

VOCIARE

BULGARIA

NATIONAL REPORT



**Victims of Crime
Implementation Analysis
of Rights in Europe**



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Implementation Analysis
of Rights in Europe

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AUTHORS

MAIN RESEARCHER: MARIETA DIMITROVA, ATTORNEY AT LAW

EDITOR: NADIA SHABANI, LAWYER

ASSISTANT: ANNA ADAMOVA, LAWYER

DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission.

Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.

The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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EXECUTIVE SUMMARY

In 2012, Directive 2012/29 of the European Parliament and of the Council (hereinafter, Victims' Directive) was adopted at EU level. It envisages special conditions and measures, to be guaranteed by each member state, for the protection of victims of crimes. The aim of the Victims' Directive 2012/29 was to ensure that minimum standards exist in each country and that every EU citizen enjoys equal and adequate treatment within the criminal justice system. The Bulgarian state has adopted changes in national legislation since the implementation of the Victims' Directive. These changes have affected several pieces of legislation: criminal legal proceedings, introduction of victims' compensation and specialized victim support services.

Regardless of the formal process of alignment of legislation with the EU standards, practice has not been significantly affected: legal proceedings are still lengthy; training for the relevant professionals is poor; there is no individual assessment to identify the protection needs of the victims; no special attention for specific groups of victims (children and those with disabilities). Therefore, it still is a challenge to ensure maximum safeguards and the protection of victims within the criminal justice. Some of the Directive's requirements are written into legislation as general principles without the development of detailed legal tools and mechanisms for their implementation. Most of the terms and the concepts of the Directive are new for the Bulgarian criminal justice. Whilst transposing the directive into law, it was necessary to consider how these new ideas should be implemented in practice and how they will fit within the existing criminal legal procedures: unfortunately, this aim has not been achieved.

Nevertheless, there are positive outcomes to report:

- a) There is a clearer understanding, among the main stakeholder groups, that current legislation does not ensure the victims' rights and does not guarantee the provision of protection and support;
- b) There are some good practices of collaboration between institutions and providers of mainstream social services and victim support services, which are considered to be successful,
- c) The role of NGOs in the process of protecting victims' rights and ensuring their safety is clearly appreciated by the professionals, involved in the criminal justice system and as service providers, as well as by the victims

Throughout the research developed, certain gaps were identified.

On a regulation level:

- a) Some important elements of the Victims' Directive were not transposed at all and others were not adequately transposed.
- b) In addition, there are gaps regarding the practical implementation of the Directive. For some of the rights transposed there are no mechanisms for their implementation. Where such mechanisms are provided, most are ineffectively and poorly developed (or are developed in an uncertain manner) in the legal framework;

On a policy level:

- a) The transposition was not supported by a clear action plan to provide programs and measures resulting in a real and effective implementation of the standards envisaged;
- b) Defensive policy development – the transposition of the Directive was recognized more as a process to “fill in” something missing in the legal procedure, without ensuring the respective application in social policy formulation and implementation (i.e. the Ministry of Labour and Social Policy did not accept its role in providing inclusive services and rehabilitation support, the Ministry of Healthcare for ensuring support with medical examinations, etc.).

On a practical level:

- a) Very often the victim is lost in the complicated circle of activities performed by different professionals: without productive coordination – integrated case management between the procedures/institutions is an issue (i.e. between the investigative bodies in the criminal legal proceedings (police and prosecution), the court and the providers of victim support services.)
- b) Multidisciplinary work is not recognized as a professional standard practice, which results in a lack of comprehensive individual assessment to identify the victim's support needs;
- c) Successful models are still in their pilot phase, mainly on project based funding, and without serious state support.

On a personal level:

- a) For some professionals the language of the Victims' Directive is still “strange” and “foreign” and difficult to accept, others may interpret the wording used in different ways;
- b) The stakeholders' attitudes on the level of implementation of the legislation differs greatly, especially regarding the effectiveness of the legislation;

In conclusion, two important society trends that might shape the context should be underlined: a) most of the, so called, successful practices were recognized as those performed by NGOs; b) in eastern Europe, there is a clear trend in decreasing the participation of NGOs, especially those who defend human rights.

INTRODUCTION

The national Bulgarian research aims to assess the practical implementation of the Victims' Directive in Bulgaria and how this has affected professional practices and impacted the lives of the victims. The focus of the research was to evaluate the legal framework as well as its application, the concerns of professionals, and how stakeholders have tried to face the challenges presented.

The main objective was to create a clear picture of the current situation. For this, the researchers used the following methodology: a legislative analysis and a mapping of competent authorities and organisations. To assess how the Victims' Directive has been implemented, it is vital to know more about national legislation, to know how the Directive was transposed into national law to further analyse whether such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the competent authorities and organisations, which relate to victims.

To support the work presented in this report, three research tools were developed in order to obtain the desired information: a desk research, an online survey, and interviews.

Desk research was the first stage of the national research. Researchers looked for answers to the questions on the main legal provisions that were established/changed after the application of the Directive and how their implementation might influence the practice of professionals in different fields of work¹. Policy research was also fundamental to provide an overview of the important strategies and relevant documents used in the process of transposition.

Together with interviews, it was possible to complete the desk research. This enabled the researchers to carry out a stakeholder analysis: the main objective was to map all key stakeholders who interact with the victims during legal proceedings, what their professional responsibilities are and what their attitude is. This made it possible to answer questions, which were incomplete during the desk research.

The third research tool, the online survey, together with interviews, resulted in a Regulatory impact assessment: an important part of the research was devoted for evaluating the impact of the Directive's requirements – regarding the quality of victim support, improvement of professional standards and skills, and policy effect and efficiency. The survey was a particularly important tool

¹ The main legislation analysed: Law on Assistance and Financial Compensation of Victims of Crimes and the Regulation on its implementation, Code of Criminal Procedure, Law on the European Protection Order, Law on protection of persons threatened with criminal proceedings, Law on Child Protection, Law on Protection Against Domestic Violence, Law on Legal Aid, Social Assistance Act and the corresponding secondary legislation have complementary implementation.

as it provides a broad evidence base and allows for statistical analysis. It consisted of close-ended questions directed at organisations and practitioners in contact with victims (police, prosecutors, judges and court staff, policy makers and victim support organisations).

This report demonstrates how Directive articles were transposed into national legislation. Subsequently, a section devoted to each of the Directive's rights (from article 1 to 21) was developed. These sections will explain if and how the articles and rights provided by the Directive have been transposed into Bulgarian law.

Furthermore, a chapter on good practices is presented as well as a chapter identifying gaps, challenges and recommendations. These provide suggestions, which might be considered good practices to be implemented by other Member States and be maintained in Bulgaria. The final chapter will provide a conclusion of this report.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

Directive 2012/29/EU of the European Parliament and of the Council was adopted in 25 October 2012. Bulgaria started a process of implementation by introducing several changes to existing legislation. The Directive was transposed into national legislation in two stages. The first stage includes the adoption of the Law on the European Protection Order and the Law on Assistance and Financial Compensation of Victims of Crimes and associated Regulation (2015-2017). The second stage includes the amendments to the Code of Criminal Procedure (2016-2017). The Law on the European Protection order is closely related to the package of measures on the adoption of the Directive as part of the wider EU objective of building a European area of justice so that people can rely on the same basic rights and trust in the judicial system across the EU.

The Law on Child Protection, the Law on Protection Against Domestic Violence, the Law on Legal Aid, the Social Assistance Act and corresponding secondary legislation have complementary applications in regards to services, measures and provision of psychological support to victims of crimes and domestic violence.

The scope of the law includes the provision of information and support to victims of crimes, procedures, responsible bodies and international cooperation. However, the provisions are formal and declarative without guaranteeing real rights. Without relevant changes in social legislation, the development of multidisciplinary social services for victims of crimes and the introduction of an adequate victims' support needs assessment mechanism, the provisions of the law remain wishful thinking.

The amendments to the Code of Criminal Procedure are meant to guarantee the victims' participation in criminal procedures. The Law on Assistance and Financial Compensation of Victims of Crimes introduces the provision of information and support to victims of crimes, compensation mechanisms, responsible bodies and international cooperation issues. In the Code of Criminal Procedure and the Law on Assistance and Financial Compensation of Victims of Crimes, there are provisions that refer specifically to the Directive. The Directive is also referred to as grounds for the adoption of the Law on the European Protection order, regardless the fact that the main aim of the law is solely the realisation of Directive 2011/99/EU into Bulgarian law.

The majority of the Directive's articles were transposed into national legislation. However, rights such as those related to the concept of restorative justice and the individual assessment to identify the victims' need of support were not transposed. Other rights, such as the right to be

heard, the right to protection, the right to access victim support services, the right to receive information to one's case, the training of practitioners etc. are not adequately transposed.

Bulgarian criminal justice legislation makes a difference between two types of crime: **public crime** and **private crime** depend on the degree of danger associated to the crime. Public crimes are prosecuted by the state (police and prosecution office) following a complaint from the victim. The investigative bodies (police, public prosecutors) establish if a crime has been committed. Private crimes are prosecuted, following a victim's complaint, in the courts: there is no need to file a complaint with the police or the prosecutors.

In accordance with rules on the burden of proofs, a victim acting as a **private plaintiff** is responsible for proving, before the court, that a specific crime has been committed².

The **criminal legal proceedings for public crimes** consist of two phases: the pre-trial and trial phases. The pre-trial phase is within the jurisdiction of the prosecutor. This phase includes all actions of the investigative body (police) and the prosecutor before the case is brought to court. The trial phase depends, to a large extent, on the performance and the results of the pre-trial phase.

The **pre-trial phase** consists of three elements: (a) the initiation of preliminary proceedings; (b) preliminary investigation; (c) the prosecutor's decision after the completion of the preliminary investigation. The main task of the pre-trial phase is to provide answers to the following questions: was a crime committed?; who is the perpetrator?; when there is a positive answer to these questions, the prosecutor draws up an indictment and sends it, together with the case, to the court.

The **trial phase** consists of the following: a) first instance court hearing - depending on the type of offense, the first instance may be a district or a county court; (b) adjudication proceedings - in a higher court, district or appellate, which is initiated and conducted on a protest filed by the prosecutor or on an appeal by the accused and his counsel, or by the victim; c) cassation proceedings - formed and conducted in connection with a protest by the prosecutor or a complaint from the accused and his defence counsel, or the victim regarding decisions of the appellate instance. The case is handled by the Supreme Court of Cassation.

In the legal proceedings for private crimes there is no pre-trial phase. The victim may submit the complaint directly before the court. There is no difference to the trial phase.

The **victim** may participate in the criminal legal proceedings as **witness, assisting party to the public prosecutor, civil claimant** and **private plaintiff** (in case of prosecution of private crimes).

² Examples for private crimes: light and average bodily injury, insult, slander and etc.

In the pre-trial phase, the victim can take part in the legal proceedings only as a witness. In the trial phase, whether the victim acts as a private prosecutor or civil claimant depends on her/his will and decision.

In the pre-trial phase, the victim is entitled to appeal all judiciary acts of the prosecutor that terminate or suspend the legal proceedings.

In the trial phase, the private prosecutor, the civil claimant or the private plaintiff are entitled to appeal those judiciary acts that harm his/her rights and lawful interests. The victim, acting in either capacity above, does not have the right to appeal judiciary acts in general, but should introduce arguments that the judiciary acts on, including when the sentence harms his/her personal rights and interests. In their capacity as civil claimants or private prosecutors, the victims have the following rights: to become acquainted with the materials of the case and to make necessary extracts; to provide evidence; to participate in court proceedings; to make requests, remarks and objections and to appeal the court's acts when their rights and legitimate interests are violated.

The victims should be notified on legal motions in the pre-trial and trial phase. The notifications to the victim are served in accordance with the rules of the CCP on summons and messages. The content of summons and messages include: the name of the sending institution sending, the number of the case and the year of its initiation; the name and address of the person summoned; his/her status; the place, date and time of the call and the consequences of non-appearance. When the summons is sent to the private plaintiff or to the private prosecutor and a civil claimant, the document must state his/her right to appear before the court accompanied by a legal counsel.

The current legislation introduces separate definitions related to the criminal justice system, one which is important for the survey, is the definition introduced in §1 (4) of the Complementary provisions of the CCP on the "specific need of protection". In accordance with the provision, specific needs of protection are available when the victim requires additional means of protection against secondary and repeat victimization, intimidation and retaliation, emotional or mental suffering, including the preservation of the dignity of victims during interrogation.

EVALUATION OF PRACTICAL IMPLEMENTATION

ARTICLE 2 - DEFINITIONS

For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

Explicit legal definition of the term "victim" does not exist in Bulgarian legislation. Such definition can be drawn based on Article 74 and the subsequent provisions of the Code of Criminal Procedure (hereinafter, CCP) as well as on the constant case law of the Supreme Court of Cassation.

A victim of crime is considered anyone who has suffered pecuniary or non-pecuniary damage from the crime. A victim who has suffered material or non-pecuniary damage from a crime prosecuted under a general procedure is entitled to participate in the court proceedings as a private prosecutor. After the death of the person, this right passes on his/her heirs. The victim or his/her heirs, as well as the legal persons who have suffered damages from the crime, may bring a civil action for damages in the court proceedings and settle as civil claimants³.

Legal persons are excluded from the practical definition of "victim". The conclusion can be drawn on the basis of the legal texts providing that the victim is entitled to claim non-pecuniary damages and that the rights of the victim pass on his/her heirs. Emotional relationship (a base for a claim for non-pecuniary damages) and inheritance are institutes specific only to natural

³ Ivanova, M, 2012, Prerequisites of constitution of the victim in the pre-trial phase, Volume XXVII, Burgas University.

persons⁴. However, legal persons are entitled to bring civil action for damages and to participate in the criminal procedure as civil petitioners.

Case law in Bulgaria, which is based on Decrees of the Supreme Court passed in the last century, limits the circle of close relatives and family members of the victim who are entitled to seek compensation for non-pecuniary damage in the case of death of the victim as a result of criminal offense. For example, brothers and sisters are among those who are excluded and are not entitled to such compensation, no matter their proximity to the deceased victim⁵. According to case law, only the spouse, the persons living with the victim, as well as the closest relatives - descendants and ascendants of the first degree are entitled to compensation.

The Law on Assistance and Financial Compensation of Victims of Crimes reproduces the same understanding. In accordance with article 3 (2) where the victim has deceased as a result of public crime the rights to assistance and financial compensation pass on only to his / her heirs (children, parents, spouse) or person with which the deceased person was in a factual cohabitation.

The exclusion from the definition of the deceased's brothers and sisters, as well as his/her descendants and ascendants of second degree (grandchildren and grandparents) creates difficulties in jurisprudence. There is a pending procedure at the Supreme Court of Cassation for interpretation of the issue whether brothers and sisters of the deceased person, his/her grandchildren or grandparents shall be entitled to the right of compensation. The procedure has been pending since 2016.

The mentioned provisions include factual cohabitation as a basis for exercising the rights under the Directive. No doubt non-married partners of the opposite sex are included in the definition; however, it is unclear whether a partner of the same sex living with the victim in a committed intimate relationship would be entitled to the implementation of the provision. The factual cohabitation between persons of the same sex is not regulated in Bulgarian law and there is no relevant case law.

In practice, those who may enjoy the rights provided in the Directive and transposed into relevant national legislation is restricted (the person injured by the crime and his/her relatives including children, parents, spouse or person with which the injured person was in a factual cohabitation).

A necessary prerequisite for the enjoyment of the rights of the victim is that he/she has explicitly requested participation in the pre-trial phase and has indicated a formal address, in the country (Article 75(3) of the CCP). The authority that institutes the pre-trial phases shall immediately

⁴ Petrov, V, 2014. Rights of the victim in pre-trial procedure. *Studia Iuris*, volume 2, specialized on-line journal of the Faculty of Law, Plovdiv University.

⁵ Supreme Court of Cassation, III staff of judges, 2017, case 637, Decision 169/24.11.2017.

notify the victim if he/she had specified a legal address in Bulgaria. If the victim was unaware of the activities prior to the opening of the pre-trial phases, he/she could not have the opportunity to indicate an address. Therefore, in the case of unfair or unreliable behaviour by the investigative authorities, there is a certain risk that the victim will not be able to exercise his/her rights.⁶ The provisions of the Law on Assistance and Financial Compensation of Victims of Crimes are more appropriate: Article 6 (1) creates an obligation for the Ministry of Internal Affairs, investigative bodies and the organisations providing support to victims of crimes to immediately inform them of their rights in the criminal proceedings and their options to participate.

⁶ Petrov, V, 2014. Rights of the victim in pre-trial procedure. *Studia Iuris*, volume 2, specialized on-line journal of the Faculty of Law, Plovdiv University.

ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.

The right to understand and to be understood is included in the provisions of the CCP and the Law on Assistance and Financial Compensation of Victims of Crimes. The victims have the right to be informed about their rights in criminal proceedings, including how to receive protection for their security and that of their relatives and on the course of the criminal proceedings. As mentioned before, the victim is entitled to this information if he/she has explicitly requested to participate in the criminal pre-trial phases and has indicated a formal address in Bulgaria. Under the CCP, the right of victims of a crime to receive information and to participate in pre-trial phases is conditional to their explicit request and the provision of a formal Bulgarian address, therefore, it is possible the victim does not receive information if he/she is not involved in the proceedings.

It should be noted that the CCP does not contain explicit provisions for relevant authorities to ensure the right of the victim to understand and to be understood when the victim is a foreigner, does not understand the Bulgarian language and requires a translation. The existing provisions, obliging the competent authority to ensure translator or to present translated papers, are related only to the accused and the procedure of questioning witnesses, but not for the provision of information to the victim.

Similarly, there are no provisions in the CCP that guarantee the victim's right to understand and be understood when it comes to a person with a disability. The only provisions that refer to disabled persons are those relating to the involvement of the accused and the questioning of a witness, if the accused person or witness has hearing impairments. There is then an obligation to assign an

sign language interpreter. If the victims are persons with intellectual disabilities, psycho-social problems, visual impairments or multiple disabilities there are no provisions guaranteeing their right to understand proceedings and to communicate with others, through adjustment of the information or usage of alternative means of communication. It was clear from the interviews and survey that police officers and prosecutors do not follow special protocols to ensure the full comprehension of victims, nor do they use specialised technical methods or instruments for groups with communication restrictions⁷. In these cases, those professionals rely on the practices and approaches that are provided by the NGOs, services providers.

There are several provisions in CCP to ensure the rights of persons with "special protection needs". According to this legal definition⁸, these are persons in need of additional means of protection against secondary and re-victimization, intimidation and retaliation, emotional or mental suffering, including the preservation of dignity during interrogation. However, there is no between the provisions and the right to understand and to be understood.

The Law on Assistance and Financial Compensation of Victims of Crimes provides more detailed information on this right. It introduces an obligation for the Ministry of Interior, investigative bodies and victim support organisations to provide information on the options available to access medical care, information about free psychological assistance and support, and any kind of specialized support that victims may need; the right to legal assistance, the bodies to which they may refer for such assistance, the prerequisites and procedures for granting free legal assistance; the bodies to which the criminal offense may be reported, the post-reporting procedures and the option available to the victims under the terms and conditions of these procedures; the bodies which may be alerted to a violation of victim's rights acting in the framework of the criminal proceedings.

However, this law does not provide mechanisms and tools for the practical implementation of Article 3 of the Directive if victims are persons with disabilities. There are no obligations for the corresponding bodies and organizations providing support to victims of crimes to adjust the information to "easy to read" versions of the documents, to use alternative forms of communication or to ensure the person is accompanied by a person of his/her choice. The CCP and the Law on Assistance and Financial Compensation of Victims of Crimes do not include obligations for investigative bodies, the court or other competent bodies to assess the communication needs and constrains of each individual victim. The fact that the institutions do not help them between different phases of the litigation process, and with the consequences after the court resolutions was confirmed by feedback from the victims' side.

Victims of crime usually go through a need assessment only if they are users of a social service that supports them in dealing with the consequences of the crime or if the victim is a child. This

⁷ Interview 2 and Interview 4.

⁸ §1 of the Complementary Provisions of CCP.

assessment is done by the social service or as a protection measure for the child in compliance with social legislation and is not related to the requirements of article 22 of the Directive⁹. There is no integrated assessment of the protection needed by each individual victim in the CCP. Victims shared that they received more individually orientated support when the assessment of their need of support was carried out by an NGO team.

When the victim of the crime is a child, s/he needs protection and support. In order to guarantee the right of the child to understand and to be understood it is necessary to adequately adapt the process of communication. The CCP and the Law on Assistance and Financial Compensation of Victims of Crimes do not include any special provisions relevant to the victim of crime being a child. However, based on the Convention of the Rights of the Child and EU legislation¹⁰, specialized child-care facilities have been set up in the country: the so called “Blue rooms” that allow interviewing children by a trained specialist in a relaxed atmosphere, in the presence of all the participants involved for the relevant stage of the criminal proceedings (in most of the cases they are “built” in the court facilities)¹¹.

In accordance with the Law on Assistance and Financial Compensation of Victims of Crimes, the provision of information to victims is entrusted to the authorities of the Ministry of Interior and investigative bodies. Representatives of institutions and organizations working directly with victims criticize the capacity and the commitment of such authorities. As a general assessment, it has been stated that these authorities and organizations do not spend enough time on providing adequate information¹². Professionals have shared the opinion that only the court responds appropriately to the obligation to inform victims about their rights, while the information provided by the police is often insufficient or incomplete.¹³ The ability of the Ministry of Interior authorities to provide information to child victims of crime is considered inefficient¹⁴. Representatives of NGOs working in the field of child protection highlighted that, during the period 2016–2017, child victims of crimes and their families were not informed of their rights to individual assessment, special protection measures, inquiry in a specialized room, and free psychological help, among others.¹⁵

9 §1(12) of the Complementary provisions of the Social Assistance Act.

10 Directive 2011/92/EC, Directive 2012/29/EC.

11 Center for the Study of Democracy, 2013, Improvement the protection of rights of victims of crime; Bulgaria National Report; <http://www.csd.bg/artShowbg.php?id=16848>.

12 2018, National Network for Children, Official Letter to the Bulgarian Minister of Justice.

13 Center for the Study of Democracy, 2013, Improvement the protection of rights of victims of crime; Bulgaria National Report; <http://www.csd.bg/artShowbg.php?id=16848>.

14 2018, National Network for Children, Official Letter to the Bulgarian Minister of Justice.

15 2018, National Network for Children, Official Letter to the Bulgarian Minister of Justice.

ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

Article 4 of the Victims’ Directive was transposed into article 6 of the Law on Assistance and Financial Compensation of Victims of Crimes (amended 2016 and 2017). Currently the authorities of the Ministry of Interior, investigative bodies (Police and Prosecution) and victim support organizations are obliged to offer, from their first contact with victims of crimes, information about their rights. When providing the relevant information, competent authorities shall take into account the condition of the victims, including their age. The information should be offered orally and in writing by means of a standard form, in a language which the victim understands. A special document (protocol) should be drafted for the provision of relevant information to the victim. The document should be drafted in duplicate and shall be registered by the respective body or organization. One copy of the document and of the standard form are provided to the victim, in a language that the victim understands.

The circle of stakeholders responsible for providing information at the first contact with the victim was expanded by the legal amendments of 2016. Initially, only the authorities within the structure of Ministry of Interior and victim support organisations were obliged to provide information at first contact with the victim. From 2016, the list of authorities has included the

investigative bodies, which is positive development in the transference of the Directive. Since the pre-trial phases are handled by the investigative bodies, their obligation to provide information immediately at the first contact with the victim is crucial for the proper implementation of Article 4 of the Directive.

The implementation of this right is related to the adoption of the right under Article 3 of the Directive. As stated above, current legislation does not foresee the obligation to offer information in different formats. The criteria used by under legislation to specify any modification to information given to victims relates only to the condition and the age of the victim. Although those criteria implicitly cover disability, vulnerability of children, elderly and migrants, etc., in law and the rules for its implementation there are no specific provisions for offering the information in “easy-to-read” versions, or allowing the victim to be accompanied by a person of his/her choice in order to facilitate the communication. Alternative forms of communication are not recognized either. The information is provided verbally and in writing, on an approved form. The authorities are obliged to explain the rights orally and to provide the written form, which is standardized and approved by the Ministry of Justice. The different rights of the victims are listed on the form, with reference to and information (phone, address and website) of victim support organisations.¹⁶ The description of the rights is a reproduction of the text of the law.

It is important to point out that the provision of Article 6 of the Law on Assistance and Financial Compensation of Victims of Crimes does not correspond entirely with Article 4 of the Directive. However, there are essential gaps: for example, the obligation of stakeholders responsible for providing information without delay at the first contact with the victim do not include any obligations to offer information on alternative accommodation (Article 4 (1) (a) of the Directive); access to legal advice, legal aid and any other sort of advice (Article 4(1)(d) of the Directive); how and under what conditions victims are entitled to interpretation and translation (Article 4(1)(f) of the Directive); the available restorative justice services (Article 4(1)(j) of the Directive) and how and under what conditions expenses incurred as a result of the victims’ participation in the criminal proceedings can be reimbursed (Article 4(1)(k) of the Directive).

In this regard, the form handled by competent authorities only contains information on the rights of free psychological help, the right to legal aid, the procedures for making complaints with regard to a criminal offence and the victims’ role in connection with such procedures, the available procedures for making complaints when their rights are not respected by the competent authority; how and under what conditions they can obtain protection for themselves and their relatives; how and under what conditions the victims can access compensation; rights of victims in trans-border situation. Related to the rights of victims in trans-border situation the form provides information mainly for the competent bodies.

¹⁶ To access the form for the rights of victims of crimes: <http://www.compensation.bg/sites/default/files/formularzpp.pdf>.

The form is provided in Bulgarian, however in regards to the provision of Article 6(a) of the Law on Assistance and Financial Compensation of Victims of Crimes, which states that it should be presented in a language that “the victim understands”, the form should be translated accordingly for citizens of other Member-States, including migrants. The Law creates an obligation for the National Council on Assistance and Compensation for Victims of Crime to issue and distribute a brochure in Bulgarian, English, German and French, which contains information related to the right to receive information from the first contact with the competent authority. This brochure should be distributed free of charge to the victim support organisations as well as to the emergency medical centres, hospitals, social assistance directorates and other legal entities who, in carrying out their activities, contact directly with victims of crime.

However, the general opinion is that the authorities and organizations do not spend enough time on providing adequate information and that the practical implementation of this right is rather formal¹⁷. This conclusion is supported by the fact that Article 6 of the Law on Assistance and Financial Compensation of Victims of Crimes does not transpose Art 4 of the Directive completely. Hence, the main focus of the information provided remains the legal criminal proceeding. Issues such as alternative accommodation, advice and consultancy, translation and interpretation, including usage of alternative communication tools are not part of it. Child protection authorities, who play important role in the field, are excluded from this process. However, as mentioned above, representatives of NGOs working in the field of child protection shared that, during the period 2016-2017, child victims of crimes and their families were not satisfied with the implementation of this article¹⁸.

According to Article 15(3 and 4) of the CCP, the court, the prosecutor and the investigating authorities are required to provide information to the victims related to their procedural rights and to provide the necessary procedural remedies for the protection of their rights and legal interests. In accordance with Article 75 (1) of the CCP, victims are entitled to receive information about their rights in the criminal proceedings including how to receive protection for their security and that of their relatives; to be informed about the course of the criminal proceedings. However, the right of the victim to receive information without delay under the CCP is preconditioned by victims’ explicit request to participate in the criminal proceedings and indicating an address for summoning in the country (based on argument of Article 75 (3) of the CCP). The question emerges as to whether the authorities should be obliged to offer information despite the victim having provided his/her contact and explicitly requested participation in the criminal proceedings. The answer, provided by the legal doctrine is “yes”. The prosecutor and the investigative body shall be obliged to explain their rights to the victims and to provide information no matter whether the victim has expressed a request for participation in the proceedings or has indicated an address

¹⁷ Center for the study of Democracy, 2013, Improvement the protection of rights of victims of crime; Bulgaria National Report, <http://www.csd.bg/artShowbg.php?id=16848>.

¹⁸ 2018, National Network for Children, Official Letter to the Bulgarian Minister of Justice.

for summoning. This should be done by the competent authority *ex-officio*¹⁹. The conclusion is based on the principle of equality of citizens in criminal matters. Any other outcome would be inconsistent with European and international standards for the protection of victims of crime in the criminal justice system²⁰ and would restrict the victims' ability to exercise the rights as foreseen in the Victims' Directive.

Article 75 of the CCP intimates that there are two stages in the provision of information. The first stage includes giving initial information on victims' rights in the criminal proceedings: how to receive protection for themselves and for their relatives and information about the course of the criminal proceedings. The second stage includes the obligation of the competent authorities (prosecutor, investigative bodies, court) to give information to the victim for both the duration of the pre-trial and the trial phases, before further action is implemented.

The victims also have the right to request assistance from the Ministry of Interior to obtain information that they cannot collect themselves

From the interviews²¹, it was clear that there was that the little information material available was mainly within the different projects performed by NGOs or institutions, but not at all widely spread. From the victims' perspective, the information is limited and insufficient to allow them to understand their rights, how they might be protected and how the available resources might be used.

19 Petrov, V, 2014. Rights of the victim in pre-trial procedure. Studia Iuris, volume 2, specialized on-line journal of the Faculty of Law, Plovdiv University.

20 Ivanova, M.. 2012, Rights of the victims of crime: to be informed about their rights in the criminal procedure and to be informed about the course of the criminal procedure; Legal collection, Center for Legal Studies, Burgas Free University.

21 Interview 1, interview 2 and interview 3.

ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.

A complaint regarding a criminal offence can be made before the authorities of Ministry of the Interior using the emergency telephone number 112 or at the nearest regional police department. Persons, victims of crime or those who have witnessed a crime, can make a complaint at the Public Prosecutor's Office. The right is regulated within criminal legislation²², however, the Law on the national system for emergency calls on the unified European number 112 has a complementary application. When the complaint is submitted to the Public Prosecutor's office or the regional police department, it should be in writing and contain information about the person making the complaint (full names, address for summons in the country, contact telephone) as well as a detailed description of the circumstances related to the crime. Additionally, the complaint should be signed by its author as anonymous complaints cannot initiate an investigation.

The complaint can be submitted either in person at the office of the competent body or sent to this office by registered mail: the complaint is issued with a special registration number. Victims of domestic violence may submit a complaint at the Public Prosecutor's office if the situation corresponds to the type of crime of domestic violence described in the Criminal Code. In all other cases where domestic violence does not represent a crime, the victim of domestic violence may seek protection before the Regional Court under the civil law procedure.²³

A complaint may also be made orally; in such cases, a minute should be drafted, signed by the applicant and the officer who received the complaint.

22 Art. 209 of the CCP.

23 Law for protection against domestic violence.

The Minister of the Interior has approved standard forms for complaints with regard to a public crime. The templates²⁴ are available in 5 languages: Bulgarian, English, French, German and Russian. The initiative is not based on explicit legal provisions in the current legislation, but upon an idea from the National Police Directorate General and aims to facilitate the reporting of crimes by foreign citizens before the police authorities. The forms have been created with the agreement of the Supreme Cassation Prosecutor's Office.

In the CCP competent authorities are obliged to appoint an interpreter when the witness does not speak or understand Bulgarian²⁵. This rule refers explicitly to the witness as a participant in the process, which means that in different phases of the legal proceedings, when the victim is interrogated as a witness and he/she does not understand Bulgarian, the competent authority is obliged to appoint an interpreter. However, for this to be implemented it is necessary to have pending legal proceedings; the stage of the submission of the complaint is prior to the initiation of the legal proceedings.

This form, provided in a language that the victim understands, mentions only the competent authorities to which a complaint about a crime may be referred and the option to report for crime through the emergency telephone number 112. There is no information included on support and translation services, but the form is available in the five languages mentioned before. Researchers consider that the form is very short and gives insufficient general information about the rights of the victims: to ensure their rights the victims need additional details.

²⁴ Website of the Ministry of Interior, <https://www.mvr.bg/gdnp>

²⁵ Art. 21 and art. 142 of the CCP.

ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.

The right of victims to receive information about their case was transposed into Article. 6 of the Law on Assistance and Financial Compensation of Victims of Crimes and in the CCP. The Law on Assistance and Financial Compensation of Victims of Crimes introduces the right of the victims to receive information on victim support services, opportunities to receive legal aid and on the compensation mechanism. The CCP²⁶ regulates the information on the criminal legal proceedings, the option of the victim to appeal any judiciary acts adopted within the legal proceedings and participation options.

As well as the general right of victims to receive information about their case, which covers all stages of the criminal proceedings until the entry into force of the sentence, the CCP introduced the victim's right to receive specific information at the different stages of procedure, including: the right of the victim to receive information on his / her right to bring a civil claim²⁷; the right to make requests, remarks and objections and to appeal against acts, that violate victim's rights and their legitimate interests; the right to be informed about the refusal of the prosecutor to initiate pre-trial proceedings (Article 213 of the CCP) or for the cessation or suspension of proceedings, instigated by the prosecutor, after receiving the case from the investigating authorities (Article 243-244); the right to appeal such acts of the prosecutor; the right to acquaint himself/herself

²⁶ Art. 75 of the CCP.

²⁷ The authorities involved in the pre-trial proceedings and the court are obliged to provide this information (Article 73).

with the materials of the investigation when those materials are submitted (Art. 227)²⁸, the right to be notified of the cessation of proceedings by the Judge- rapporteur (Article 250) and the right to appeal against that act in case of crimes **persecuted (do you mean persecuted or prosecuted?)** on a complaint of the victim (private crimes); the right to be notified of an agreement to decide the case (Article 382) indicating that the victim is entitled to initiate civil action for non-pecuniary damage before the civil court.

The practical implementation of these rights brings us back to Article 75 of the CCP and the prerequisites enabling the victim to receive case information and to participate in the legal proceedings: explicit request to participate in the criminal proceedings and indication of an address for summons in the country. The investigative authority can inform the victim of the pre-trial phases, only if the latter has indicated an address in the country. Therefore, if such an address is not available or the victim does not know that such procedure is in place, s/he cannot be informed nor can he/she participate in the pre-trial phase of the legal proceedings²⁹.

The legislature assigns the active role to the victim, rather than the competent bodies. All rights of the victim to participate and receive information in criminal proceedings are premised by the victim's behaviour (expression of explicit will and notification of address). However, the victim is too often in a vulnerable situation, or traumatized and may not know or be able to be as proactive as required by the law, which will result in a limitation of the rights provided by the Directive.

The victim is usually questioned as a witness in the case, and if the victim is not informed of the existence of pre-trial phases, his/her rights as a victim of crime are explained for the first time before the hearing of the victim as a witness. However, this hardly is the best practice: when the victim has not been interviewed at the start of the investigation but is questioned as a witness later in the proceedings, s/he is deprived of the opportunity to know his/her rights (including the right to receive information about the case) and to exercise them accordingly.

However, if the victim does not wish to receive this information, the Law on Assistance and Financial Compensation of Victims of Crimes does not anticipate such refusal.

Analysis of the Code of Criminal Procedure shows that a victim's right to receive information does not mean the victim has to be notified of every action taken; indeed, only those that enable the victim to follow the development of the proceedings related to his/her case will be shared. Firstly, the victim should be aware of the initiation of the pre-trial phase and the start of the case (Article 75(2) of the CCP): this notification is a prerequisite for exercising all other procedural rights. The victim must also be informed about the refusal to initiate the pre-trial phase: this notification is an obligation for the public prosecutor (Article 213 of the CCP) and the victim is

²⁸ This right depends on an explicit request made by the victim.

²⁹ Article 75(3) CCP.

entitled to appeal the refusal. The victim should also be notified about any termination of the investigation at the pre-trial phase or suspension of the pre-trial phase and the presentation of legal proceedings before the court.

The victim has the right to receive a written translation of the acts terminating or suspending the legal proceedings in a language that the victim understands. If the public prosecutor refuses to initiate the **pre-trial phase**, the refusal should be announced to the victim or his/her heirs.

According to the CCP³⁰ there is no obligation to translate subpoenas and court orders into a language that the victim understands. During the interviews it was raised that victims feel they must become fully engaged in the process if they really want to understand all legal procedures, etc. If they are not pro-active, it may be complicated to ensure this right. From interviews with the police officers it was clear that they feel that "they do not have the obligation to act if the victim refuses support". Pursuant to Article. 249 of the CCP, a breach of the procedural rules in the pre-trial phases is available in the case of non-compliance by the authorities to inform the victim or their heirs about: the initiation of the pre-trial phases; about victim's rights and how the victim may take part in the proceedings. Such a breach of the procedural rules is available also if the victim fails to receive a translation of the prosecutor's order for termination or suspension of the criminal proceedings if the victim does not speak Bulgarian. Based on this provision, it can be concluded that if the victim does not know the Bulgarian language, the competent authorities are obliged to submit a corresponding translation only of the acts issued as part of the criminal legal proceedings. The victims are entitled to the materials of the investigation legal proceedings are brought to trial and they are entitled to examine all relevant details. The investigative body shall set a limited period for the examination of materials, depending on the factual and legal complexity of the case, its volume and other circumstances that may be relevant to the duration of the study (Article 228 of the CCP).

As the criminal justice procedure is available only in Bulgarian: persons who do not speak Bulgarian may use their native, or another, language, in these cases an interpreter is appointed. If any of those involved, including the victim is unable to examine the materials, the investigative body shall be obliged to clarify and, if necessary, to read the documents on their behalf.

³⁰ Art. 179 of CCP.

ARTICLE 7 – RIGHT TO INTERPRETATION AND TRANSLATION

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.

In accordance with the CCP, victims are entitled to receive written translations of the prosecutor's order for termination or suspension of the proceedings if the victim does not understand or speak the Bulgarian language. Participants in the criminal proceedings, not speaking Bulgarian may use their native or other language. In these cases, an interpreter is appointed, an interpreter should also be appointed for interrogation of a witness, who does not speak or understand Bulgarian. This rule is applicable to victims, interrogated in the capacity of witnesses.

In the CCP there are four provisions relevant to the right of the victim to interpretation and translation (Articles 21, 75, 249 and 142). As mentioned, if the victims do not understand Bulgarian, they have the right to receive a written translation of only two documents issued in the legal proceedings: the prosecutor's orders on the suspension or the termination of the criminal legal proceedings: these are considered essential for the fulfilment of a victim's rights. Within the criminal legal proceedings, the competent authorities are not obliged to present the victim with copies of other translated articles and documents (such as the indictment, the final sentence, etc.) or to ensure interpretation. If the victim takes part in the legal proceedings or is questioned as a witness, a translator should be appointed, provided the victim does not understand Bulgarian and if the victim has hearing impairments, a sign language interpreter should be appointed. However, under national legislation there are no requirements obliging the competent authorities to assess a victim's need for translation and interpretation. In the Code, there are no provisions entitling the victims to ask for translation or interpretation at their own request, nor are there legal options for victims to challenge a decision not to provide interpretation or translation.

Where there is a requirement for an assessment to determine whether a participant in the legal proceedings needs interpretation and translation support, whether the translated/interpreted information is sufficient for the participant to understand and contribute to the proceedings, or whether interpretation and translation facilities should be denied, this is regulated only with regard to the defendant.

Overall, comparing what is available for the victim and the defendant, research shows that the rights of the defendant are better guaranteed³¹. Unfortunately, there are no similar provisions aiming to guarantee the victim's right to translation and interpretation.

Victims with intellectual, psychosocial and multiple disabilities, regardless of their role in the criminal legal proceedings, are not given help to understand the legal proceedings. The defendant or the victim are usually represented by their counsel; however, there are no adequate mechanisms to present articles, issued in the legal proceedings, in an "easy-to-read" version or to use alternative means of communication.

During the interviews, no-one mentioned any case that used translation or interpretation services. One case dealing with refugees was mentioned, but it was not clear what the response from the police should be regarding the steps to be followed³².

³¹ The defendant who does not understand a Bulgarian language has the right to interpretation and translation in criminal proceedings in a language that he understands. The defendant shall be provided with a written translation of the following documents: act for bringing charges and determine the detention measures, the indictment, the judgment, the decisions of the appellate instance and the cassation instance. The defendant has the right to refuse translation when he has a defence counsel and the refusal does not violate his procedural rights. The court and the investigative authorities, involved in the pre-trial procedure are entitled on their own initiative or based on a motivated written request of the defendant or his defence counsel to provide a written translation of other additional documents where they are essential for the exercise of the rights of the defence. Exceptionally, instead of a written translation oral translation or oral summary may be provided when the defendant agrees, has a defence counsel and this does not infringe his procedural rights. The court and the investigative body may refuse to provide the defendant written or oral translation of any additional documents under Art. 395a(2) of the CCP where they are not essential to the exercise of the rights of the defence and to refuse to translate parts of them where they are immaterial to the defendant's right of defence. The act of the investigative body, representing a refusal the defendant to be provided with translation is subject to appeal to the supervising prosecutor.

³² Interview 4 and Interview 5.

ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

The right of the victim to access victim support services is regulated in the mainstream social services legal framework and in the special legal framework related to the adoption of the Directive (The Law on Assistance and Financial Compensation of Victims of Crimes). In accordance with the Social Assistance Act, mainstream social services are meant to support people's social inclusion and independent living. As far as victims of crime need such support, they can rely on the mainstream legal framework regulating the access and delivery of social services. Moreover, the investigation authorities have the obligation to refer victims to support organizations.

In the Law on Assistance and Financial Compensation of Victims of Crimes, all victims of public crimes have access to organizations providing free psychological counselling, practical assistance and legal aid, as well as to the provision of shelter or other appropriate temporary accommodation for victims of crime when there is an immediate risk of secondary and repeat victimization, intimidation and revenge.

Specialized victim support services are provided by organizations selected by the Ministry of Justice. Such organizations are mainly NGOs, private social service providers registered as social services providers in the Agency for Social Assistance, part of the Ministry of Labour and Social Policy and their activity follows the generic legal framework for the delivery of social services for all vulnerable groups.

Mainstream social services are provided by the municipalities and private providers, mainly

NGOs, acting in compliance with the requirements of the Social Assistance Act and the relevant secondary legislation.

The victim support services, under the Law on assistance and Financial compensation of victims of crimes, are provided by victim support organizations. In accordance with §1 of the Complementary provisions of the Law on assistance and Financial compensation of victims of crimes a "victim support organization" is a non-profit legal entity established under Bulgarian law and registered for public benefit, which supports the victims of crime free of charge and, under appropriate conditions, complements the actions of the state in this respect.

There is no major distinction between the private providers of mainstream social services and those of specialized victim support services. NGOs carrying out victim support services should be registered in **public benefit?** in regard to the mainstream social services, NGOs in **private benefit?** could be providers too.

The mainstream social services are underwritten by public funds (state or municipal budgets) as are victim support services (the budget of the Ministry of Justice).

The mainstream social services may be contracted out to private providers through a special tender procedure provided for in the Social Assistance Act. The contracting authority is the mayor of the municipality, where the services are provided³³.

Victim support services also are designed to be contracted out to NGOs in public benefit. The contracting authority is the Ministry of Justice and the tender procedure applicable is regulated under Public Procurement Law, which is more complicated and expensive when compared to the procedure provided in the Social assistance act.

³³ Good practice for victim support services, provided by NGO: PULSE Foundation is a Bulgarian non-governmental organization, established in 1999. In 2015, PULSE Foundation operates with 19 full time employees and over 40 youth volunteers. An important goal of the Foundation is to contribute to the intellectual, professional and spiritual development and stimulate the rise of social status of Bulgarian women, including to protect the rights of people, affected by violence, trafficking and other forms of exploitation, as well as drug addicted and their families, in direction of social integration and personal realization.

PULSE Foundation works in six general programs:

1. integration and rehabilitation of persons and children, affected by violence and trafficking, by providing rehabilitation programs.
2. violence prevention through informal trainings, youth activities, raising awareness, organizing events, seminars, workshops and conferences;
3. crisis center for individuals and children, affected by violence; the center is both funded with public and private resources;
4. programs providing services to people, addicted to psychoactive substances;
5. prevention of HIV/AIDS among intravenous drug users;
6. drop-in center.

In accordance with the Law on assistance and Financial compensation of victims of crimes, the victim's support services include: emergency medical assistance under the Health Care Act; psychological counseling and assistance; free legal assistance under the Law on Legal Aid; practical assistance³⁴

The **psychological support** and assistance as a specialized victim support service is provided, on the territory of each of the appellate judicial districts, by specialists – psychologists from victim support organizations.

The emergency medical assistance is provided in accordance with the Health Care Act.

In accordance with the Law on assistance and Financial compensation of victims of crimes, victim support organizations should provide **shelter** or other appropriate temporary accommodation for victims of crime for which there is an imminent risk of secondary and repeat victimization, intimidation and revenge. The shelter can be provided for a maximum of up to ten days³⁵. However, the shelter, as a victim support service, and its access is regulated by the mainstream social services' legal framework. The Law on assistance and Financial compensation of victims of crimes introduces only a maximum duration for the usage of this service, which is short, inadequate and does not address the individual needs of the victims

The free psychological support available under the Law on assistance and financial compensation of victims of crimes, is accessible through an application submitted by the victim to the support organization³⁶.

The right to free legal assistance is expressly granted to victims of domestic or sexual violence or trafficking of people, who do not have sufficient financial means and wish to be represented by legal counsel. It should be noted that the right to legal aid is not an absolute.

Guidelines, on how the prosecution should proceed in cases of complaints for domestic violence, a murder threat or a breach of defence order, were approved by the Prosecutor General on 30 April 2018³⁷. In accordance with these guidelines, the administrative heads of regional prosecution offices are required to publicise, at a publicly accessible place in the prosecutor's office or on its Internet site, information related to victims' access to free medical services and legal aid. In

³⁴ In accordance with art. 11(2) Law on assistance and Financial compensation of victims of crimes, "practical assistance" consists in the prominent placement of relevant information boards and other materials on the rights of victims of crime under the Law, the creation of a relaxed and favorable environment in contact with them, the provision of information on the risks of secondary and re-victimization, intimidation or revenge, as well as providing advice on preventing them.

³⁵ Art. 26(2) of the Regulations for implementation of the Law on assistance and Financial compensation of victims of crimes

³⁶ The application must contain: 1. the full name of the victim, his/her nationality, date and place of birth, permanent and current address; 2. date, place and circumstances of the offense; 3. the date on which the victim informed the competent authorities of the offense committed; 4. the reasons for the applicant for the search for psychological assistance.

³⁷ <http://m.legalworld.bg/71014.ukazaniia-do-prokurorite-za-razsledvane-na-signalite-za-domashno-nasilie.html>.

addition, contact details of the competent authorities, responsible for the protection of victims and their relatives, should be provided. The contact details of the territorial department of social assistance, responsible for drafting a needs assessment of the victim from services and providing a referral to appropriate services in line with the identified needs, should be also provided.

On the National council for assistance and protection of victims of crimes website is an information brochure on the rights of victims of crimes, which is available in four languages³⁸: Bulgarian, English, German and French.

Victims of domestic violence or human trafficking are also entitled access to universal mainstream social services regulated by the generic legal framework. Access to the mainstream social support services, including shelters for victims of domestic violence and trafficking, is based on an individual multidisciplinary assessment of needs of support plan³⁹. In accordance with the Social Assistance Act and the Regulation for its implementation, those willing to use mainstream social services (incl. victims of crimes, victims of domestic violence and trafficking of people) must submit a written application from their current address to: 1). the director of the Social Assistance Directorate for the social services, which are funded from the state budget; 2). the mayor of the municipality for the social services, funded from the local budget; 3). the management body of the social service provider for privately funded services.

On the basis of the application and the attached documents, the corresponding authorities prepare, within 20 days, a social report on the social assessment of the person's needs and a proposal, in accordance with the identified needs and personal choices of the victim. Based on the social report, referral for usage of particular social services should be issued by the Social Assistance Directorate and the mayor of the municipality respectively.

Victims of domestic violence or of human trafficking are immediately accommodated in a crisis center, regardless of their current address. In such cases, the Social Assistance Directorate in charge of the crisis center prepares the social report. When a victim of domestic violence or a trafficked person is a pregnant woman, or mother of a child under the age of three at risk of abandoning her child, she is immediately accommodated in a crisis center or Mother and Baby Unit along with the child.

At the conclusion of the mainstream social services contract, the social service provider is obliged to draft an individual multidisciplinary needs assessment and individualized plan for delivery of the service.

NGOs working in the field support the idea that the type and scope of specialized victim support

³⁸ <http://www.compensation.bg/sites/default/files/en.pdf>.

³⁹ Art. 16(5) of the Social Assistance Act.

services and the need of the victim for other mainstream services should be determined by an individual assessment drafted by multidisciplinary team⁴⁰.

Victims' individual needs assessment from support services is an important prerequisite for accessing those services. Unfortunately, requirements for individual needs assessment, as precondition for accessing services, are set forth only in the generic legal framework applicable to mainstream social services. The Victims' Directive does not require risk of victimisation and needs evaluations prior to a victim accessing special support services and measures including access to mainstream services. Such packages of services should be provided to the victims of a crime during their first contact with the justice system and the investigative bodies, which requires close inter-sector cooperation between the judiciary and the social system. However, in the implementation of the Directive, the multidisciplinary and inter-section approach in assessing a victim's needs for support services was not introduced into the national Bulgarian legislation.

There are no explicit provisions on how referral to victim support services should be carried out in the special national legislation after the adoption of the Directive.

As mentioned above, the Social Assistance Act has relevant provisions for the referral of users to mainstream social services, including those aiming to support victims of domestic violence and people trafficking. The Social Assistance Agency approves methodologies for the delivery of different types of generic residential services. Such methodology exists for domestic violence and human trafficking shelters (crises center) with a maximum capacity for 8 persons. In the methodology requirements for the premises are introduced⁴¹. Each shelter is required to have a reception room for urgent medical examinations, in addition to requirements related to the bedrooms and the rest of the premises. In practice, victims using such shelters share bedrooms, the methodology doesn't limit the number of beds that could be placed in one bedroom. However, the maximum number of beds per shelter is 8.⁴² In accordance with an interview of the minister of Labor and Social Policy, by February 2018, the total number of shelters for victims of violence and trafficking was 23, of which 18 were shelters for children. Based on 2017 data, provided by the Social assistance Agency, 584 victims of domestic violence needed support services, of these 183 were women and the rest were children: existing shelter services are insufficient for the number of victims needing assistance. The Law on Assistance and Financial Compensation of Victims of Crime Provides for specialised support services, however, there is no special legal mechanism for the referral of victims to those services, nor any requirement for a needs

⁴⁰ Social Activities and Practice Institute, 2017, Individual assessment model and inter-sector cooperation in regards to victims of crime.

⁴¹ The premises should comply with the requirements of Regulation number 4/2009 for project execution and maintenance of buildings in accordance with the requirement for an accessible environment. Each shelter should have kitchen and dining room, fully equipped, living room and each user shall enjoy separate bed and wardrobe.

⁴² February 2018, Interview of the Minister of Labour and Social Policy at Focus Information Agency; <http://www.focus-news.net/news/2018/02/02/2484304/ministar-biser-petkov-23-sa-krizisnite-tsentrove-v-stranata-za-zhertvi-na-nasilie-nuzhdata-e-pogolyama-i-tova-e-otbelyazano-v-proekta-za-ratifitsirane-na-istanbulskata-konventsia.html>.

assessment of services to be done at first contact of the victim by the corresponding authorities

Specialized victim support services are provided on completion of the application submitted by the victim, making the victim the pro-active party.

With reference to the above, it can be concluded that when victims of crime are users of mainstream social services, the corresponding provisions for an assessment of needs for services and a referral to specialised services should be applied: the main functions and responsibilities are entrusted to the regional Social Assistance departments. Additionally, when victims of crime are users of specialized victim support services the corresponding support organizations, most of which are social service providers, should apply the social legislation general requirements to draft individualized need assessments and individualized plans for the delivery of services.

Quality standards are only available for the mainstream services as part of the universal legal framework. The indicators are mostly quantitative and do not provide real tools to measure the quality of the service and its impact on the quality of users' lives.

As mentioned before, victims of crime for which there is an imminent risk of secondary and repeat victimization, intimidation and revenge can receive shelter for a period of up to ten days. The Law on Assistance and Financial Compensation of Victims of Crimes is silent on what happens if the victim needs shelter for longer than 10 days. The generic legal framework for social services introduces the terms: short-term and long-term services. The short-term services are provided for 3 months and the long-term services are provided thereafter. Users, who are victims of domestic/sexual violence and human trafficking, of mainstream services regulated in the Social Assistance Act may claim assistance for specialised services, within the terms provided in the generic legislation. For example, clients of crisis shelters for victims of domestic violence, trafficking or other forms of exploitation are entitled to use the service for 6 months. The Social Assistance Agency approves a methodology for the delivery of the service crisis shelter (center)⁴³. However, the mainstream social services are funded by the state budget through financial transfers to the municipalities, and the specialized victim support services are funded by the Ministry of justice. **Therefore, without explicit regulation for inter-sector cooperation, the introduction of needs assessment for services, and integrated services, including integrated funding, it is not realistic a continuity of the specialized victim support services to be ensured adequate to their needs. (This needs some work as I'm confused about its meaning)**

Victim support professionals agreed that to answer all the respective needs of the victim in the mid - and long term is challenging, as funding of those services is insufficient and it is concentrated on large cities, where the providers are based⁴⁴.

⁴³ In the methodology is pointed out that regardless the legally determined term for usage of the service 6 months it is recommendable the duration of the service to be 3 months. Depending on the specificity of each individual case the duration of the usage of service can be prolonged but not more than 6 months.

⁴⁴ Interview 3 and Interview 5.

ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.

Currently there is no specific body coordinating victim support services in Bulgaria. The special support services are available only to victims of public crimes; therefore, the gravity of a crime is a prerequisite to accessing those services. Generic social services are accessible to all vulnerable groups, including victims of crimes regardless of how serious the crime might be.

The Ministry of Justice provides financial compensation and support to victims of certain public crimes (terrorism; murder; attempt to murder; intentional grievous bodily injury; harlotry; rape; trafficking of human beings; crimes committed on the order or in pursuance of a decision of an organized criminal group; other serious intentional crimes that have resulted in death or serious bodily injury as a consequence) and under certain conditions. However, the Ministry of Labour and Social Policy and its structures are involved in funding and the control of service providers (private providers or municipalities), which supply advisory services, shelter and psychological support to victims of domestic violence and human trafficking in accordance with the generic legal framework for social services. The Ministry of Interior, the corresponding investigative bodies and the prosecution are obliged to inform victims of crime on their rights and, in some cases, to refer them to the social assistance departments or relevant support services in the community. Victims of crime who have called the emergency phone number 112 only receive medical assistance or are referred to the regional police departments.

Free **legal aid** is offered to victims of crime if they meet the financial conditions and can prove they have a low income. There are no options for emergency financial assistance or escort and support services in court.

All support services provided are for the use of victims of public crime. In the case of domestic violence or human trafficking, coordination mechanisms have been developed for interaction between competent authorities and providers of victim support services.

As already explained, the victim support services are contracted out to different private providers - NGOs in public benefit. Over the period 2012-2013⁴⁵, the Ministry of Justice provided funding worth 255,897 Euro to 18 non-governmental organizations working with victims of domestic violence and human trafficking. In addition to support for victims, services such as training and monitoring activities are also included in these funds. In parallel, there is also public funding (from the state budget) for mainstream services (shelters and others) that are accessible for all vulnerable groups, including victims of crime. However, the delegated state budget for mainstream services and the budget of the Ministry of Justice for specialized victim support services is insufficient to cover the cost of working with victims and is granted once the service has already been delivered and a detailed report has been prepared. As a result, the contracting authority may decide not to reimburse all costs incurred. Thus, the non-governmental organizations have the burden of providing advanced funding for the services they offer.

All the professionals as well as the victims confirm that the number and the variety of the services are insufficient⁴⁶.

⁴⁵ Kukova, S, Bulgarian Helsinki Committee, 2014 Victim Support Services in the EU: An overview and assessment of victims' rights in practice Bulgaria.

⁴⁶ Interview 1, Interview 2, Interview 3, Interview 5.

ARTICLE 10 - RIGHT TO BE HEARD

Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

The victim's right to be heard is guaranteed mainly in procedural legislation, with children's rights covered by the Child Protection Act. In accordance with the CCP, victims of crimes have the right to be represented and heard during all phases of the legal criminal proceedings trial phase.

Victims with special protection needs right to be heard is guaranteed by the special requirements for the questioning of those victims (Art. 139 (10) of the CCP). In accordance with this provision, questioning shall be conducted by taking measures to avoid contact with the accused, including through a videoconference or telephone conference.

In the CCP there are no specific rules related to the right of children to be heard in the legal proceedings. Having in mind that children are extremely vulnerable as victims and witnesses of crimes, the provision of Art. 139 (10) should be applied in all cases when children are involved in the procedures.

In accordance with the Child Protection Act, in any administrative or judicial proceedings in which a child's rights or interests are concerned, the child must be heard if he / she is 10 years of age, unless this would be detrimental to his / her interests. There is an option for the child to be heard under the age of 10, depending on the maturity of the child. Any decision allowing for the child to be heard should be justified.

In addition, when there is significant contradiction between the explanations of the defendant or between the explanations of the defendant and the witness (victim of crime), there is the possibility for the witness (victim of crime) to be confronted by the defendant. This is still an acceptable means of proof in respect of crimes in which a victim or witness is a child. And this is entirely in contradiction with the requirement of creating as many safeguards as possible to avoid contact between the victim and the defendant.

Another important issue related to a child's right to be heard in the criminal legal proceedings and in the civil proceedings for protection against domestic violence, is the lack of legal option

when it comes to representation. Usually children are represented by their lawful representatives (parents and guardians) or by counsels appointed by them. Under current legislation there are no legal options to enable children to be represented by independent legal consultants or to appoint their own legal counsels in the legal proceedings.

Usually parents, as lawful representatives of children, make all decisions related to their representation and participation in the legal proceedings. The same is applicable for guardians of persons deprived of legal capacity. A conclusion can be drawn that there are not enough guarantees for children and persons under guardianship as victims of crime to be heard in a safe manner.

If there is a conflict of interests between the lawful representative and the represented person, the court may appoint a special representative. Such provision is available under the Code of Civil Procedure and the practice shows that it is very rarely applied in procedures related to children and persons deprived of legal capacity. A similar rule is available in the CCP; however, a special representative may be appointed at the discretion of the court. If the person is deprived of legal capacity, he/she is not entitled to make such request.

Whether the victim participates as a private prosecutor or a private claimant, depends on the circumstances, and the will, and preferences of the victim or their representative.

The Code of Criminal procedure introduces restrictions⁴⁷ on the credibility of the testimony provided by victims of crime with physical or psychosocial disabilities. The provision of the CCP states that people, who are not able to perceive the facts relevant to the case nor provide credible testimony, due to physical or psychosocial disabilities, cannot be witnesses. The ability of the witness to provide credible testimony is assessed through an expert analysis ordered by the court, which is usually carried out by medical doctors and psychiatrists. Victims with disabilities, and children, who do not meet certain cognitive standards are not considered credible witnesses and are precluded from being heard as witnesses in criminal legal proceedings.

⁴⁷ Art. 118(3) of the CCP.

ARTICLE 11 - RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.

The rights of the victim, in the event of a decision not to prosecute, are regulated in the CCP⁴⁸. The victim is entitled to appeal any decision of the public prosecutor at the pre-trial stage, which terminates or suspends the legal proceedings, including a decision stating the crime will not be prosecuted.

If the public prosecutor decides to **terminate the criminal legal proceedings** the victim should be informed and is entitled to appeal the decision before the corresponding appellate court⁴⁹.

In the case of a **suspension of the criminal proceedings**, the victim should be informed about the act of the public prosecutor. The victim is entitled to appeal the suspension before the first instance court⁵⁰.

Therefore, it can be concluded that the role of the victim determines the right to appeal and ask for a review if there is a decision not to prosecute or if proceedings are suspended.

If the legal proceedings are terminated at the **trial phase**, the victim - depending on whether he/she is participating as a civil claimant or private prosecutor - is entitled to appeal all decisions of the court that harms his/her rights and interests.

48 Art. 75, Art. 213, Art. 243 and art. 244 of the CCP.

49 Art. 243 of the CCP.

50 Art. 244 of the CCP.

In all cases related to termination and suspension of the criminal legal proceedings, the victim is entitled to appeal and to ask for a review of the decision. The sentence, of the first instance court, may be appealed by the victim only if the latter has participated in the legal proceedings in the capacity of either a private prosecutor or a civil claimant. The private prosecutor may appeal the verdict if rights have been infringed by the verdict, while the civil claimant is entitled to appeal the verdict only in regard to the civil claim. If the defendant is discharged by the judgment of the court, the victim will not be able to appeal and seek a review before the high instance court unless the victim has intervened in the process as a private prosecutor.

The right to information and the provision of translation for the victim is only valid for acts, which are terminated or suspended due to the public prosecutor's decision in the pre-trial phase. Moreover, there is no obligation to provide the verdict or decisions of the court to the victim, unless the latter participates in the proceedings in the capacity of a private prosecutor or a civil claimant. Finally, the witness has no right to seek a review of the court's decisions.

ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.

This obligation under art. 12 of the Directive is new for Bulgaria and introduces a new paradigm of justice, which is still alien to the Bulgarian criminal law and proceedings. The aim of the article is to attend to the needs of the victim (material, emotional and social) and to achieve a therapeutic effect on the relationship between the victim and the defendant.

It should be noted that the CCP does not provide options and procedures to enable the victim and the offender, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence with the help of an impartial third party.

In 2004, in Bulgaria adopted a Law on mediation: in accordance with art. 140(3) of the Code of Civil Procedure, the court in its first open hearing may guide the parties to mediation or other means of arbitrarily settling the dispute. Therefore mediation, as a legal tool, is applicable in all civil law cases. The court has the obligation to explain to the parties that such a possibility exist for them to settle their dispute. If the parties decide to use this tool, then the rules and principles of the Law on mediation are applicable. However, without a specific provision in the Civil Procedural Code, mediation cannot be implemented in civil legal procedures. The same logic is applied in regards to the criminal legal proceedings.

Article 3(2) of the Law on mediation provides that mediation can be used in the cases described in the CCP: unfortunately, this Code does not provide case and procedural opportunities whereby the victim and the offender are enabled, if they freely consent, to actively resolve matters arising from the criminal offence with the help of an impartial third party. In fact, mediation is not used in criminal proceedings because it is not explicitly regulated as a part of the criminal legal proceedings as it is part of the civil law procedures.

However, bearing in mind that cases of protection against domestic violence are part of the civil law procedures, mediation can be used successfully in these instances.

From the interviews it was obvious that there is no comprehensive understanding among professionals of specific terms such as restorative justice, restorative services, etc.⁵¹. It was confusing that in some of cases they “confirm” that those instruments have been adopted by the Bulgarian legislation and practices, but they were not clear what exactly they included.

51 Interview 3 and Interview 4.

ARTICLE 13 - RIGHT TO LEGAL AID

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.

The right of the victim to free legal aid is regulated by Article 6(1) item 2 of the Law on Assistance and Financial Compensation of Victims of Crimes. The provision refers to the Law on legal aid, which regulates access to free legal aid, its requirements and limitations, as explained below. Free legal aid is provided, in accordance with the Law on Legal aid, by lawyers and members of the Bar and is funded by public money. The legal aid system covers situations where legal aid or representation is mandatory by law as well as in cases where a participant (including a victim of crime) in criminal, civil or an administrative procedure does not have the means to pay for legal services, but wishes to be represented by a lawyer as required by the interests of justice. The right to free legal assistance is expressly granted to victims of domestic or sexual violence or human trafficking, who do not have financial means and want to be represented by a legal counsel. It should be noted that the right to legal aid is not absolute.

The funds for free legal aid are provided by the state budget. The National Bureau for legal aid and the Bar Associations are responsible for the organization of the free legal aid.

When the victim, as a private prosecutor or civil claimant, provides evidence that s/he is unable to pay the lawyer's fee, wishes to engage counsel and the interests of justice so require, the first instance court may appoint a lawyer to provide free legal aid.

The scope of the free legal aid includes:

1. consultations in order to reach an agreement prior to the proceedings or to initiate proceedings, including a consultation in case of 'fast' proceedings⁵², in accordance with the CCP;
2. preparing documents to initiate a lawsuit;
3. procedural representation;
4. representation on detention.

Access to free legal aid is based on a decision to grant legal aid taken by the body responsible for the legal proceedings, at the request of the person concerned, or by virtue of the law. The application for legal aid is submitted before the competent court (in case of pending procedure), or before the National Bureau of Legal Aid (in case of need of preliminary consultation for starting legal proceedings). The assessment is made by the court or the National Bureau of Legal Aid on the basis of the income of the person or his family; property status certified by a declaration; family status, health status; employment; age and other circumstances⁵³.

Free legal aid is only available to people with low incomes, compliant with the requirements for the provision of social assistance aids. The income should be proven by preconditioning documents: currently, as this income threshold is very low such a prerequisite for accessing free legal aid practically limits the exercise of this right- only the very poor are entitled to the right of access to free legal aid. According to the practice of the Supreme Court Of Cassation, the assessment should be made on the basis of the actual property status of the person, including on the basis of a declaration of assets. As a result, individuals who have property or real estate and low incomes are limited in their access to free legal aid. According to Art. 24, item 2 of the Law on Legal Aid, free legal aid shall not be granted where the claim is manifestly unfounded, unjustified or inadmissible. The provision of Art. 22, (1) of the Law on Legal Aid introducing the income threshold is essential, and the lack of the conditions envisaged by it determines the power of the competent authority to issue a refusal⁵⁴.

⁵² Fast criminal legal proceedings is regulated in chapter 24 of the CCP, articles 356 and the subsequent articles. Fast criminal legal proceedings takes place when:

1. the person is arrested at or immediately after committing the offense;
2. there are obvious traces of the crime on the person's body or clothing;
3. the person appeared in person before the relevant bodies of the Ministry of Interior, the investigative body or the prosecutor with acknowledgment of the committed crime;
4. an eyewitness pointed to the person who committed the crime.

⁵³ In accordance with Art. 23(3), item 7 of the Law on Legal Aid "other circumstances" are circumstances which are important for the assessment of the court or the Bureau.

⁵⁴ Decision No. 15420 of 05.12.2012 on the adm. No. 10613/2012 of the Supreme Administrative Court.

A survey, which included 40 court hearings held between May 2014- April 2015⁵⁵, on the attitudes towards victims of trafficking in the courts in Bulgaria, identified that none of the victims took advantage of free legal aid.

In practice, the investigative authorities and the prosecution do not inform the victims about their right to be represented, for two reasons. First, they consider the victim only as a witness, not a party to the proceedings - civil claimant and private prosecutor. Secondly, the presence of a lawyer at the time of the investigation will contribute to the transparency of the actions of the authorities, something which is avoided. Representatives and researches from the civil sector and legal practitioners share the opinion that the rules for providing legal assistance to victims are restrictive.⁵⁶

During the pre-trial phases, victims rarely understand that they have the right to a lawyer and that they are entitled to legal aid.

In the survey above, it was possible to conclude that, due to a lack of information about their rights and the services they can use, victims were not adequately protected and did not know they were entitled to representation in the judicial proceedings. This happened even though local anti-trafficking committees functioned in two of the cities where observations were made.

There are state-funded local crisis centres for victims of domestic violence and NGOs provide services for victims of trafficking. The lack of accessible and competent legal aid for victims of human trafficking is one of the reasons for the low number of accusations.

55 Kadieva M, Terzieva J, Kolariov E, 2015 Monitoring Report - Survey of the attitudes towards victims of trafficking in the courts in Bulgaria, Netherlands Helsinki Committee, Animus Foundation, Gender Alternatives.

56 Center for the study of Democracy, 2013, Improvement the protection of rights of victims of crime; Bulgaria National Report; <http://www.csd.bg/artShowbg.php?id=16848>

ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.

The right to reimbursement of expenses by the offender is regulated by the CCP. Under Article 189 (3), when the defendant is found guilty, the court shall order him to reimburse all costs, including lawyers' fees and other expenses, as well as any costs incurred by the private prosecutor and the civil claimant if such a request has been made. Therefore, the right of the victim to reimbursement of expenses is not absolute and is implemented only if the victim took part in the proceedings as a private prosecutor or a civil claimant, or if the defendant is found guilty and the private prosecutor or civil claimant has made an explicit request for such reimbursement.

A warrant is issued by the court for the expenses awarded. The award of the expenses is must be included when the court drafts the verdict. The witness is entitled to reimbursement of expenses incurred in connection with his/her appearance before the competent authorities. Therefore, if the victim does not participate in the judiciary stage of the proceedings as private prosecutor or civil claimant, the only reimbursement of expenses is for those incurred in the capacity of a witness.

At the pre-trial phase, the victim may submit a request before the respective first instance court to take measures, under the Code of Civil Procedure, to secure expenses incurred and awarded in a case. At the pre-trial phase the victim cannot be nominated and intervene as a civil claimant, this can happen only at the trial phase.

It should be taken into consideration that the right to reimbursement of expenses is different from the right to compensation, which will be considered later on in this report⁵⁷. The expenses subject to reimbursement may include lawyer's fees for representation of the private prosecutor or civil claimant, as well as some judiciary fees.

57 See chapter regarding Article 16.

In accordance with the same law, victims are entitled to financial compensation for medical expenses and to financial compensation for loss of income. Also, close relatives of a deceased victim are entitled to reimbursement of funeral expenses. These rights should be considered as part of the right to financial compensation.

Victims need some support and advice to apply for compensation, which is not available. There are also communication gaps between the different authorities involved. The victims shared that the procedures are very complicated to follow, and there is no support in managing the case and navigating through the “complicated path between the institutions doors”.

ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.

Material evidence, including victims’ property, is kept by the competent authorities until the criminal proceedings have been completed. The CCP provides the opportunity, with the permission of the public prosecutor, to return items seized as evidence to those entitled to them before the end of the criminal proceedings. This is only possible if it does not make it difficult to disclose the objective truth and such a decision does not constitute an administrative violation. However, this possibility constitutes an exception. The legislator, therefore, provides for⁵⁸ an option for a temporary limitation of the right to property based on the necessity to use the material evidence in the particular case⁵⁹. Practice reveals that the objects seized as material evidence are kept until the end of the criminal proceedings. They follow the case and should be at the disposal of the competent authorities at each stage of the criminal legal proceeding.⁶⁰

Furthermore, there are no provisions under national legislation to ensure that the property should be returned to victims in a sensitive way. Police officers shared that there are no clear protocols on how to ensure this right, very often they put the victims’ property in the same places where the perpetrators’ property is kept⁶¹.

ARTICLE 16 - RIGHT TO DECISION ON

58 Articles 110(2) and art. 111 of the CCP.

59 Haskovo Regional Court, Ruling on case number 637, year 2015.

60 The case law of the Bulgarian Criminal Courts.

61 Interview 3.

COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

The right to a decision on compensation from the offender in the course of criminal proceedings is regulated in the CCP⁶². The victim may intervene in the trial phase of the criminal legal proceedings as a civil claimant and initiate a civil action for damages caused by the offense. Such a claim can be submitted separately, in the form of civil legal proceedings as well. However, there are advantages to bringing a civil claim during the criminal proceedings: the victim does not pay a state fee (4% of the claim should be paid in advance, prior to legal proceedings, provided the victim claims damages in a civil proceedings); as a civil claimant in the criminal legal proceedings, the victim may benefit from the evidence gathered; the consideration of the claim is not as formal as it would be in a civil legal proceedings; a civil claim cannot be brought within criminal legal proceedings when, at the same time it is initiated under the Code of Civil Procedure; during the criminal legal proceedings, a civil claim can be brought in the trial phase before the first court hearing.

A civil claim could be brought against the defendant, but may also be brought against the defendant and other people who bear civil liability for the damage caused by the crime.

If the criminal proceedings are terminated and the offender is not convicted, the civil claim is not considered. However, in that case, the civil claim may be brought before the civil court (Article 88 (3) of the CCP) Moreover, there are no requirements for obligatory representation of the civil claimant by a lawyer.

The civil claim itself allows the victim or his / her heirs to claim damages for material and non-pecuniary damages resulting from suffering.

If the victim has received compensation based on a civil claim, this prevents the victim from

⁶² Art. 84 of the CCP.

claiming compensation from the State Compensation Fund. However, bringing a civil claim does not prevent the victim from claiming compensation from an insurance company. The problem is that once the civil claim is brought against the defendant, then, if it is respected, the warrant should be issued against the defendant. In such a case, the insurance company does not recognise the warrant issued against another person and the victim should initiate a new civil proceeding in order to obtain compensation from the insurance company.

In accordance with the Law on Assistance and Financial Compensation of Victims of Crime, victims of public crimes⁶³ explicitly listed in art. 3(3) of the law are entitled to a one-off financial compensation payment - a state grant of up to 10,000 BGN. Victims of other public crimes, not listed in this article, do not have such rights to pecuniary compensation. The Law on Assistance and Financial Compensation for Victims of Crime is a special law with a narrower scope and introduces a specific legal framework on the right to compensation for victims of certain crimes. According to statistics⁶⁴, between the adoption of this law in 2007 and by 2014, nearly 580 applications for financial compensation have been submitted and over the 8 years, amounts from 250 to 5000 BGN in compensation have been paid out to 140 people who have actually received compensation. The total amount granted for compensation during this time is around BGN 278,000, according to the statistics of the Ministry of Justice with an average payment being BGN 1985. The compensation is based on a very formal procedure, which starts only after the end of the criminal procedure or its suspension, or respectively its termination by the prosecutor's office. Only victims and their relatives who have not received other compensation - from a civil claim against the offender or from insurance are entitled to such compensation. By law, once the state has paid, the Minister of Justice must initiate proceedings against the guilty party who must refund the money. Statistics over this time show that the ministry has received repayments of about 1500 BGN.

Financial compensation is granted after a conviction, an agreement on the case or an act of the prosecutor, whereby the proceedings have been terminated or suspended because of the failure to reveal the perpetrator. A claim for financial compensation, under the Law on Assistance and Financial Compensation for Victims of Crimes, shall be submitted to the National Council within one year from the entry into force of the above-mentioned acts. The submission of the claim after the expiry of this one-year term prevents the victim from claiming compensation later.

⁶³ Terrorism; murder; attempt to murder; intentional grievous bodily injury; fornication; rape; trafficking of human beings; crimes committed on the order or in pursuance of a decision of an organized criminal group; other serious intentional crimes that have resulted in death or serious bodily injury as a consequence.

⁶⁴ Legal word, magazine, November 2014, <http://legalworld.bg/40165.jertvite-na-prestypleniia-mogat-da-razchitat-na-250-5000-lv-kompensacii.html>.

ARTICLE 17 – RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position: a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.

Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

It is important to point out that not only Bulgarian citizens and citizens of EU Member States, but also citizens of third countries (if an international treaty is in force) are entitled to support and compensation under the Act on Assistance and Financial Compensation of Victims of Crimes. Nationals of other countries legally residing in the territory of the Republic of Bulgaria are entitled to receive the same support services and are entitled to the same rights as Bulgarian citizens.

There are provisions⁶⁵ in the Law on Assistance and Financial Compensation for Victims of Crime and the regulations for its implementation, the CCP and the Law on European Protection Order relevant to rights of victims, who are nationals of other countries.

The current legal framework makes no differentiation in the treatment of cross-border victims and Bulgarian citizens. The competent body responsible for providing assistance to cross-border and Bulgarian citizens is the National Council for support and financial compensation of victims of crime. When citizens from other Member-States and third countries claim financial compensation for a crime committed in Bulgaria, the responsible body to consider the claim is the Ministry of Justice.

In accordance with the CCP, after a proposal by the prosecutor, with the consent of the victim or at the request of the victim, the court of first instance may prohibit the defendant:

1. from directly approaching the victim;
2. from making contact with the victim in any form, including by telephone, by electronic or ordinary mail and fax;
3. from visiting certain settlements, areas or sites in which the victim resides or visits.

These protection measures are applicable to citizens of other member states and third countries as well. The court shall inform the victims of the possibility of issuing a European protection order. In accordance with the Law on European Protection orders the court of first instance may issue such European Protection orders to domestic and cross-border victims.

According to an Order by the Minister of the Interior⁶⁶ determining the procedure for notification of a victim by the order of the Law on Assistance and Financial Compensation for Victims, the official assigned to work on a case involving a crime shall immediately inform the victims about the options for the protection of their rights and interests. This refers to all victims, even those who are not Bulgarian citizens. The official should also inform cross-border victims how to protect their rights and interests, and which competent authorities they may contact. Correspondingly, the foreign offices of the Republic of Bulgaria in the Member States of the European Union should inform Bulgarian victims of crime, in writing, about the competent authorities in that particular State, which they may contact to obtain assistance and financial compensation.

Free psychological assistance is provided to victims during, or within an appropriate time after the end of, the criminal proceedings. Victims who are non-Bulgarian citizens are also entitled to

⁶⁵ Art. 27 of the Law on Assistance and Financial Compensation for Victims, and art. 9, item 10 of the Regulations of its implementation.

⁶⁶ Order of Minister of Interior number I-93 dated 18.01.2013.

a one-off financial compensation under the Law on Assistance and Financial Compensation for Victims of Crimes, provided they meet the requirements of art. 3(3) of the law, as explained in the previous paragraph.

Regardless of the time limits set forth in the CCP, the criminal proceedings are often significantly delayed, and this is neither in the interests of the victims nor the other participants in the process. There are many cases against Bulgaria before the European Court of Human Rights in connection with delays in criminal justice. Currently, Chapter 26 of the CCP allows the defendant and the victim of crime to submit a claim for accelerated consideration of the proceedings. This right is provided to the benefit of both Bulgarian and non-Bulgarian citizens and the aim of the legislator has been to ensure compliance with, among other laws, the Victims' Directive to provide equal opportunities for victims from other member states and third countries.

European Protection Orders issued in another Member State must be recognized⁶⁷ in Bulgaria by the competent court. When the court recognizes the European Protection Order, it is necessary to set out a protection measure provided for in the Bulgarian CCP, which corresponds best to the protection measure taken in the issuing State. The protection measure determined by the court cannot be more severe than the measure taken in the issuing State.

⁶⁷ The competent court may refuse to recognize and execute an European protection order, issued in another member state on one of the following grounds, provided for in the Law on European Protection Order:

- the order is incomplete or the incompleteness has not been remedied by the competent authority of the issuing State within the time specified;
- the measure under the order is different from the restrictions and protection measures provided for in the Bulgarian legislation ;
- the measure was ordered in connection with an act which does not constitute a crime under Bulgarian law;
- the measure was ordered in connection with a crime in regards to which there was amnesty under the Bulgarian law and the case is subject to a Bulgarian court;
- the perpetrator enjoys immunity, which makes it impossible to take a protective measure;
- the criminal prosecution for the offense is lost by limitation and the case is subject to a Bulgarian court;
- the recognition of the order would be contrary to the *ne bis in idem* principle;
- the protection measure was ordered against a person who due to his age under Bulgarian law cannot be criminally liable for the acts in connection with which the measure was imposed;
- the measure is related to a crime, which according to the Bulgarian legislation is considered to be committed entirely or mainly on the territory of the Republic of Bulgaria.

ARTICLE 18 - RIGHT TO PROTECTION

Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

The right to protection is regulated in the CCP, in the Law on European Protection Order and the Law on Protection from Domestic Violence.

Firstly, based on a proposal by the prosecutor, and with the consent of the victim or at the request of the victim, the court of first instance may prohibit the defendant:

1. from directly approaching the victim;
2. from contact with the victim in any form, including by telephone, by electronic or ordinary mail and fax;
3. from visiting certain settlements, areas or sites in which the victim resides or visits.

The above mentioned protection measures are regulated both in the Code of Criminal Procedure⁶⁸ and the Law on European Protection Order⁶⁹.

The Bulgarian court is entitled to issue a European protection order in criminal matters and to send such orders for recognition and enforcement in another Member State. A European protection order is based on a protection measure⁷⁰ regulated in the CCP. Such protection measures are applicable to all victims of crime regardless of their citizenship or permanent residence.

⁶⁸ Article 67(1) of the CCP.

⁶⁹ Article 3(1) of the Law on the European Protection Order.

⁷⁰ The measures of protection regulated in the CCP include prohibition of the offender to approach the victim directly; to make contact with the victim in any form, including by telephone, by electronic or ordinary mail and fax; to visit certain settlements, areas or sites in which the victim resides or visits.

Following the recognition of the European Protection Order, the court sends a copy of the enforcement order to the authorities of the Ministry of Interior in the country of residence of the protected person. The protection order is immediately enforceable and if the determined protection measure is violated, the Ministry of Interior shall immediately notify the prosecution authorities and the court.

In accordance with Article 75 of the CCP, victims and their close relatives and persons in close relationship with victims may enjoy the right to protection.

More specifically, in accordance with the Law on protection from domestic violence, the following protection measures are applicable in order to protect victims of domestic violence:

- obliging the perpetrator to refrain from domestic violence;
- temporarily forbidding the perpetrator from living in the co-habited dwelling with the victim for a term fixed by the court;
- prohibiting the perpetrator from approaching the victim's accommodation, his/her place of work, places where the victim establishes social contacts and places of recreation, under conditions and terms, determined by the court;
- temporary placement of a child to reside with the parent who has not committed violence, under conditions and within a time limit set by the court and only if this is not contrary to the interests of the child;
- obliging the perpetrator of violence to attend specialized programs and services;
- referral of victims to recovery programs and support services.

These measures shall be imposed for a period of three to 18 months.

Where the request for protection measures against domestic violence contains information about a direct, immediate or consequential threat to the life or health of the victim, the competent court shall issue an immediate injunction for protection without summoning the parties, within 24 hours of receipt of the request for protection⁷¹. Police authorities are responsible for monitoring the execution of the injunction. If the perpetrator fails to comply with the court injunction for protection measures, the police authority registering the violation may detain the offender and shall immediately inform the prosecution authorities. A beneficiary of such an injunction issued in any Member State may request an order for protection on the territory of the country to which he/she travels to.

⁷¹ Art. 18(1) of the Law on Protection from Domestic Violence.

The Law on the protection of persons threatened with criminal proceedings also includes provisions relevant for the right of the victim to protection. The protection measures under this law include the following:

- ensuring personal security;
- security of the property;
- temporary accommodation in a safe place;
- change of place of residence, place of work or educational establishment;
- full change of the identity.

The victims, their relatives and persons in close relations with the victims are entitled to enjoy these protection measures if the victim has intervened in the criminal legal proceedings as witness, private prosecutor or civil claimant. These measures under the Law on protection of persons threatened with criminal proceedings can be applied together with measures under the CCP or the Law on European Protection Order or separately, temporarily - as long as there are reasons for their application -, or permanently, depending on the need of protection. They are applicable to all victims of any crimes, regardless in which capacity they participate in the criminal legal proceedings. Within the criminal legal proceedings there are no provisions regulating how victims are informed of what support/protection is available afterwards. There are provisions related to the assessment of specific needs of protection of a witness. However, these provisions do not include an obligation to provide information. Having in mind that the victims are often questioned as witnesses, these provisions may be applied to them as well. In accordance with the Code of Criminal Procedure, an expert report may be made to identify specific needs for the protection of witnesses in connection with their participation in criminal proceedings. If the victim is involved in such proceedings as a witness, there are no legal obstacles for their specific needs of protection to be identified as set forth in art. 144(3) Code of Criminal Procedure.

ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

(1) Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

(2) Member States shall ensure that new court premises have separate waiting areas for victims.

The CCP explicitly requires that contact between the victim and the defendant is to be avoided only in regard to the questioning of a witness with specific needs. As mentioned before in the survey, under the current legislation there is a legal definition of the concept of persons with specific needs of protection. Similar requirements are provided for regarding the questioning of child victims.

An explicit requirement is available in the CCP to avoid contact between the witness (victim) and the defendant as per measures taken under the Law on protection of persons threatened with criminal proceedings. Special provisions are available for the interrogation of a witness (victim), such as using a secret identity.

Nevertheless, according to Articles 139(1), 140 and 141 of the CCP, if a victim does not qualified as a victim with special protection needs, if the victim is not a child, or if the victim is not a witness protected under the Law on protection of persons threatened with criminal proceedings, there is no obligation for contact between the victim and the defendant to be avoided. It can be concluded that the right to avoid contact between the victim and the defender is not adequately transposed into national legislation. The right is applied only as an exception for certain categories of witnesses or victims.

According to Article 223 (2) of the CCP, in the pre-trial phase, while the witness is questioned, it is possible that the defendant and his counsel participate in the interrogation. Additionally, at the trial phase, if the witness is not a beneficiary of protection measures, the victim shall come to the court room and shall be interrogated. Usually this happens with the presence of the public

prosecutor, the defendant and defendant's counsel (allowed by what is foreseen in Article 273 of the CCP). In such cases, victims shall remain in the court room until the end of the hearing. The exception to this rule is provided only for witnesses for whom a secret identity has been applied. If the victim is a minor (between the age of 14 and 18), after he/she has provided testimony, he/she is removed from the courtroom, unless the court decides otherwise.

A confrontation between the witness (victim) and the defendant is still a valid means of proof that can be used under the CCP. It can be applied to both children and adults when being interrogated as witnesses.

ARTICLE 20 – RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

The CCP makes a distinction between victims and witnesses. Victims have no obligations under the CCP, which is not the case with witnesses: a witness, regardless of whether a victim of crime or not, is obliged to testify⁷² and bears criminal responsibility for perjury⁷³.

Representatives of the legal doctrine⁷⁴ consider it advisable to introduce a separate code for questioning a witness who is a victim of crime and other witnesses. The interrogation should be conducted only as a last resort so that the person shall not experience again what has happened. Furthermore, the interrogation should be done with appropriate psychological support and the CCP should allow victims of crime to refuse to give testimony, **related to the act of crime subject to the indictment in the same case**. (Not sure what you mean)

Currently, the number of interviews a witness (victim) should undergo is restricted to one, only in regard to children (up to the age 14) and witnesses with specific needs of protection. (Article 280(6) of the CCP); in all other cases, victims can be interviewed repeatedly.

In accordance with the CCP⁷⁵, the competent investigative body (Prosecution, Police office) shall ensure a timely, lawful and successful investigation. The investigative body is obliged to gather, as soon as possible, the necessary evidence to reveal the objective truth, guided by the law, its

⁷² Art. 120 of the CCP.

⁷³ Art. 290 of the Criminal Code.

⁷⁴ Gospodinova, M. 213, Improving the situation of victims in the pre-trial legal proceedings, Sofia University, Faculty of Law.

⁷⁵ Art. 203 of the CCP.

internal conviction and the instructions of the public prosecutor.

According to the CCP, the investigation shall be carried out and the case shall be sent to the prosecutor within two months of the date of its commencement⁷⁶. Therefore, any initial interviews with the victim as a witness should be carried out within this time frame. The public prosecutor may specify a shorter term, but if this period is insufficient, the public prosecutor may extend the term up to the original two months. However, because of factual and legal complexities of a case, the public prosecutor may extend the term from 1 to 4 months. If this period is insufficient, the administrative head of the relevant prosecutor's office may extend the term further at the request of the monitoring prosecutor. The duration of each extension may not be more than two months at a time.⁷⁷ Case law shows that time frames of the investigation are often extended and a large number of victims and offenders complain about the delay in justice⁷⁸. This has resulted, as mentioned before, in lawsuits being brought against Bulgaria at the European Court of Human Rights.

Victims of crime are entitled to free legal aid and, therefore, they can be accompanied through the different stages of the criminal legal proceedings by their lawyers. However, current national legislation does not provide victims of crime with the possibility to be accompanied by other people of their own choice. The criminal legal proceedings are dominated entirely by legal professionals. In the procedures there is no freedom for participation of supporters and others whom the victims trust and who may accompany them.

In order to determine the nature of the bodily injury and or the physical or mental state of the victim, an expert-report may be requested. The act appointing the expert-report should state: the reasons why the expertise is required; the subject of the expertise; the materials submitted; and the name of the medical establishment where the observations will take place. The expert-report should be done by someone with an appropriate medical education. However, the CCP does not require that the number of medical examinations be kept to a minimum.

Victims shared that they had undergone numerous medical examinations and the doctors had to follow complicated rules to ensure that examinations were performed regularly, which is considered a necessary part of the procedure. The medical professionals complained that in some cases they had difficulty ensuring examinations and evaluations were carried out, because there is no clear obligation for doctors to support this process (especially when the situation requires an intervention outside working hours – after 6 p.m., during holidays, etc.).

⁷⁶ Art. 234(1) of the CCP.

⁷⁷ Art. 234(3) of the CCP.

⁷⁸ Dimitrov and Hanumov v. Bulgaria, ECHR.

ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

child victims of crimes and violence. Currently, when reporting events that are of public interest and are related to child abuse, ill-treatment or family problems, media service providers must respect the right to privacy and the child's identity.

The right to the protection of privacy is closely connected with assessment under Article 22 of the Victims' Directive. During criminal proceedings, the competent authorities may adopt appropriate measures on the protection of privacy, taking into account personal characteristics of the victim evaluated in the individual assessment. Moreover, they shall ensure privacy related to images of victims and of their family members.

This right is not properly transposed into current national legislation. In Bulgaria, it is not mandatory to proceed with the individual assessment of victims to identify special protection needs in every case. The assignment of such assessment is a legal possibility and is regulated under the CCP that the assessment shall be carried out by an expert, which prevents a multidisciplinary approach. Thus, without adequate assessment of protection needs, the competent authority can hardly undertake specific measures to protect a victim's privacy.

Nevertheless, the CCP provides for a number of procedural steps to allow for the protection of a victim's privacy by preventing the disclosure of information on witness's identity.⁷⁹ These provisions are correspondingly applicable for victims participating as witnesses in the legal proceedings, though are mainly related to witnesses protected by a secret identity.

According to the Child Protection Act, information about children cannot be disclosed without the consent of their parents or legal representatives. In accordance with the Law on Radio and Television, the Council for Electronic Media and the State Agency for Child Protection are the bodies that develop the criteria to assess content, which might be unfavourable or threatening to the physical, psychological, and / or social development of a child. The document adopted by the above-mentioned authorities includes criteria on how the media should present information on

⁷⁹ Art. 123(2), item 2 of the CCP, Art. 141 of the CCP.

ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

Article 22 of the Directive was not adequately transposed into Bulgarian national legislation: the CCP amendment on the right of victims to receive a timely individual assessment is far from the philosophy and understanding of the directive on this right. Instead of introducing obligatory assessment, including a two-step procedure (evaluation as to whether protection is needed and application of specific protection measures), the CCP⁸⁰ regulates the assessment as an optional expert's report, which might also be used to identify specific needs for the protection of witnesses in connection with their participation in criminal proceedings. It is important to note that such an assessment /expert's report only concerns witnesses, the victim has no statutory right to an assessment but one could be carried out, if the victim has the status of a witness.

The assessment is carried out by an expert appointed by the relevant competent authority⁸¹. Consequently, it is not possible to achieve a multidisciplinary and comprehensive assessment of the victims' need for protection. Usually, the expert provides the evaluation and makes recommendations only in view of his own speciality. The expert's report is required as any other-when special knowledge in the field of science, art or technique is necessary to clarify certain circumstances of the case, when the court or the body of the pre-trial phase appoints an expert opinion.

National legislation does not include requirements for a timely evaluation and as noted above, such evaluation is just a legal option, depending on the discretion of the court or the pre-trial body. Regulated as a form of expert's report the assessment does not guarantee the other requirements of Article 22 of the Victims' Directive, namely: national law does not introduce the presumption of vulnerability of the child victim; there are no mechanisms for respecting the will and preferences of the victim; and no victim is taken in particular consideration, according to the type of crime committed.

⁸⁰ Art. 144(3) of the CCP.

⁸¹ The prosecutor in the pre-trial phase and the court in the trial phase.

In conclusion, victim support organisations⁸² consider that transposed this way, the provision cannot accomplish its objective. The fact that the expert's report /assessment is carried out only by an expert who has one speciality does not allow the multiple-stakeholder analysis, which is necessary to take into account the characteristics and needs of the victim.

⁸² Social Activities and Practice Institute, 2017, Individual assessment model and inter-sector cooperation in regard to victims of crime.

ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.

(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.

Witnesses with special protection needs identified through an assessment /expert's report/ as described in the previous section may benefit from some specific protection measures in the criminal legal proceedings. Hence, minors (children up to the age of 14) and witnesses with special protection needs should be questioned only once. There is an exception for a second interview if their testimony cannot be read under the conditions and by the order of Article 281⁸³ of the CPP or the new interrogation is of the utmost importance in reaching the truth. The cross-examination shall be conducted when measures are taken to avoid contact with the defendant, including in specially equipped premises.

Since witnesses, who have already been interviewed, should remain available and at the disposal of the court after the hearing, when the witness is protected under a secret identity, he/she shall wait in a suitable room outside the courtroom. Also the interrogation of a witness with a secret identity can be carried out through audio visual conference connection.

Due to their vulnerability, child witnesses and victims of crime are interrogated using a camera. Under-age witnesses or victims up to age of 14 are questioned in the presence of a psychologist or teacher or in the presence of his/her parents. Cross-examination of minors aged between 14 and 18 implies the presence of the above-mentioned specialists, but the presence of the parents is not mandatory, they may take part in the proceedings depending on the decision of the competent authority⁸⁴. The discretion of the competent authority doesn't depend on an assessment of victims needs from protection under Article 22 of the Victims' Directive. Similar provisions were available in the CCP before the adoption of the directive. The amendments related to the transposition of the Directive were rather perfunctory and formal, and didn't lead to substantial changes.

The above mentioned protection measures are applicable only to witnesses. The CCP has no provisions related to timeliness, adequacy and inclusiveness of the implementation of special protection measures against secondary victimisation and repeat victimization. In the CCP there are several provisions⁸⁵ related to the specific protection measures, however, the protection measures considered above in the paragraph related to art. 20 of the Directive should be taken into consideration.

⁸³ Art. 281(1) The evidence of a witness given in the same case before a judge in the pre-trial proceedings or before another chamber of the court shall be read when:

1. there is a significant contradiction between them and the testimony given to the judicial investigation;
2. the witness refuses to testify or claims that he does not remember anything;
3. the witness, regularly summoned, cannot appear before the court for a lengthy or indefinite period and is not required or cannot be questioned by delegation;
4. the witness cannot be found to be summoned or deceased;
5. the witness does not appear and the parties agree;
6. the witness is a minor, or a witness with special needs of protection.

⁸⁴ The prosecution in the pre-trial phase and the court in the trial phase.

⁸⁵ Art. 139(10), art. 144(3), art. 280(6), art. 281(1) and §1 of the Complementary provisions of the CCP.

ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

Children are vulnerable participants in the criminal legal proceedings. In Bulgaria, over the last 10 years child-friendly practices have been developed across the different regions of the country. A child-friendly environment (friendly, protective and rights based) should be used each time a child is to be heard in the criminal legal proceedings. In 2007, multidisciplinary and inter-institutional training was conducted, at the local level, in three Bulgarian districts where the first specialized facilities for questioning children ("Blue Rooms") were set up. The aim was to create a friendly atmosphere, to provide video recording facilities and to avoid contact between the victim and the perpetrator. These rooms were created in municipal social service facilities for children and families at risk and a team of psychologists and social workers was trained to work with the children.

Each Blue Room consists of two rooms, separated by Venetian glass and equipped with specialized audio and video equipment. One room provides a relaxed and inviting atmosphere for the child and the other houses the specialized equipment for conducting the interrogation and creating the video and audio recordings. The data collected during the interrogation is recorded through cameras in the "Blue Room" onto a computer in a room behind the so-called Venetian mirror and is used in pre-trial and court proceedings.

However, the mere existence of the Blue Rooms is not enough to guarantee the right of the child to be heard: the judges, prosecutors and investigative bodies must be trained on how to interview children and to follow the principle of one time interrogation, as explained below.

As a safeguard, in the CCP, there is a special provision introducing the principle that minors (children up to the age of 14) and witnesses with specific needs of protection should only be interviewed once⁸⁶. There is an exception for a second interrogation if their testimony cannot be read under the conditions and by the order of Article 281 of the CCP or the new interrogation is of utmost importance in revealing the truth. The questioning shall be conducted when measures are taken to avoid contact with the defendant, including in the above specially equipped premises.

Although there are 27⁸⁷ "Blue Rooms", in Bulgaria, the victim support professionals share the opinion⁸⁸ that there are still interview practices that do not guarantee children's rights and the protection of their best interests. Children are often interrogated in the presence of a number of people, strangers, even in the presence of the defendant. They are interrogated by non-specialized staff who not trained to work with children, causing the child extra trauma and stress, which could be avoided if the interrogation was carried out only once by a specialist in a protected environment.

Protection of children in emergency cases falls within the competence of the Ministry of Interior and its structures. As emergencies are considered cases where the child was victim of a crime or where there was an immediate danger for child's health or life or where the child is involved in a crime.

Emergency protection measures can take several forms as follows:

- Placement of the child in special rooms, usually in the police offices where the authorities can prevent him/her from coming into contact with persons who may have negative influence or who may harm the child ;
- Placement in special institutions or social services and, if there is a need, protection by a permanent bodyguard ;
- Return of the child to the parents or caregivers.

The Child Protection Agency and the Child protection Departments at the regional Social Assistance departments have complementary functions in such cases.

⁸⁶ Art. 280(6) of the CCP.

⁸⁷ 2016. National Network for Children, Participation of children in the criminal justice system; <http://nmd.bg/detsata-tchast-ot-sadebni-proizvodstva-se-izslushvat-v-27-vsini-stai/>

⁸⁸ 2018, National Network for Children, Official Letter to the Bulgarian Minister of Justice.

However, the CCP does not perceive children as vulnerable participants in the legal proceedings. As already mentioned, there is no obligatory assessment of a victim's protection needs. Nevertheless, there are separate safeguards⁸⁹ put into place to ensure a child's participation and understanding of the criminal legal proceedings. For example, minors aged up to 14 years should be interrogated only once in the criminal legal proceedings (one time interrogation and avoiding contact with the offender). It is important to note that these safeguards are available only for minors up to the age of 14 and witnesses with special needs of protection and are not relevant for other groups of children (those between 14 and 18 years old). The provision of Article 139 of the CCP (which regulates the option for witnesses with special protection needs to be interrogated without coming into contact with the offender, including through audio visual recording) refers only to witnesses with special protection needs. Therefore if a child does not have the status of a witness with specific needs of protection, the provision shall not be applicable.

When considered witnesses with special protection needs, minors and victims of crime, are interrogated using a camera. Minors up to the age of 14 are interrogated in the presence of a psychologist or teacher or in the presence of their parents. Interrogation of minors between 14 and 18 years can be done without the presence of trained specialists or parents.

There is an additional provision⁹⁰ ruling that, where the interests of the minor or the injured party and his parent or guardian are inconsistent, the relevant body⁹¹ shall appoint a special representative - a lawyer. However, there are no criteria and mechanisms on how this conflict of interest should be established. Additionally, there are no tools in the criminal proceedings on how to detect and respect a child's opinion. Finally, in Bulgaria there are no juvenile courts or juvenile sections within the regular courts, nor judges specially trained to work with child victims.

In general, it can be concluded that the implementation of this provision is inadequate. The CPP amendments do not guarantee a child's rights as a victim or vulnerable witness. Nor are there any requirements in regard to the person conducting the interview /interrogation, which is in breach of the preamble of the Victims' Directive which requires efforts to be made for the victim to be understood.

⁸⁹ Article 140 of the CCP, art. 263(3) of the CCP and art. 280(6) of the CCP.

⁹⁰ Art. 101(1) of the CCP.

⁹¹ Prosecutor in the pre-trial phase and the court in the trial phase.

ARTICLE 25 - TRAINING OF PRACTITIONERS

Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.

Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.

Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.

Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Under the Law on the Ministry of the Interior, officials of the Ministry, as well as the police, are required to have appropriate professional qualifications in connection with the implementation of the tasks and activities of the Ministry of the Interior. According to the same law, they are obliged to maintain and regularly improve their professional training and qualifications. However, the relevant legislation does not prescribe compulsory training for police officers on how to work with children and victims of crime, or on issues related to victims' rights.

Under the Judiciary Act, junior judges should pass a full course of compulsory initial training at the National Institute of Justice. The National Institute of Justice has developed and delivered, from November 23 to January 22 2016, an electronic online training course "Introduction to Justice for Children". The training was designed for judges and prosecutors. The aim of the course was to educate these professionals on how to consider cases involving child victims and witnesses of crimes and children in conflict with the law. The course was implemented with the financial

support of the Bulgarian - Swiss Funding mechanism. Having in mind that the training was developed and delivered on a project base it is difficult to ensure its sustainability.

In accordance with the Law on Assistance and Financial Compensation of Victims of Crime, the National Council for Assistance and Financial Compensation for Victims of Crime organizes and conducts training of different groups of professionals who assist victims of crime. But neither the law nor the Rules, for its application, specify how the training shall be funded, which organizations will provide the training, the time frame and what groups of professionals should be covered.

It can be concluded that the adoption of Article 25 of the Directive into the national legislation is a formality. The existing provisions are wishful in their aims and only report that a change has been made without any impact on reality.

It was underlined that the training provided is very limited, exclusively within certain projects, and mainly implemented by NGOs. The training is fragmented and does not belong to a more sophisticated and comprehensive skills development program⁹².

⁹² Interview 3, Interview 4 and Interview 5.

ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.

Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.

The Act on Support and Financial Compensation for Victims of Crime and its Implementation Rules introduces an obligation for the National Council for Support and Financial Compensation for Victims of Crime to carry out and coordinate international cooperation in support of victims of crime. However, this obligation is not adequately transposed, either in the Law for Assistance and Compensation of victims of crime or in the rules for its application.

Nonetheless, protection programs have been developed to support victims of crimes in which the issues of international cooperation were also addressed. For example, in the National program for protection of victims of trafficking 2016, developed by the National Committee for combating trafficking of human beings, includes a chapter on international cooperation⁹³. In the program there is a special chapter on how international cooperation shall be implemented. An exchange of good practices, in the field of prevention and counteraction of the trafficking in human beings, is included. Participation in international projects on the counteraction and protection of victims of trafficking is provided together with development of bilateral and multilateral partnerships.

Bulgaria has ratified the Convention of the Council of Europe against human trafficking as well as the European Convention for compensation of victims from violent crimes; however, the Istanbul

⁹³ National Committee for combating trafficking of human beings, 2016, National program for protection of victims of trafficking.

Convention was not ratified by the Bulgarian Parliament. There was an aggressive campaign against the Convention, led by conservative groups as well as populist organizations. Currently, practice shows that co-operation is mostly carried out between investigative bodies, but unfortunately it is rather focused on certain actions of the investigation, rather than the support of victims of crimes.

The government, the National Committee on prevention of trafficking of people and its local departments supported by NGOs working in the field, periodically organizes awareness raising campaigns against the trafficking of people and sexual exploitation. Different NGOs working in the field of prevention of gender-based violence also organize other campaigns. Unfortunately, within the context of the social, negative, attitudes to the Istanbul Convention little can be done by those NGOs to develop their plans. Statistics shows that, in Bulgaria, every fourth woman is a victim of domestic violence, and according to a report by the Partners - Bulgaria Foundation in September 2016, the figure is even more worrying - one in three women suffers daily violence at home. Unfortunately, because of patriarchal and conservative attitudes this problem is not recognized and adequately addressed.

GOOD PRACTICES

Even before the adoption of the Directive, some good practices related to protection of the rights of victims of crimes were developed in Bulgaria. These good practices were mainly contributed by NGOs working in the field of child protection and social services. Among these good practices we can mention:

- the first Blue Rooms for questioning children, developed in Bulgaria in 2012 by NGOs funded by foreign donors (UNICEF and others);
- shelters and services for victims of domestic violence;
- 24 hours service "National Hotline for support and referral to services of victims of violence" provided by the Foundation "Animus Association", implemented with a grant from the Ministry of Justice (year 2016).

Since 2005, when the Law on protection against domestic violence was adopted, gender-based violence has been an issue at policy and legal level. Along with the development of social services for all vulnerable groups, mainstream social services for victims of domestic violence were developed, which then were upgraded for victims of trafficking as well. NGOs took a leading role and the pilot services were developed under different projects. However, the state gradually took financial responsibility for these services that are now considered state delegated activities and funded from the state budget. Regardless of the fact that these services are inadequate and unequally spread around the country, their development has been an important step forward in the decentralization of services as well as recognising involvement and role of NGOs in the field.

We can summarize that the most important good practice and positive result from the adoption process has been that national legislation has changed. And notwithstanding that the standards of the Directive, in most cases, were perfunctorily acknowledged in the legal acts, the implementation of the Directive boosts the process of changing the legal framework and existing attitudes and practices. The next step will be to ensure their effective implementation. Secondly, the Directive supported long-term sustainable answers to some of the pilot practices mentioned above i.e. multidisciplinary evaluation, "blue" rooms (for special hearings), etc.

GAPS, CHALLENGES, AND RECOMMENDATIONS

The challenges identified throughout the report are outlines on different levels and with different impacts on the system development and ensuring victims' rights.

On **regulation level**:

- a) important sections from the Victims' Directive were not transposed properly including the following: the circle of persons entitled to the rights regulated in the Directive; the right of victims to be heard, the concept of restorative justice, the obligation of the state to provide training to the professionals involved, the right of victims to protection during criminal procedures, the right to access victim support services and the individual assessment of victims needs of support. Other rights from the Directive are transposed in perfunctorily but without the relevant tools and mechanisms for their implementation so the provisions remain impractical. Victim support services are not well developed and the mechanism for contracting out these services to private providers is inadequate and does not create incentives for potential service providers to participate.
- b) most of the mechanisms that shall ensure the enjoyment of the rights were declared, but ineffectively and poorly developed (or developed unclearly) within the legal framework;

On **policy level**:

- a) the adoption was not supported by a clear action plan for ensuring programs and measures that will give real effective implementation of the standards;
- b) defensive policy development – the adoption of the Directive was recognized more as a process that would “fill in” something that missing in the legal procedure, without ensuring the respective application in social policy formulation and implementation (i.e. Ministry of Labour and Social Policy did not accept that they have a role for the inclusive services and rehabilitation support, Ministry of Healthcare for ensuring support with medical examinations, etc.).

On **practice level**:

- a) very often the victim is omitted from the complicated circle of actions that are performed by different professionals, without productive **coordination** – integrated case management between the procedures/institutions is a challenge (i.e. between the police and the penal procedure phase, between the social service support if such exist and participation in legal procedures, etc.
- b) **multidisciplinary cooperation** is not recognized as practice or a professional standard, which reflects in the creation of complications for the victim;
- c) successful appropriate models are still in their pilot phase, mainly on a project-based **funding**, without serious **state support**;

Main observation about stakeholders' attitude:

- a) for some groups of professionals, the **language of the Directive** is still something “strange” or “foreign” and ultimately unaccepted; in some the cases different professionals are using the same terms with different meaning;
- b) the stakeholders have a different attitude to the level of legislation implementation, and its effectiveness; responsible state institutions are less critical than the victims and the service providers.

From the lessons learned from the process so far, some recommendations might be given: it is of key importance, when legislative amendments are introduced, that their implementation is supported by an action plan with specific measures on how to prepare professionals for the new standards. The reform requires new quality standards, and new instruments for implementation by the respective parties involved. Of course, this should be accompanied by focusing on the efforts of, and investment in, the professional development of the respective stakeholders. Beyond the new legal requirements and standards, there are two important issues that have important impacts on victims' right satisfaction: developing more different services that are effective in the support process and developing special measures for integrating collaboration between systems (reaction and collaboration between social workers and police officers, healthcare specialist and social workers, etc.).

CONCLUSION

Currently the Bulgarian penal system is focused on the defendant, to ensure a fair process. Victim protection and the application of rights is not a priority so professionals do not have concrete protocols/procedures that might help them navigate process, or obtain special instruments and skills if they are open to this.

It is important to summarize two general findings. First, it is of importance that the European Union uses such instruments (i.e. the Victims' Directive), because this approach has at least two effects: a) it provides national contexts a guideline on what are "the best standards" that a system should follow, b) it promotes the necessity to follow good standards, c) turn such legal instruments into policy and raise awareness that its implementation is not related to a political agenda.

Second, the adoption of relevant legislation is only the first step and others have to be initiated to ensure the efficiency of governmental policies, ensuring that victims' lives are improved, as well as providing professional development and community satisfaction.

Moving forward, some of the specific challenges with regard to national legal restrictions, specifics and contextual requirements should be addressed, these might be: a) creating more opportunities for a balanced system, b) supporting the advocates and key agents of change, to ensure, in the long term, that the system will improve. The important lesson learned is that additional efforts should be devoted to raising public awareness and increasing the community awareness on the topic of victims' rights, that there is need for support and that there is the need for a "system driver" to actually perform the changes required.

In general, it can be concluded that the Directive's implementation is inadequate. The Bulgarian penal system is focused on the defendant, to ensure a fair process: there are a high number of cases at the European Court of Human Rights in which Bulgaria is being sued for damages because of the infringement of the offender's rights in criminal legal proceedings. The focus of the Bulgarian criminal justice is mainly on the repression, penalty and the figure of the offender. One of the leading principles of the penal procedures is the revelation of objective truth. As a result, criminal procedural legislation does not connect social issues and crimes and does not consider issues related to restorative justice. In spite of the high number of international documents (UN and EU instruments) related to restorative justice, it is a very strange concept for the relevant Bulgarian legislation.

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3. CASE-LAW

- a) Organizational practices
- b) Personal interviews

4. OTHER SOURCES OF INFORMATION

- a) Personal interviews
- b) Informal conversations
- c) Discussion within working groups

APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS

#	Name	Institution	E-mail	Phone #
1		Ministry of Justice representative		
2		P.U.L.S Foundation - victim		
3	Asya Alexandrova, the Director of rehabilitation services for victim of violence and trafficking	P.U.L.S Foundation – professional		
4		Police officers (3)		
5	Julia Andonova, the Director of the P.U.L.S. foundation – advocacy organization, and service provider	P.U.L.S. director of social services that supports victims		



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