

## 6. ГІСТЬ НОМЕРА.

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### VICTIMS OF CRIME ACTS IN SLOVAKIA (DOES IT FULFIL MINIMUM EUROPEAN REQUIREMENTS?)

*The attempt to reduce the risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender done in the article. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public.*

**Keywords:** *victim, crime, legal standards, victim support service, protection of victims, victimization, intimidation.*

#### **Introduction**

The first attempts to modify the issue of victims of crime in Slovakia took place in January 1, 2016, when went into effect amendments of Law no. 301/2005 Coll. (the Code of Criminal Procedure) transposing into Slovak law, Directive 2012/29/EU, which establishes minimal legal standards in the area of rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter “Directive”). The Directive was transposed only partially, and the remaining transposition of the Directive in the sections relating to the provision and operation of support services for victims of crime should be made later. The full transposition of the Directive was finally carried out two years later, namely by Act No. 274/2017 Coll. on Victims of Crime and on the Amendment to Certain Acts (hereinafter referred to as the «Victims of Crime Act»), which entered into force on January 1<sup>st</sup> 2018 and which will be dealt with in this article.

At the time of drafting the new Victims of Crime Act, the Slovak Republic was delayed with the transposition of the Directive for more than two years, which resulted in the European Commission’s infringement proceedings against the Slovak Republic, in compliance with Article 258 of the Treaty on the Functioning of the European Union (TFEU). Due to this fact one of the main reasons for presenting a draft of the Victims of Crime Act, was the attempt to eliminate the transposition deficit and will to ensure the full transposition of the Directive.

In the following, we will focus our attention on the provisions of the Victims of Crime Act which, in our opinion, are not in line with the objectives of the Directive. These are: an obligation for member States to ensure separate waiting areas for victims, premises designated or adapted for the purpose of the victims’ interviews and free victims support services.

#### **Separate waiting areas for victims**

The Directive in art. 19 (2) lays down the obligation for Member States (also for the Slovak republic) to ensure that new court premises have separate waiting areas for victims.

The aim of this article is the attempt to reduce the risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims.

That fulfilment of this obligation in the Slovak legal system is missing. The Ministry of Justice of the Slovak republic (which created the Victims of Crime Act in Slovakia) states that the ministry will take this requirement into account when constructing new court buildings. But we do not know the time of realisation of this promise yet.

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Therefore, it remains a question of when the «promise» (without any legal basis) will be fulfilled, and until when will victims of crime in the court buildings have to be directly confronted with their offenders.

### **Interviews with the victim in premises designed or adapted for that purpose**

Another requirement arising from the Directive is that interviews with the victim should be carried out in premises designed or adapted for that purpose (Art. 23 (2) a)).

The Slovak legislature dealt with the above mentioned requirement in § 8 par. (2) of the Victims of Crime Act, as follows: «*The competent law enforcement authorities (court, police etc.) and those providing victim support proceed in such a way that its activities do not cause secondary and repeat victimisation and adopt effective measures to prevent repeated victimisation. For this purpose, the competent law enforcement authority and court shall use suitably designed or adapted premises if their space capabilities allow it.*»

We think that the competent law enforcement authority's spatial possibilities do not currently meet the requirement of the Directive. Again, the question arises as to when prosecuting authorities and courts will use suitable premises for the victims' interviews so that their activities do not cause secondary and repeated victimization and when the Slovak Republic meets European and international standards on the protection of victims of criminal offenses.

### **Free victim support services**

The Directive in art. 8 (1) lays down the obligation for Member States to ensure that «*victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings.*»

In the Slovak republic the victim support service is divided into two categories "general support service" and «special support service for particularly vulnerable victim».

Special support service for particularly vulnerable victim is for free, the problem arises with general support service. The general support service is provided for free only by a person who had received a grant, for a period of up to 90 days, if it is justified by the seriousness of the offense, otherwise such general support service is paid, except for the first consultation.

We consider this to be contrary to the aims of the Directive, particularly for the following reasons:

a) Free support should, unconditionally, cover all victims. We do not consider it as appropriate that free general support service is provided only if the person (who provides the general support service) has received a grant, and when it is justified by the seriousness of the crime. It is questionable what kind of possibilities are available for victims from the regions of Slovakia, where the entities that have received grant are not present. For the victim it should be very demanding to travel for this support to other regions of Slovakia,

b) as insignificant also appears the provisions of Slovak legislation about the situation that any person who has received a grant is available, then general support service can be provided but, is paid (except for the first consultation). Such legislation is superfluous, as it is logical that everyone can pay for professional help, even today, without the need for legal regulation,

c) the Directive lays down the obligation for victim support services before, during and for an appropriate time after criminal proceedings and this requirement is not taken into account in the text of the Slovak Act at all. The directive also in its recitals lay down: «*Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive*». In the Slovak Victims of Crime Act only a period of 90 days is provided and due to the time of criminal proceedings it is not possible to cover the period before, during and for an appropriate time after criminal proceedings. At the same time, it is not clear how this period should be counted, when it starts, when it ends or whether it can be interrupted, and so on.

### **Conclusion**

The protection of victims has been part of the European Union's agenda since the 1980s. One of the aims of European Union is to create minimum standards in this area, which was to be fulfilled in Slovakia by the Slovak Victims of Crime Act.

As we mentioned earlier, part of the Directive is transposed into the Code of Criminal Procedure and part in to the Victims of Crime Act and this we do not consider as a right solution. A better solution would be regulation by a single law, such as in the Czech Republic. Even Code of Criminal Procedure does not use the term «victim» but the term «aggrieved». Note, that the term victim is in relation to the term aggrieved on the one hand broader and, in another hand narrower. The term victim is broader to the term aggrieved because the term victim means not

only natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence, but the term victim also covers family members 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. The term victim is narrower than the term aggrieved because the term victim is only a natural person, while the term aggrieved in the sense of the Slovak law also covers legal entities as well as the state.

The potential problems related to the transposition of the Directive (such as separate waiting areas for victims, free victim support services, interviews with the victim in premises designed or adapted for that purpose, etc.) certainly include problems in securing sufficient resources from the state budget to finance the costs associated with the introduction of victim support services.

In the future, the Slovak Republic should also try to avoid situations where it does not transpose the Directive within the prescribed transposition period. Transposition may take place in several stages or by using transitional provisions if the transposition deadline is met. The most important factor is «to not wait» until the end of the transposition deadline. Already at the time of the preparation of the Directive, the Member states should start working on the «mapping of the situation» in the country (and not just the legislative one).

The answer to the question whether the regulation of victims of criminal offenses in the Slovak law meets the expectations set by European and international standards can be best given by the Court of Justice of the European Union which, in the case of proceedings against the Slovak Republic, can judge whether the transposition of Directive is sufficient or not.

#### References

1. *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012).*
2. *Law no. 274/2017 Coll. (Victims of Crime Act).*
3. *Law no. 300/2005 Coll. (the Criminal Law).*
4. *Law no. 301/2005 Coll. (the Code of Criminal Procedure).*

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