



**Review and analysis of the Bulgarian national legal framework on the rights and protection of victims of crime and its application:  
contributing to an effective implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime**

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*Animus Association Foundation is a founding member of La Strada International, a European NGO network working in the field of prevention against trafficking in human beings and support of trafficked persons.*

*In addition, it operates the National Helpline for Children 116111, a Community Support Centre for children and their parents and a Mother and Baby Unit for victims of domestic violence and trafficking in human beings with children under 3.*

## 1) Introduction, background and research questions

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (“The Directive”; “Victims’ Rights Directive”) was adopted on 25 October 2012 and entered into force on 15 November 2012. It requires Member states to ensure by 15 November 2016 access for victims and their family members to general victim support and specialist support, in accordance with their needs (Article 8). However, several member States, among which Bulgaria, have not yet established generic victim support services in the country.

The project “SupportVoC - Development of a Generic Support Services Model to enhance the Rights of Victims of Crime” seeks to contribute to the promotion and protection of rights of Victims of Crime (VoC) in Spain, Greece, Italy, Bulgaria and Cyprus. This will be achieved through developing model Standard Operating Procedures (SOPs) for generic victim support services relying on the good practices and experience of the Spanish generic victim support services operating since 1995. The model SOPs will be adaptable to national contexts. In addition, cooperation between competent authorities and service

providers will be promoted and improved, thus contributing to ensuring a comprehensive protection of crime victims.

This report reviews and analyses the national legal framework on the rights and protection of crime victims and its application. The objective is to establish the gaps and deficits that need to be addressed so as to improve the promotion and protection of the rights of crime victims.

The SupportVoC project is funded by the Justice Programme (2014-2020) of the European Union and it is implemented by a Consortium of six partners consisting of University of Barcelona (UB) – Spain, leader of the project, Family and Childcare Centre (KMOP) – Greece, National Centre for Social Solidarity (EKKA) – Greece, Animus Association Foundation (AAF) – Bulgaria, “Hope For Children” CRC Policy Center (HFC) – Cyprus, and CESIE – Italy.

## 2) Methodology

The research methodology combines desk research (of relevant legislative texts and other documents – reports, articles, etc.) and interviews with stakeholders and professionals with experience related to the topic of victims, their needs and their rights.

The interviews were carried out with selected professionals and stakeholders – high-level officials (Minister of Justice, Head of the Social Assistance Agency), lawyers, inspectors investigating organized crime, border police officers, representatives of the National Commission for Combatting Trafficking in Human Beings as well as representatives of international organizations such as IOM, and of various NGOs providing direct support to victims – Crisis Centers, Social Support Centers, Child and Youth Advocacy Centers, helplines for victims of violence and for children.

The tool used was a semi-structured interview and though similar questions were asked, they did not follow the same order with each participant. Where needed, clarifications were made by putting additional questions and asking for examples.

All of the participants in the research were informed about the project and its goals. Consent forms were also provided and everyone was informed that they could choose to finish their interview at any moment or not to address all the questions. Separate interviews were carried out with each participant as they visited our office. Depending on their different fields of expertise and experience, the interviewees provided different points of view and were able to contribute more to different questions. Most of them provided specific examples and case studies from their work and offered their observation on the gaps in the existing system for victim support. Thus, the analysis of the results from the interviews also focuses on the identified deficits and problematic topics as well as on the recommendations and suggestions given by these interviewees.

The findings from the interviews are incorporated in the desk review but provided in boxes as illustration of the theoretical and/or practical findings.

### 3) The main structure and principles of the national criminal justice system

Bulgarian criminal justice system is based on the continental legal tradition.

The fundamental principles enshrined in the Bulgarian Constitution stipulate that the Republic of Bulgaria shall be governed by the rule of law, the Constitution and the laws of the country (Art. 4, para 1) and that it shall guarantee the life, dignity and rights of the individual (Art. 4, para 2). The Constitution further provides that everyone charged with a crime shall be brought before a court within the time established by law (Art. 31, para 1), and that a defendant shall be considered innocent until proven otherwise by a final verdict (Art. 31, para 3). The rights of a defendant shall not be restricted beyond what is necessary for the purposes of a fair trial (Art. 31, para 4). The Constitution provides for the right to legal defence whenever anyone's rights or legitimate interests are violated or endangered (Art. 56).

International treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall have primacy over any conflicting provision of the domestic legislation (Art. 5, para 4).

The Bulgarian criminal justice agencies include the police, prosecutors, investigators, judges and probation officers. In general investigation is conducted by police investigating officers under the supervision of the prosecutor. In Bulgaria prosecutors and investigators are part of the judiciary and not of the executive. The prosecutor's office is a single centralised system where every prosecutor is subordinate to a higher-ranking prosecutor and all prosecutors are subordinated to the Prosecutor General. The prosecutor supervises the investigation as a supervising prosecutor.

Investigators are in charge of investigating crimes against peace and humanity; offences against the State or classified information; offences committed by persons with immunity, members of the Council of Ministers, judges, prosecutors, investigators, or civil servants in the Ministry of Interior, the State Agency for National Security or the Customs Agency; crimes committed abroad; as well as legally and factually complex crimes. All other offences are investigated by police investigating officers under the supervision of the prosecutor's office. The prosecutor's powers regarding pre-trial proceedings are set forth in Art. 196 Criminal Procedure Code (CPC): s/he supervises investigation; takes part in investigation activities; gives direct instructions; monitors general compliance of all investigative actions with the law as well as respect of established time-limits.

### 4) The current national legal framework on the position and procedural rights of victims in criminal justice system

#### Definition of victim in the Bulgarian (criminal) law

The Bulgarian law uses the term "injured party", which is defined as "any person who has suffered material or non-material damage from a crime" (Art. 74, para 1 CPC). Upon the injured party's death, the rights associated with the person in their capacity of injured party pass on to that person's heirs (Art. 74, para 2

CPC). The 2006 Criminal Procedure Code introduced for the first time a separate section, Chapter Eight, setting out the rights of the victims in the criminal proceedings.

The legal doctrine is split on the issue whether legal entities may be victims of crime, too. Most of the academics and legal experts are of the opinion that only natural persons may be injured parties in criminal proceedings. Their position is premised on the following arguments:

- Only natural persons may sustained non-material damage such as pain and suffering;
- The victim's rights may be inherited, which is characteristic of natural persons only;
- A couple of CPC provisions distinguish between the injured natural person and the injured legal entity (e.g. Art. 213, para 1 and Art. 243, para 3).

For convenience, further in the report the term “victim” will be used instead of “injured party”.

### **The identification of victims**

The identification of victims remains a problem in many cases in Bulgaria, as the interviews suggest. The representatives of institutions like the police expect the victims to self-identify as such. The situation is similar in many other contexts: many professionals are not specifically trained to recognize victims of certain crimes/abuses due to various reasons like organizational issues, lack of funds, frequent staff changes.

Also, some professionals do not identify themselves as part of the victim protection or child protection system and do not perceive the reporting or referral of cases as their obligation. Such is often the situation with the medical professionals even in the cases of children. The Bulgarian Child Protection Act stipulates that everyone who has information about a child at risk or an abused child should report it to the Social Assistance Directorate and professionals can be fined if they fail to do so. Yet, referrals of cases by medical personnel or teachers are rare.

### [Rights of the victims in pre-trial proceedings](#)

The rights of the victims in pre-trial proceedings arise upon their express wish to take part in the pre-trial proceedings and after indicating an address for communication in the country (Art. 75, para 3 CPC). To do so, victims apparently need to be aware that such pre-trial proceedings are in progress. This is why the law prescribes a duty for the body that has launched pre-trial proceedings to notify immediately victims if they have specified a communication address in the country (Art. 75, para 2 CPC).

The Support and Financial Compensation for Crime Victims Act also stipulates a general duty for the Ministry of Interior bodies, investigators and victim support organisations to immediately inform victims about their rights in the criminal proceedings and how they make take part in it (Art. 6, para 1, item 5). In addition, victims must be informed about the following:

- Access to medical assistance, and information about organisations that provide free psychological counselling and support and any specialised help they may get (Art. 6, para 1, item 1);
- Their right to legal aid, and the terms and procedure to apply for such (Art. 6, para 1, item 2);

- Where a signal about a crime may be lodged, and the respective procedures and possibilities applicable thereafter (Art. 6, para 1, item 3);
- Bodies that may be seized with a signal concerning a violation of the victims' rights by a criminal proceedings authority (Art. 6, para 1, item 4);
- Bodies competent to provide protection for them and their families (Art. 6, para 1, item 6);
- Bodies competent to provide financial compensation (Art. 6, para 1, item 7);
- How foreign nationals may get protection in case their rights and interests have been violated by a crime committed in Bulgaria (Art. 6, para 1, item 8);
- How to get protection in case their rights and interests have been violated by a crime committed in another country (Art. 6, para 1, item 9).

Further on, the supervising prosecutor is in charge to make sure that the investigating authorities provide victims with all this information in the course of pre-trial proceedings (Art. 6, para 2).

The competent authorities in charge of informing victims of their rights must take into account the victims' condition and age, and must inform them in a language they can understand (Art. 6a Support and Financial Compensation for Crime Victims Act). However, in practice there is no way to ensure that this requirement is met, especially in case of victims from the minorities, or poorly educated ones as many of the victims of trafficking are. In particular for victims of trafficking, the Anti-Trafficking Act stipulates that the pre-trial authorities (i.e. investigating police officers and/or prosecutors) inform victims of trafficking, immediately after they identify them as such, about the possibility to be granted special protection, if within one month they declare their consent to cooperate with the authorities for the detection of the crime. For child victims of trafficking, the one-month period may be extended up to two months upon a proposal of the chairperson of the State Agency for Child Protection (Art. 26).

Most of the provisions discussed above have been introduced in the Support and Financial Compensation for Crime Victims Act following transposition of the Victims' Rights Directive.

The victims' rights in pre-trial proceedings are set forth in Article 75, para 1 CPC. Victims are entitled to the following:

- To be informed about their rights in the criminal proceedings;
- To obtain protection for themselves and for their relatives;
- To be informed about the course of criminal proceedings;
- To take part in the proceedings;
- To make requests, notes and objections;
- To challenge the acts suspending or terminating the criminal proceedings;
- To have a legal representative;
- To receive a written translation of the ruling suspending or terminating the criminal proceedings in case they do not know Bulgarian language.<sup>1</sup> This latter provision was introduced in the course of transposing the Victims' Rights Directive.

Amendments to the Criminal Procedure Code (SG 63/2017) transposing *inter alia* the Victims' Rights Directive introduced a new ground for termination of judicial proceedings in case of a substantial violation of the rights of the victims or their heirs in the course of the pre-trial proceedings, namely failure to inform them about the launch of the pre-trial proceedings, or of their rights, including their right to take part in

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<sup>1</sup> Supplemented State Gazette no. 63/2017, in force as of 5 November 2017.

the proceedings, or in case they have not been provided with written translation of the ruling to suspend/terminate the proceedings if they do not speak Bulgarian (Art. 249, para 4, item 2 CPC).

Victims may be granted protection for themselves and their relatives. There are several mechanisms to that end. One is the supervision measures set forth in Article 67 CPC: prohibition to approach the victim, to establish contact in any way with the victim or to visit certain places that the victim attends or resides in. These protection measures are taken upon the prosecutor's proposal or the victim's request. The judge must rule immediately in the presence of the defendant, the victim and the prosecutor by a final ruling. The supervision measures may be repealed upon the victim's request. Otherwise, they are in force throughout the criminal proceedings until a final sentence is delivered or the criminal proceedings are terminated.

Witnesses are entitled to physical protection in case there are sufficient grounds to believe that their testimony may put their health or life in danger, or that of their relatives (Art. 123 CPC).

Further on, the Protection of People Involved in Criminal Proceedings Act provides for various other protection measures, including the most radical one change of personality (Art. 6). However, the protection under this law is granted only in relation to criminal proceedings concerning violent intentional crimes or crimes committed or commissioned by organized crime groups (Art. 4).

Another important right of the victims is the security for costs of a future civil claim (Art, 73, para 2 CPC). The claim is reviewed under the Civil Procedure Code. This guarantees effectively the right of victims to receive compensation.

Victims have the right to a legal representative in the pre-trial proceedings to ensure that their rights and interests are protected. The legal doctrine points out that unlike the mandatory defence, the law does not prescribe mandatory legal representation for victims/witnesses.<sup>2</sup> Experts point out that such mandatory legal representation could be required for certain groups of vulnerable people such as minors, or people with intellectual or physical disabilities. This appears logical given the provision of Article 51 CPC which stipulates that in case the victims are minors or suffer from physical or intellectual disabilities that prevent them from protecting their rights and legitimate interests, the prosecutor may file a civil claim on their behalf.<sup>3</sup>

### Rights of the victims in judicial proceedings

Victims take part in judicial proceedings as witnesses unless they express their wish to be constituted as private prosecutors and/or civil claimants. This right is conditional on their victim status and may pass on to their heirs.

The private prosecutor maintains the indictment in court side by side with the prosecutor and they often complement their work in the trial. The private prosecutor's rights include the right to get acquainted with the case materials; to furnish evidence; to take part in judicial proceedings; to make requests, notes and objections and to appeal judicial acts that affect their rights and legitimate interests (Art. 79 CPC).

Victims may constitute themselves as civil claimants in the criminal proceedings to seek compensation of sustained damages. A civil claim may also be lodged separately after finalization of the criminal

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<sup>2</sup> Manev N., Criminal Procedural Law. Manual for Students. Fourth revised edition, Sofia 2008, p. 165.

<sup>3</sup> Petrov, V., The Rights of Injured Parties in Pre-Trial Proceedings, 2014, Law Faculty of Paisiy Hilendarski University.



proceedings. In the framework of criminal proceedings, civil claimants have the right to take part in the judicial proceedings; to seek security for the costs of the claim; to get acquainted with the case materials; to furnish evidence; to make requests, notes and objections; and to appeal the judicial acts that affect their rights and legitimate interests (Art. 87, para 1 CPC).

As private prosecutors and civil claimants, victims may be represented by a lawyer (art. 10, para 1 CPC) and may be assigned a legal aid lawyer if they avail of no means, would like to be represented and the interests of justice so require (Art. 100, para 2) (discretion of the court).

Minor victims and victims who are fully or partially incapacitated are appointed lawyers *ex officio* in case their interests run contrary to the interests of their parents or guardians (Art. 101, paras 1 and 2 CPC).

The Support and Financial Compensation for Crime Victims Act specifically stipulates that crime victims are entitled to free legal aid under the terms and procedure of the Legal Aid Act (Art. 8, para 1, item 3). Free legal aid under the Legal Aid Act is two types: (1) the so-called primary legal aid consisting of consultations and preparation of documentation; and (2) legal representation. People of no financial means or clients of residential type of social services such as victims of trafficking, domestic violence or gender-based violence are in principle entitled to free primary legal aid. As far as legal representation is concerned, three cumulative conditions have to be met: that victims express their wish to be represented; that they avail of no means; and that the interests of justice so require. The latter is assessed for each individual case by the pre-trial authority or the court respectively. In practice legal representation in the pre-trial phase is rarely granted. Experts admit that unless assisted by lawyers working with victim support organisations, crime victims do not avail of the possibility to use free legal aid. In addition, the free legal aid is administered by lawyers registered with the National Bureau for Legal Aid. There is no particular specialization, though, thus victims end up with lawyers who are not trained on specificities such as those associated with trafficking of human beings or sexual violence.

### **Difficulties in receiving legal aid/representation**

For many victims of crime the access to legal aid and representation is a major problem. They cannot afford such representation, do not know their rights, do not trust the system. Therefore they many discontinue their participation in legal proceedings or not claim their rights.

Victimization is often the result of different risk factors like poverty, lack of education or professional skills and options, or vulnerabilities like mental or physical illness, intellectual deficits, etc. These factors lead also to lack of assertiveness and learned helplessness, so such victims cannot fend for their rights on their own – or even understand them in some cases. In other cases the possibility for free legal aid exists on paper, but cannot be used by the victim, as was pointed out by one of the interviewed lawyers. Such is often the situation with victims of domestic violence who do not meet the requirements for low income or lack of property. They may have some income and may own some property, but due to the domestic abuse itself (control by the abuser) they cannot actually use their money or property. The specifics of different kinds of

crime and abuse need to be taken into consideration when determining protection measures and options.

Another vulnerable group are the elderly people who become victims of violence from their children or relatives. Due to their age and physical or mental problems they may be helpless and unable to take legal or other measures themselves. Yet, only in case they have been officially declared disabled by a medical commission the local Directorate for Social Assistance can start proceedings on their behalf under the Act for Protection from Domestic Violence. The others are expected to take these measures themselves. But many of these elderly people need assistance and access to legal counsel, aid and representation, as well as services targeted at their specific needs and challenges.

As regards minors, the Child Protection Act (Art. 15) stipulates that children who have turned 10 years of age shall be heard in every administrative or judicial proceedings that affects their rights or interests, and children below the age of 10 shall be heard if the level of their maturity allows for it. A social worker from the Social Assistance Directorate shall attend the hearing (Art. 15, para 4). Where the court deems it appropriate, the child's parent, guardian, caretaker or another close relative shall attend the hearing as well. More importantly, pursuant to art. 15, para 8 Child Protection Act, the children are entitled to legal aid and support in all proceedings affecting their rights and interests. However, the Criminal Procedure Code does not provide for mandatory legal representation for children in pre-trial proceedings.

### **The position of victims and their family members in criminal justice proceedings**

According to the interviewees, the victims and their relatives are usually in the position of witnesses in criminal justice proceedings and rarely as civil claimants. This position was described by some of the interviewed lawyers as a quite passive one: the victims are expected to provide testimony even through the means of threats or coercion. This approach strongly contradicts the principles of empowerment of victims. According to the interviewed lawyers this happens particularly often in the cases of trafficking victims to whom it may be implied that they also did something wrong that can be sanctioned or in the cases of people unaware of their rights and with low educational level.

This passive position of the victims can be attributed to lack of awareness about their rights as well as lack of assertiveness. Also, the quality and availability of victim protection services vary to a large extent in different parts of the country. The concentration of services and professionals in larger cities creates disparities in the quality of care for victims, especially for those living in smaller or poorer communities. At the same time, members of such communities are especially vulnerable to many forms of crime (like trafficking) and abuse.

Strengthening the position of the victims, giving them a more active voice can be achieved by increased access to legal aid and representation, as was stated by many of the interviewees. According to them the availability of adequate legal advice and representation will empower the victims to assert their rights more often and will make them much less likely to be subjected to revictimization or inappropriate methods of interrogation.

The position of children as witnesses in criminal justice proceedings in Bulgaria is often problematic. They can be subjected to many interrogations – in front of the police, the prosecutor, the court. Court hearings are frequently in the presence of the perpetrator leading to further traumatization. Even though more and more of the so-called “blue rooms” are available, their use is not required by the court. Some important conclusions can be made in regard to these “blue rooms”: a) their number and availability needs to increase; b) their use for the interrogation of children should be mandatory; the implementation of points a) and b) requires the special preparation of professionals – psychologists, social workers – that can lead these interrogation following the approach of the best interest of the child.

## Domestic Violence

Domestic violence is still not criminalized in Bulgaria despite the signing of the Council of Europe Convention on preventing and combating violence against women and domestic violence (“the Istanbul Convention”). Protection against domestic violence is provided following a civil procedure set forth in the Protection against Domestic Violence Act.

According to the Bulgarian law, domestic violence is “any act of physical, sexual, psychological, emotional or economic violence, as well as the attempt thereto, the coercive limitation of personal life, personal freedom and rights committed against relatives, or persons who are currently or have been in a familial relationship or cohabitation” (Art. 2, para 1 Protection against Domestic Violence Act). Children who have witnessed acts of domestic violence are considered victims of domestic violence (Art. 2, para 2).

Protection against domestic violence is granted upon complaint of the victim or a certain set of related people. That is to say that authorities cannot act *ex officio*. The Social Assistance Directorate has the powers to seek protection against domestic violence for children (Art. 8, para 4), although it seldom avails of this statutory opportunity. The court may issue an immediate protection order in case of a risk for the victim’s health and life. The court proceedings are two-instance and the burden of proof is reversed, although judges sometimes expect from victims to prove that they are victims of domestic violence. The law is often used as an extra tool in divorce or custody proceedings, which is why the protection granted by the court is not deemed as genuine.

The court may rule any of the following protection measures or a combination thereof (Art. 5):

- Oblige the perpetrator to abstain from committing domestic violence;
- Remove the perpetrator from the co-habited residence for a term decided by the court;
- Prohibit the perpetrator to approach the victim and the victim’s residence, working place, places of social contacts;

- Temporary placement of the child with the victimized parent, unless this contradicts the child's interests;
- Oblige the perpetrator to take part in specialised programmes;
- Refer victims to rehabilitation programmes.

In addition to the protection measures, the perpetrator is always imposed a fine from BGN 200 to BGN 1,000 (Art. 5, para 4).

Protection against domestic violence and gender-based violence by criminal law is only secondary, that is only insofar as specific acts of domestic violence reach such gravity as to be classified as crimes, e.g. medium or grave bodily injury, or murder.<sup>4</sup> A number of crimes are prosecuted only upon a complaint by the victim (e.g. light bodily injury), so if the victim decides to withdraw the complaint, the prosecution is terminated. Violation of protection orders, including European protection orders, is criminalized as failure to comply with a court ruling and punishable by imprisonment up to three years or a fine up to BGN 5,000 (Art. 296, para 1 CPC).

### Trafficking in Human Beings

Trafficking in human beings is criminalised (Articles 159a to 159d Criminal Code), in line with relevant international and European treaties. A non-punishment clause for criminal acts performed by victims of trafficking was introduced in 2013 (Art. 16a, para 1 Criminal Code).

The Anti-Trafficking Act confers on victims of trafficking who have agreed to cooperate with the authorities a special protection status (Art. 25): extended stay in the shelters for victims of trafficking operating with the National Anti-Trafficking Commission for the duration of criminal proceedings, and extended residence permit for victims who are third-country nationals.

The Law on Combating Trafficking in Human Beings (hereinafter “the Anti-Trafficking Act”) provides for the setting up of a national commission and local commissions for combating trafficking in human beings, and contains a variety of measures to prevent trafficking in human beings and to protect and assist its victims, including the setting up of shelters for temporary accommodation for victims of trafficking and centres for their protection and support.

### Referral

A National Mechanism for Referral and Support of Trafficked Persons (NRM) was set up in November 2010. It is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, in partnership with civil society. It outlines the roles and procedures of all stakeholders and provides concrete measures and steps for the identification and referral of trafficked persons. In 2016, the NRM was revised to reflect ongoing legal developments and changing trends and was officially endorsed by the Council of Ministers as a bylaw.

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<sup>4</sup> Survey Report. Victims of Crime Rights and Competent Stakeholders in Romania, Bulgaria, Germany and Sweden, February 2018, available at: <http://prorefugiu.org/survey-report-victims-of-crimes-rights-competent-stakeholders-in-romania-bulgaria-germany-sweden/>

The identification of child victims of trafficking in human beings and their referral to assistance follows the rules and procedures set forth in the Co-ordination Mechanism for Referral, Care and Protection of Unaccompanied Minors and Child Victims of Trafficking in Human Beings Repatriated to Bulgaria. It sets up a system for inter-institutional referral of cases and creates obligations for co-operation between stakeholders involved in the fight against trafficking in children. In implementing the Co-ordination Mechanism, stakeholders are guided by the principles of the best interest of the child, inter-institutional information exchange and collaboration, and a multidisciplinary approach at national and local level. The co-ordination of the implementation of the mechanism is executed by the Minister of the Interior and the Chair of the State Agency for Child Protection.

A draft Coordination Mechanism for Supporting Survivors of Domestic Violence<sup>5</sup> has been elaborated upon the initiative of the Animus Association Foundation with the involvement of all major public stakeholders. It lays down operational procedures to be followed in case of imminent danger or potential risk for the survivors of domestic violence. However, despite the extensive advocacy work, the Coordination Mechanism has not been endorsed as a mandatory *opus moderandi*.

### **Juvenile justice system**

Currently no juvenile justice system has been established in Bulgaria yet and the legislation still applied is extremely outdated (introduced in the year 1959), with focus on the perpetrators and sanctions for them. The approach to minor offenders is often also outdated and based on negative stereotypes and attitudes. Within the current system the underage offender is typically viewed as “bad” and “flawed” and not as a probable victim of his or her own traumatic experiences. The methods of intervention are often punitive, not preventive. Underlying traumatic causes of problematic behaviours among minors like runaways, truancy, theft, etc. are not recognized by many professionals working within the limits of the current legislation, the punitive approach is employed quickly and cooperation with other services is not sought after.

Changes in the current Bulgarian system would require not only legislative measures, but also a focus on specialized services of a different kind for minors who have committed a crime and the work with whom is very difficult and challenging.

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<sup>5</sup> Text of the Coordination Mechanism in Bulgarian: <http://animusassociation.org/wp-content/uploads/2017/08/Koordinacionen-mehanizum-doma6no-nasilie.pdf>. The Coordination mechanism has not been adopted largely due to the opposition of the Ministry of Health regarding the envisaged obligation for medical professionals to refer victims of domestic violence to the police and signal Child Protection Departments about child victims of domestic violence.

## 5) The current national legal framework on the protection of victims from secondary and future victimisation. Compensation

### Protection against secondary and future victimisation

Amendments to the Criminal Procedure Code for the purpose of transposing the Victims' Rights Directive introduced the notion of "witnesses with specific protection needs". Such specific protection needs are in place when additional means are required to protect witnesses against secondary or repeated victimization, retaliation or intimidation, emotional or psychological suffering, or to protect their dignity during questioning (§ 1, para 4 Additional Provisions CPC).

Thus, witnesses with specific protection needs are questioned in such a way as to avoid contact with the defendant, including by means of video or telephone conference (Art. 139, para 10 CPC).

Minors below the age of 14 are in principle questioned in the presence of a pedagogue or a psychologist, and where appropriate – in the presence of their parents or guardians. For minors aged 14 to 18, the competent body decides who should attend the questioning (Art. 140, paras 1 and 2 CPC). The new provision of Art. 140, para 5 CPC introduces the *possibility* to question minors while taking measures to avoid contact with the defendant, including in specially equipped premises or through video conference.

Specific protection needs of witnesses in the criminal proceedings are established by assigning an expert assessment (Article 144, para 3 CPC).

Experts have been highly critical of the way the provisions of Articles 23 and 24 of the Victims' Rights Directive have been transposed.<sup>6</sup>

Firstly, within the meaning of the Directive, children are always considered to be witnesses with specific protection needs, while in the Bulgarian Criminal Procedure Code this distinction is blurred as witnesses with specific protection needs and minors are treated as two separate groups of witnesses.

Secondly, taking specific measures against revictimization of minors who are questioned as witnesses or victims of crimes is introduced as an option, and not as a rule in criminal proceedings. For years experts working in the field have signaled that the practices applied in questioning child victims or witnesses of crimes are harmful to children and violate their best interests. Children are questioned on numerous occasions, by people who are not specifically trained, and often in the presence of the defendant.

Thirdly, the Victims' Rights Directive requires that child victims undergo individual assessment of their specific protection needs. The envisaged expert assessment does not clearly transpose this requirement, and is not prescribed as mandatory.

The most alarming omission concerns the questioning of child victims of crime. A previous draft bill of the Ministry of Justice elaborated for the purpose of transposing the Victims' Rights Directive envisaged that minors are questioned before a judge immediately after the crime and/or the victim have been identified,

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<sup>6</sup> Position of the National Network for Children, including letter to the President to veto the amendments and supplements to the Criminal Procedure Code (in Bulgarian): <http://nmd.bg/%D0%BD%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%B0-%D0%BC%D1%80%D0%B5%D0%B6%D0%B0-%D0%B7%D0%B0-%D0%B4%D0%B5%D1%86%D0%B0%D1%82%D0%B0-%D0%BF%D0%BE%D0%B8%D1%81%D0%BA%D0%B0-%D0%B2%D0%B5%D1%82/>.

keeping the number of interrogations to a minimum. Currently, the amendments to the Criminal Procedure Code prescribe that minor witnesses (or witnesses with specific protection needs) who have been questioned in the pre-trial proceedings shall not be questioned again in court unless their testimony is of particular importance for revealing the truth (Art. 280, para 6 CPC). However, this is applicable only insofar as minors (or witnesses with specific protection needs) have been questioned in the pre-trial proceedings before a judge and in the presence of the defendant and his/her defence counsel (Art. 281, para 1, item 6), which severely limits the application of this provision.

Experts, including professionals at the Child Advocacy and Youth Centre Zona ZaKrila with Animus,<sup>7</sup> have been advocating that child victims and witnesses of crimes are questioned in specialized child-friendly hearing facilities (the so-called 'blue rooms') by specially trained professionals. Currently there are 26 blue rooms functioning in the country. The rationale behind the blue rooms is to ensure a safe space for questioning children who take part in criminal proceedings in a friendly and non-victimising manner taking account of their particular vulnerabilities. Children are questioned by a specially trained professionals behind a Venetian glass, while at the other side of the glass are the judge, investigating police officer and/or prosecutor, the defendant and his/her defence counsels, and the child parents/guardians where appropriate.

There are no rules on the procedures to follow and requirements to the process of questioning and/or the professionals performing it. Often children are questioned by investigating officers or officers from the Juvenile Delinquency Police Units who apply the same methods to child victims or witnesses as they apply to children in conflict with the law. They are not acquainted with the psychological aspects of revealing traumatic experiences, hence interrogations are often traumatizing for children.

Further on, experts working with child victims and witnesses of violence have been strongly advocating that the so-called interview in the context of police checks is repealed in relation to minor victims and witnesses of violence. This interview is conducted prior to launching pre-trial proceedings and in fact is identical to interrogation but without any probative value in the criminal proceedings. Practice shows that after these interviews children often refuse altogether to undergo any further questioning.

### Support for recovering from the harm suffered

The Support and Financial Compensation for Crime Victims Act provides for several forms of support for crime victims (Art. 8, para 1):

- Medical aid in emergency cases;
- Psychological counselling and support;

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<sup>7</sup> The main goal of the Child and Youth Advocacy Centre "Zona ZaKrila" is a comprehensive model for work with child survivors and witnesses of violence and their families. It aims to effectively guarantee the rights and the best interests of child survivors and witnesses of violence where the child is at the centre of the work of all relevant institutions. The model ensures a supporting environment for the child from the moment the signal for violence is received through the whole process of investigation until the end of the judicial proceedings, the implementation of the protection measures as well as the recovery process of the child and their family. The pilot model is supported by UNICEF and functions from 2016. Since 2018 there operates a specialized child-friendly hearing facility.

- Free legal aid;
- Practical help.

This support is provided prior to, during, and after the criminal proceedings (Art. 8, para 3).

Free psychological counselling and support is provided by specialists from victim support organisations according to the victims' individual needs and their particular condition (Art. 9, para 1). The Additional Provisions of the law specify that "victim support organisations" are not-for-profit organisations registered to provide support to crime victims free of charge (§ 1). The free psychological counselling and support is financed by the Ministry of Justice (Art. 9, para 2).

According to the Implementing Rules on the Compensation Act, an Expert Commission with the National Council for Support and Financial Compensation for Crime Victims exercises control over the victim support organisations. The latter must submit annual reports to the Ministry of Justice about the support they have rendered.

## Compensation

The right to compensation in Bulgaria may be effected in several ways:

- a) In the course of criminal proceedings;
- b) By means of a separate civil action after the criminal proceedings have been finalized;
- c) Through an administrative procedure under the Support and Financial Compensation for Crime Victims Act.

Financial compensation for material and non-material damage to be paid by the perpetrator may be sought in the framework of the criminal proceedings (Art. 84, para 1 CPC). Victims may file a compensation claim (civil action) against the trafficker in the framework of the criminal proceedings. During the criminal proceedings, the victim is not required to pay the initial court fee, which is determined as a per cent of the claim and which fee is due when filing a civil action under the Civil Procedure Act. To guarantee that the compensation is paid, the prosecutor and the victim have the right to seek attachment of the defendant's assets in the course of pre-trial and trial proceedings (Art. 73, para 2 CPC).

It is possible to file a claim for compensation for material and non-material damage to be paid by the perpetrator in separate civil proceedings.<sup>8</sup> This is also the only opportunity for the crime victims to claim compensation for non-material damage if the criminal proceeding concludes in a settlement between the Prosecution and the Defendant.

A fairly limited group of victims may receive compensation, and only for material damage, under the Crime Victim Assistance and Financial Compensation Act. These are victims of terrorism, premeditated and attempted murder, premeditated grave bodily injury, sexual assault, rape, human trafficking, organized crime; crimes committed or commissioned by organized crime groups; as well as intentional violent crimes whereby death or grave bodily injury have occurred (Art. 3, para 3). Crime victims may benefit from this administrative procedure only after the criminal proceedings have been completed or the investigation has been terminated due to failure to detect the perpetrator. The following costs may be compensated under the publicly funded scheme: medical treatment (examinations and medication that is not covered by the

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<sup>8</sup> Pursuant to Article 45 of the Obligations and Contracts Act (tort/delict) following the rules of civil procedure.



Health Insurance Fund); transportation (e.g. transportation costs to appear in court); fees for legal counsel if the victim has not made use of free legal aid; other court fees; lost income. The Fund compensates amounts up to BGN 10,000 (€ 5,000).

The compensation under the Crime Victim Assistance and Financial Compensation Act is coordinated by the National Council for Assistance and Financial Compensation, an interagency unit with the Minister of Justice chaired by a deputy Minister of Justice. The National Council is composed of representatives of the following institutions/authorities: Supreme Court of Cassation; Supreme Cassation Prosecutor's Office; Ministry of the Interior; Ministry of Health; Ministry of Labour and Social Policy; Ministry of Finance; Ministry of Justice; Ministry of Foreign Affairs; State Agency for Child Protection; National Anti-Trafficking Commission; Supreme Bar Council; and the Association of Victim Support Organisations.

According to information provided by the Secretary of the National Council for Assistance and Financial Compensation upon Animus inquiry, fairly few crime victims have been awarded compensation for material damage under this Act: from 17 applications of victims of trafficking filed after the law has been enforced in January 2007, none has been approved for compensation; from 16 applications of rape victims, only two have been approved and financial compensation to the total amount of BGN 4,000 has been awarded.

## Mediation

Mediation as an alternative out-of-court dispute settlement procedure is voluntary (Art. 2 Mediation Act) and requires the consent of both parties. It is usually used for civil, commercial, labour, family, administrative or consumer disputes. Although Art. 3, para 2 Mediation Act stipulates that mediation is possible in the cases provided for in the Criminal Procedure Code, its application in the criminal field is very limited: it is preserved only for privately actionable cases initiated upon a complaint by the injured party such as light bodily injury, libel or defamation.

As regards gender-based violence and domestic violence cases in particular, Animus has voiced its opinion against the institute of mediation or any restorative justice mechanism in cases of gender-based violence and domestic violence.

We have relied on the express prohibition of mandatory mediation in the Istanbul Convention (Art. 48, para 1) and a number of other studies/instruments that advise against restorative justice mechanisms in cases of violence against women such as the UN Secretariat Handbook for Legislation on Violence against Women<sup>9</sup> and the Verwey-Jonker Instituut comparative report on restorative justice in cases of domestic violence.<sup>10</sup>

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<sup>9</sup> Handbook for Legislation on Violence against Women of the Division for the Advancement of Women in the Department of Economic and Social Affairs of the United Nations Secretariat, p. 38, available at:

<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

<sup>10</sup> Verwey-Jonker Instituut, Restorative Justice in Cases of Domestic Violence, Comparative report [https://www.verwey-jonker.nl/doc/2015/7388\\_restorative%20justice%20in%20cases%20of%20domestic%20violence.pdf](https://www.verwey-jonker.nl/doc/2015/7388_restorative%20justice%20in%20cases%20of%20domestic%20violence.pdf).

The main arguments against mediation in cases of violence against women are that it removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability.

## 6) The main national public and non-governmental agencies that provide victim support services on national level

### The main national public institutions involved in providing victim support and protection services

The Ministry of the Interior is a first line institution responsible for the identification of the victims and the investigation of crimes. It is also usually the first institution to confront domestic violence. There is a national coordinator and regional coordinators on domestic violence.

The Prosecutor's Office is in charge of the prosecution of perpetrators and ensures, together with the police, victims' participation in criminal proceedings.

Criminal court divisions try perpetrators and ensure victims' participation during trial. Civil court divisions impose protection measures against domestic violence.

The Ministry of Justice leads the National Council for Assistance and Compensation of Crime Victims and funds various projects for prevention and combatting of domestic violence.<sup>11</sup>

The National Bureau for Legal Aid with the Minister of Justice organizes the state-paid legal aid provided by the respective bar councils.

The State Agency for Child Protection is the key stakeholder as regards children and implements the Coordination mechanism for referral, care and protection of child victims of trafficking.

The Ministry of Labour and Social Policy, through the Social Assistance Agency, provides social services to victims of human trafficking and domestic violence.

The State Agency for Child Protection and the Social Assistance Agency are the authorities that license social services providers regarding services for children and adults respectively and monitor their work.

The National Commission for Combating Trafficking in Human Beings (NCCTHB) is the national coordination body against trafficking in human beings and in support to victims of trafficking. It is a body within the Council of Ministries and is chaired by a Deputy Prime Minister. The activities of the Commission are implemented by a permanent Secretariat headed by a Secretary. The Commission is responsible for defining and implementing the national anti-trafficking policy and strategy. It designs and implements national annual programmes, training of experts, reintegration of trafficked persons, research and analysis, international cooperation and improvement of legislation. The NCCTHB manages the only specialised services for victims of trafficking.

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<sup>11</sup> Pursuant to Art. 6, para 7 of the Protection against Domestic Violence Act, every year part of the budget of the Ministry of Justice is earmarked for projects for prevention, training and combatting of domestic violence. The funds are distributed to NGOs following a competitive procedure set forth in Articles 11 to 19 of the Implementing Rules of the Protection against Domestic Violence Act.

### **Lack of enough preparation among professionals**

Another problematic area identified by many of the interviewees is the preparation of the professionals working with victims. There are serious disparities in this regard. Though some professionals may have been trained specifically to work with a certain target group (victims of domestic violence or of human trafficking), many are not. Also, the levels of staff turnover are high among social workers and other helping professionals due to low pay and extreme workload. Thus, trained staff can often leave and be replaced by untrained employees. In many places, especially the smaller towns, trained professionals are not available as they typically finish their education in the bigger cities and remain there. Thus, the access to services in many places is very limited and the people who provide it may not be properly trained to identify, inform and assist specific groups like the victims of crime.

Other problems related to the local services were pointed out by representatives of the police in our interviews. According to them the local authorities or social services do not always cooperate enough (or quickly enough) with them on cases of trafficking when children or relatives of the victim need some special support because of lack of understanding of the specifics of the crime and the risk or because of lack of training. According to interviewees, though the heads of agencies and higher-level officials are aware of the strategies to combat crime and assist victims, the lower-level staff may not be that well informed, trained or sensitized.

### **Non-governmental organisations providing victim support services**

NGOs operate crisis centres for women and/or children victims of violence (trafficking in human beings and domestic violence). Most of these crisis centres are state-delegated activities although the funding is insufficient and NGOs often combine it with project funding. There are 26 crisis centres in the country, 18 for children and eight for women and children. That is to say that in 11 out of 28 administrative regions in the country there is not a safe place to accommodate women or children victims of violence.

There are four shelters for victims of human trafficking with the National Anti-Trafficking Commission that are administered by NGOs: one in Varna, one in Burgas, and two in the capital Sofia for children and adults respectively.

There is only one centre specialised for victims of sexual violence in the city of Burgas.

Civil society organisations support victims of crime by rendering psychological support and counselling, social and health services, legal consultations and representation.

A list of the most prominent NGOs providing support for victims of gender-based violence is available in the Survey Report Victims of Crime Rights.<sup>12</sup>

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<sup>12</sup> *Ibid* 4, pp. 41 to 45.

### **Victims' needs – shelter, long-term care, medical aid**

The interviewees identified some of the needs of the victims as particularly problematic to be met at the current moment:

The need for long-term care, especially for victims of human trafficking, who are very often representatives of vulnerable, marginalized and not well adapted groups. Their re-integration typically requires more efforts, time and specialized assistance. The shelters and opportunities for long-term care in Bulgaria are very limited.

Medical aid – many victims do not have medical insurance or their health insurance rights have been terminated. Though emergency care is available to all, the special medical needs of some groups of victims are not met. For example, the victims of trafficking for sexual exploitation or labour exploitation often have many medical problems (gynecological, dental, related to mental health, etc.), but usually they have no health insurance rights because they have not worked officially.

### **National Helplines**

A National Helpline for Children 116 111 with the State Agency for Child Protection operates 24/7. It is managed by Animus Association Foundation following a competition procedure. It provides consultations and referrals to children and adults in relation to problems involving children.

In addition, the standardized European number 116 000 Helpline for Missing Children is operated by Nadja Centre Foundation, a not-for-profit foundation.

Animus Association Foundation manages also the National Helpline for Survivors of Violence. It is supported by the Ministry of Justice and operates 24/7. Clients, even anonymous ones, receive information, counselling and referral to relevant competent bodies. On Wednesdays free legal counselling is also provided.

A21, an NGO, operates the national helpline 0800 20 100 for victims of trafficking.

There is a National Helpline for Free Legal Consultations operated by lawyers with the National Bureau for Legal Aid (0700 18 250).

### **Lack of specialized services for some groups**

In most of the interviews it was emphasized that some groups of victims do not have access to relevant services or their access is very limited – like male victims of trafficking or forced beggary, people with disabilities, elderly people. Their needs are specific and different groups of victims require different kinds of services and approaches, with specifically trained staff, suitable facilities, etc. Also, many victims who have been exploited for beggary or forced labour abroad become homeless upon their return to Bulgaria, as was pointed out to us by representatives of the police. Currently no specific service tends to their needs. Due to the lack of shelters they are

moving from place to place, their traces become lost and thus they cannot contribute to a police investigation even when they want to.

So, this was another common recommendation – the planning and creation of specialized services for different victim groups.

## 7) Analysis of the national legal act that transported the Directive into the national legal order

The Victims' Rights Directive has been transposed for its better part by amendments to two legal acts: the Criminal Procedure Code (CPC) and the Support and Financial Compensation for Crime Victims Act ("the Compensation Act").

Amendments to the Compensation Act were adopted in July 2016 and took effect on 6 October 2016. The reasons to the bill amending and supplementing the Compensation Act expressly referred to the transposition of the Victims' Rights Directive. The amendments aim at:

- Expanding the scope of the entities that provide information about the victims' rights;
- Ensuring free access for all crime victims to organisations that provide free psychological counselling;
- Expanding the scope of crimes for which victims are entitled to financial compensation.

The proposed amendments to the Criminal Procedure Code were submitted in Parliament in June 2017, although Article 27 of the Directive envisages that Member States transpose the Directive by 16 November 2016. It must be noted that the amendments aimed not only at transposing the Victims' Rights Directive and Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, but at introducing a series of other changes as well such as accelerating pre-trial proceedings, changing the jurisdiction for review of high-level corruption cases, introducing procedures for seizing the CJEU with preliminary rulings on criminal matters etc. The bill was submitted to Parliament by the Council of Ministers.

The Legal Matters Standing Parliamentary Committee (the leading committee) approved the bill with 12 to 0 votes (6 abstained). The European Matters and Control of EU Funds Standing Parliamentary Committee unanimously approved the bill (7 votes in favour).

The Supreme Court of Cassation, the Prosecutor General and the Supreme Bar Council submitted their opinions on the bill. Only the Supreme Court of Cassation discussed the proposed amendments for the transposition of the Victims' Rights Directive. It raised the following issues:

- As regards the envisaged right for victims not speaking the Bulgarian language to receive a written translation of rulings suspending or terminating criminal proceedings, it is not clear why this right is envisaged only for rulings in the pre-trial phase, and not for such in the trial phase as well. Besides, the proposed amendments do not provide for establishing victims' command of the Bulgarian language;

- As regards the proposed procedural rules for interrogation of witnesses with specific protection needs, the definition is unclear as it makes recourse to notions such as repeated or secondary victimization that need to be defined;
- There are no rules proposed for establishing these specific protection needs. The proposed expert witness opinion is not sufficient to establish that a witness has to be questioned following the special rules for questioning witnesses with specific protection needs. Such an expert witness opinion would establish the emotional or psychological condition or suffering. However, circumstances such as fear from retaliation or need for protection against secondary or repeated victimization are not the subject of an expert opinion but of an assessment of the circumstances of the case. To conclude, the manner in which the specific protection needs of witnesses are to be established is not comprehensively elaborated and would create difficulties in practice.

## 8) Conclusions and recommendations

The Victims' Rights Directive has been only partially transposed to the Bulgarian national law, although the Table for Compliance with EU Law appended to the bill amending and supplementing the Criminal Procedure Code indicates "Full Compliance" to all provisions of the Directive, including Articles 8 and 9.

As far as procedural rights of crime victims are concerned, the regulation of the involvement of witnesses with special protection needs in the criminal proceedings is unclear, in particular how these special needs are established. The participation of children remains problematic as the law does not treat them by default as witnesses with special protection needs and leaves it to the discretion of the courts to ensure their involvement in a child-friendly manner. In this regard good practices such as the safe spaces for child-friendly questioning of children (the so-called blue rooms) need to be regulated in the law, together with clear rules for their functioning, mandatory use and strict requirements for the professionals conducting the interrogation of children.

The law provides for free legal aid but again it does not prescribe for mandatory legal representation for children in all legal proceedings. State-paid legal aid is organized in a way that does not ensure specialized tailor-made legal support for specific groups of crime victims such as children, victims of sexual violence, or victims of human trafficking.

Regarding the provision of services, Bulgaria does not have a generic victim support entity. Victim support services are provided by NGOs licensed under the respective procedures and operating with insufficient public funding, often matched with financing under various projects. Services are provided to victims of domestic violence and human trafficking but there are no specialized services for example for victims of sexual violence or rape. Besides, these services are unevenly distributed geographically and there are whole regions in the country where victims have nowhere to turn to.

Support services focus on crisis intervention and there are no long-term programmes to assist victims with their reintegration and empowerment.

Coordination between stakeholders remains a challenge. Where coordination mechanisms are in place (e.g. human trafficking, children) protection and support for victims is better organized. A clear deficit is

established in providing support to victims of domestic violence as it is not criminalized and there is no coordination mechanism endorsed.

Training of specialists remains a challenge, both in relation to law enforcement and members of the judiciary and social workers at the public social service and protection authorities.