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Committee on Legal Affairs

2011/0129(COD)

26.3.2012

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights

on the proposal for a directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (COM(2011)0275 - C7-0127/2011 - 2011/0129(COD))

Rapporteur: Antonio López-Istúriz White

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SHORT JUSTIFICATION

In a classic Court of Justice case, a British citizen, Ian Cowan suffered a violent assault at the exit of a metro station during a brief stay in Paris. His assailants could not be identified. He therefore sought compensation from the French authorities for injury resulting from that assault.

As it turned out, France made the award of State compensation for harm caused in France to the victim of an assault resulting in physical injury subject to the condition that the victim hold a residence permit or be a national of a country which has entered into a reciprocal arrangement with France. Mr Cowan did not fit within any of these categories and was therefore denied compensation. The Court, on a reference from the national compensation body, held that such a limitation was contrary to the prohibition of discrimination by reason of nationality enshrined in the Treaty.

This case shows to what extent lacunae or even discriminatory measures in the protection of victims in the internal market and now in the area of freedom, security and justice can hamper the fundamental rights of Union citizens, particularly those who choose to exercise their right to free movement. As the Court of Justice rightly held, the protection of victims is "a corollary of that freedom of movement". The Union ensures the free movement of persons, it must equally ensure proper standards and rules when things go wrong.

The committee therefore strongly welcomes the Commission's proposal for a directive establishing minimum standards on the rights, support and protection of victims of crime, in particular given the shortcomings of previously adopted EU instruments, be it in terms of content or in implementation². It considers it essential and long overdue that these rights be strengthened and promoted to ensure a proper balance with ongoing EU initiatives concerning suspected and accused persons' rights. Generally speaking, criminal justice systems focus on the offender and the public, sometimes to the detriment of the victim and the traumatic effects of the crime. Victims should not feel excluded from such proceedings.

The committee would like to see certain aspects of the proposal strengthened and made more effective, whilst remaining cost-effective and sustainable financially.

The committee supports the Commission's approach of setting out minimum standards, thereby enabling Member States to go further in protecting victims if they wish. This approach should establish a basic level of support for victims in those Member States which do not have long established victim support organisations.

In certain cases, following large-scale crimes, victims can be especially traumatised. This is generally the case for victims of terrorist crimes, but can also apply to victims of organised crime. This is because the criminal acts in question, owing to their scale but also to the way in which they are carried out, destroy the everyday lives of victims for good, leading them to

¹ Judgment of 2 February 1989 in Case 186/87 Cowan v Trésor public, at paragraph 17.

² Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2011/220/JHA), OJ L 82, 22.3.2011, p.1; Commission report of 20.4.2009 COM (2009) 166 final; Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p.15; Commission report COM (2009) 170 final.

lose their sense of normality. The confidence of, for example, a victim of a terrorist bomb and a victim of human trafficking can be irreparably damaged in similar ways. Such victims need to rebuild their lives. This is why your rapporteur believes that victims of such crimes should be treated as vulnerable victims.

Even though a series of minimum rights is a crucial basis, what victims need above all is individual and respectful attention by the relevant justice system.

Finally, the committee considers that criminal justice systems in the Member States should be more geared towards to protection of victims, and not solely focused on the defendant. This change of culture cannot be achieved solely by legislation but will require sustained training and educational efforts, practical guidance and exchange of best practice. The Union is in a privileged position to lead on such questions as better awareness of victims' rights, better enforcement of these rights and proper training especially for judicial staff and legal practitioners.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights, as the committees responsible, to incorporate the following amendments in their report:

Amendment 1

Proposal for a directive Recital 8

Text proposed by the Commission

(8) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.

Amendment

(8) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive, *in particular so as to give victims a comprehensive status of party in criminal proceedings, including the right to legal aid and access to the file,* in order to provide a higher level of protection.

Amendment 2

Proposal for a directive Recital 10

Text proposed by the Commission

(10) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings and how to access their rights. In this respect, information allowing the victim to know about the current status of any proceedings and their progress is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute.

Amendment

(10) When providing information, *victims should be permitted access to the relevant case files and* sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings and how to access their rights. In this respect, information allowing the victim to know about the current status of any proceedings and their progress is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute.

Amendment 3

Proposal for a directive Recital 13

Text proposed by the Commission

(13) Support, whether provided by governmental or non-governmental organisations, should be made available from the moment a crime takes place as well as throughout criminal proceedings and after such proceedings in accordance with the needs of the victim. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution to allow all victims the opportunity to access such services. Certain groups of victims such as victims of sexual violence, gender, race hate or other bias crimes or victims of terrorism may require specialist support services due to the particular characteristics of the crime they have fallen victim to.

Amendment

(13) Support, whether provided by governmental or non-governmental organisations which are registered and *monitored under national law*, should be made available from the moment a crime takes place as well as throughout criminal proceedings and after such proceedings in accordance with the needs of the victim. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution to allow all victims the opportunity to access such services. Certain groups of victims such as victims of sexual violence, gender, race hate or other bias crimes, and victims of terrorism or organised crime, may require specialist support services due to the particular characteristics of the crime they have fallen victim to.

Justification

Victims of organised crime belong in the group of particularly vulnerable victims, since they are especially open to intimidation and the threat of repeated violence by the perpetrators of such crime. This is why they need special measures not only for protection during criminal proceedings, but also concerning specialist support services.

Amendment 4

Proposal for a directive Recital 17

Text proposed by the Commission

(17) Some victims are particularly vulnerable during criminal proceedings to secondary and repeat victimisation and to intimidation by the offender or his associates. Such vulnerability can broadly be identified from the personal characteristics of the victim and the type or nature of the crime. On this basis some victims such as children, persons with disabilities, victims of sexual violence and victims of human trafficking are in most cases vulnerable to further victimisation and in need of special protection measures. Only in exceptional circumstances, such as balancing the fundamental rights of the accused or suspected person, or where the victim so wishes, should access to such protection measures be limited. In the case of victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, where specific and more detailed provisions are already included in separate instruments adopted or in course of negotiation this Directive does not deal with those same matters.

Amendment

(17) Some victims are particularly vulnerable during criminal proceedings to secondary and repeat victimisation and to intimidation by the offender or his associates. Such vulnerability can broadly be identified from the personal characteristics of the victim and the type or nature of the crime. On this basis some victims such as children, persons with disabilities, victims of sexual violence, victims of organised crime and victims of human trafficking are in most cases vulnerable to further victimisation and in need of special protection measures. Only in exceptional circumstances, such as balancing the fundamental rights of the accused or suspected person, or where the victim so wishes, should access to such protection measures be limited. In the case of victims of human trafficking or organised crime and victims of child sexual abuse, sexual exploitation and child pornography, where specific and more detailed provisions are already included in separate instruments adopted or in course of negotiation this Directive does not deal with those same matters.

Justification

Victims of organised crime are one of the specific categories of victim defined in the

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Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on Strengthening Victims' Rights in the EU - 18.05.2011 (COM(2011) 274). In view of the fact that the victims of organised crime are particularly vulnerable to intimidation and the threat of repeated violence by the perpetrators of such crime, they need special measures for protection.

Amendment 5

Proposal for a directive Recital 24

Text proposed by the Commission

(24) Any *officials* in criminal proceedings likely to come into contact with victims should be trained to identify and meet the needs of victims both through initial and ongoing training and to a level appropriate to their contact with victims. This should include specialist training *as appropriate*.

Amendment

(24) Any *professionals* in criminal proceedings likely to come into contact with victims should be trained to identify and meet the needs of victims both through initial and ongoing training and to a level appropriate to their contact with victims. This should include specialist training, *for example concerning victims of sexual offences, families bereaved by murder, young victims of crime or victims of crossborder crime*.

Amendment 6

Proposal for a directive Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to

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this Directive, the legislator considers the transmission of such documents to be justified¹.

¹ The Commission sent to the Council a written justification on X (X).

Amendment 7

Proposal for a directive Article 3 – introductory part

Text proposed by the Commission

Member States shall ensure that victims are provided with the following information, without *unnecessary* delay, from their first contact with *the* authority *competent to receive* a complaint *concerning* a criminal offence:

Amendment

Member States shall ensure that *all* victims are provided with the following information, without *undue* delay *and in a language that the victim understands*, *conveyed using child-sensitive communication techniques where appropriate*, from their first contact with *any public* authority *following* a complaint *about* a criminal offence:

Amendment 8

Proposal for a directive Article 3 – paragraph 1 – point f

Text proposed by the Commission

(f) *to what extent and* on what terms they are entitled to receive legal advice, legal aid or any other sort of advice;

Amendment

(f) on what terms they are entitled to receive legal advice, legal aid or any other sort of *independent and expert* advice;

Amendment 9

Proposal for a directive Article 3 – point f a (new) Text proposed by the Commission

Amendment

(fa) that they have a right to interpretation and translation in every case, free of charge;

Amendment 10

Proposal for a directive Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The information provided for in paragraph 1 shall be provided both orally and in writing, in simple and accessible language, taking into account any particular need of vulnerable persons.

Justification

It is not sufficient to give authorities the option of providing the information in paragraph 1 only orally.

Amendment 11

Proposal for a directive Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that victims are notified of their right to receive *the following* information on their case and that they *receive this information* where they have expressed such a wish:

Amendment

1. Member States shall ensure that victims are notified of their right to receive information on their case and that they *are able to have access to the relevant case files* where they have expressed such a wish, *and that they thus receive the following information*:

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that victims are offered the opportunity to be notified when the person prosecuted or sentenced for offences concerning them is released from detention. Victims shall receive this information *where they have expressed such a wish*.

Amendment 13

Proposal for a directive Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2. Member States shall ensure that victims are offered the opportunity to be notified when the person prosecuted or sentenced for offences concerning them is released from detention *or if that person escapes from detention*. Victims shall receive this information *immediately in every case*.

Amendment

2a. Member States shall ensure that the notification and information provided under paragraphs 1 and 2 is in simple and accessible language, taking into account any particular need of victims who are vulnerable.

Amendment 14

Proposal for a directive Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall guarantee the right of victims to modify at any moment the decision concerning their wish to receive or not to receive the information mentioned in paragraphs 1 and 2.

Proposal for a directive Article 6 – paragraph 4 – point a

Text proposed by the Commission

(a) the complaint *of* the criminal offence to the competent authority;

Amendment

(a) the complaint *concerning* the criminal offence to the competent authority;

Amendment 16

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that victims and their family members, in accordance with their needs, have access to free of charge, confidential victim support services.

Amendment

1. Member States shall ensure that victims and their family members, in accordance with their needs, have access to free of charge, confidential victim support services *before, during, and for an appropriate amount of time after conclusion of any criminal proceedings*.

Justification

It is necessary to specify that there should be a consistent, guaranteed level of support across Member States and that support should not be limited to the aftermath of the crime as criminal proceedings can be protracted, complex and traumatic, particularly for victims of violent and/or sexual crime.

Amendment 17

Proposal for a directive Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall respect the victim's choice not to avail himself or herself of support from the State.

Proposal for a directive Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall allow governmental or non-governmental organisations with a legitimate interest which are registered and monitored under national law to intervene in criminal proceedings in support of, or on behalf of, the victim or victims.

Amendment 19

Proposal for a directive Article 8

Text proposed by the Commission

Member States shall ensure that victims receive written acknowledgement of any complaint made by them to an appropriate authority of the Member State.

Amendment

Member States shall ensure that victims receive written acknowledgement *in a language they understand* of any complaint made by them to an appropriate authority of the Member State.

Justification

In line with the rights afforded to individuals accused of committing crimes abroad.

Amendment 20

Proposal for a directive Article 9

Text proposed by the Commission

Member States shall ensure that victims may be heard during criminal proceedings and *may* supply evidence.

Amendment

Member States shall ensure that victims may *take part in criminal proceedings and that they have the right to* be heard during criminal proceedings and *to* supply evidence.

Proposal for a directive Article 11 – paragraph 1 – point c

Text proposed by the Commission

(c) the suspected or accused person or offender must have accepted responsibility for their act;

Amendment

(c) the suspected or accused person or offender must have accepted responsibility for their act *and must offer an explanation to the victim*;

Amendment 22

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. Member States shall facilitate the referral of cases to mediation or other restorative justice services, including through the establishment of *protocols* on the conditions for referral.

Amendment

2. Member States shall facilitate the referral of cases to mediation or other restorative justice services, including through the establishment of *procedures* on the conditions for referral.

Amendment 23

Proposal for a directive Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that mediation or other restorative justice services, where provided by nongovernmental organisations, are registered and subject to regular monitoring under national law.

Proposal for a directive Article 14

Text proposed by the Commission

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

Amendment 25

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. Member States shall take measures to encourage offenders to provide adequate compensation to victims.

Amendment

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

Amendment

2. Member States shall take measures to encourage offenders to provide adequate compensation to victims *and shall assist victims in the timely enforcement of compensation orders*.

Justification

This paragraph should be strengthened by stressing that Member States should be responsible for ensuring that compensation orders are quickly executed.

Amendment 26

Proposal for a directive Article 16 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that simple, common procedures are in place to enable victims of crime resident in another Member State to apply for compensation easily, and that crossborder compensation orders are executed without undue delay.

Justification

Victims of crime abroad should not be put off from claiming the compensation that they are entitled to by complex procedures. Member States should ensure that there is a single, simple procedure for non-national claims for compensation, and that cross-border compensation orders are executed in a timely fashion.

Amendment 27

Proposal for a directive Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

1. For the purposes of this Directive, the following categories of victims are considered to be vulnerable due to their personal characteristics:

Amendment 28

Proposal for a directive Article 18 – paragraph 1 – point a

Text proposed by the Commission

(a) Children;

(a) Children *and the elderly*;

Amendment

Amendment

1. For the purposes of this Directive, the

considered to be vulnerable due to their

following categories of victims are

personal characteristics or situation:

Amendment 29

Proposal for a directive Article 18 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) Persons who are at risk of being targeted or intimidated;

Amendment 30

Proposal for a directive Article 18 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) Victims of domestic violence;

Amendment 31

Proposal for a directive Article 18 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) Victims of terrorist attacks, of organised crime, of paedophilia and of cyber-crime.

Amendment 32

Proposal for a directive Article 19

Text proposed by the Commission

Member States shall *progressively* establish the necessary conditions to enable avoidance of contact between victims and accused or suspected persons in any venue where victims may have personal contact with public authorities due to their being a victim and in particular venues where criminal proceedings are conducted.

Amendment

Member States shall establish the necessary conditions to enable avoidance of contact between victims and accused or suspected persons in any venue where victims may have personal contact with public authorities due to their being a victim and in particular venues where criminal proceedings are conducted.

Amendment 33

Proposal for a directive Article 20 – paragraph 1 – point a

Text proposed by the Commission

(a) victims are interviewed without *unjustified* delay after the complaint *of* a criminal offence has been made to the competent authorities;

Amendment

(a) victims are interviewed without *undue* delay after the complaint *concerning* a criminal offence has been made to the competent authorities;

Proposal for a directive Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall promote the provision of pre-trial familiarisation visits to courts for victims.

Justification

The committee believes that victims should be able to benefit from pre-trial familiarisation visits to courts.

Amendment 35

Proposal for a directive Article 21 – paragraph 2 – point c

Text proposed by the Commission

c) all interviews with the victim are conducted by the same persons unless this is contrary to the good administration of justice;

Amendment

c) all interviews with the victim are conducted by the same persons unless this is contrary to the good administration of justice *and unless the victim expresses a wish to the contrary during the course of the criminal investigations*;

Amendment 36

Proposal for a directive Article 21 – paragraph 2 – point d

Text proposed by the Commission

(d) all interviews with victims of sexual violence are conducted by a person of the same sex.

Amendment

(d) all interviews with victims of sexual violence are conducted by a person of the same sex *unless otherwise requested by the victim*.

Proposal for a directive Article 23 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that *judicial authorities may adopt* during the court proceedings, *appropriate measures* to protect the privacy and photographic images of victims and their family members.

Amendment 38

Proposal for a directive Article 23 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1. Member States shall ensure that *appropriate measures are adopted, in particular* during the *investigation, prosecution and* court proceedings, to protect the privacy and photographic images of victims and their family members.

Amendment

1a. Member States shall ensure that all agencies in contact with victims adopt clear standards by which they may only disclose to a third party information received from or relating to a victim, on the condition that the victim has consented to such disclosure, or that there is a legal requirement or authorisation to do so.

Amendment 39

Proposal for a directive Article 24 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that police, prosecutors and court staff receive both general and specialist training to a level appropriate to their contact with victims to sensitise them to the needs of victims and to deal with them in an impartial,

Amendment

1. Member States shall ensure that police, prosecutors and court staff *always* receive both general and specialist training to a level commensurate with their contact with victims to sensitise them to the needs of victims and to deal with them in an

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respectful and professional manner.

impartial, respectful and professional manner.

Amendment 40

Proposal for a directive Article 24 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that members of the judiciary have access to both general and specialist training to *sensitise them to* the needs of victims and to deal with *them* in an impartial, respectful and professional manner.

Amendment

2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall ensure that members of the judiciary have access to both general and specialist training to make them aware of the needs of victims and of the need to deal with such victims in an impartial, respectful and professional manner, and that they are encouraged to take part in such training, including further training, where appropriate.

Amendment 41

Proposal for a directive Article 24 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall always ensure that lawyers have access to both general and specialist training to sensitise them to the needs of victims and to help them to deal with them in an impartial, respectful and professional manner.

Amendment

3. Member States shall *always* take

Amendment 42

Proposal for a directive Article 24 – paragraph 3

Text proposed by the Commission

3. Member States shall take measures to

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ensure that those providing victim support and restorative justice services receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner. measures to ensure that those providing victim support and restorative justice services receive adequate training to a level commensurate with their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

Amendment 43

Proposal for a directive Article 25 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall ensure that their embassies and consulates have wellestablished liaison mechanisms in place with the victims' service providers and agencies in the Member States in which they are located in order to ensure the quick referral of victims.

Justification

This suggestion has been made by several constituents in cases where they, or relatives, have become victims of crime abroad. It is an omission that should be addressed in legislation.

Amendment 44

Proposal for a directive Article 25 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Member States shall ensure that their national law on the repatriation of mortal remains follows a common procedure and time frame which take into account both the wishes of the family and their religious and cultural traditions.

Justification

This is a recurrent and persistent problem for families of victims of crime.

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Proposal for a directive Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27a

Report

1. The Commission shall, no later than five years after the date of entry into force of this Directive, publish a report on its implementation.

2. That report shall be accompanied, if appropriate, by proposals for amending this Directive.

PROCEDURE

Title	Minimum standards on the rights, support and protection of victims crime	of
References	COM(2011)0275 - C7-0127/2011 - 2011/0129(COD)	
Committees responsible Date announced in plenary	LIBE FEMM 7.6.2011 7.6.2011	
Committee (s) asked for opinion(s) Date announced in plenary	JURI 7.6.2011	
Rapporteur(s) Date appointed	Antonio López- Istúriz White 20.6.2011	
Rule 51 – joint committee meetings Date announced in plenary	19.1.2012	
Discussed in committee	10.10.2011 25.1.2012	
Date adopted	26.3.2012	
Result of final vote	$\begin{array}{cccc} +: & 16 \\ -: & 0 \\ 0: & 0 \end{array}$	
Members present for the final vote	Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Chris Engström, Giuseppe Gargani, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Alexandra Thein, Rainer Wieland, Cecilia Wikström	tian
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger	
Substitute(s) under Rule 187(2) present for the final vote	Pablo Arias Echeverría	