



Uniwersytet  
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# EU Criminal Law

## Lecture

### **EU Procedural Rights Rights of the victim**

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## Harmonisation of procedural rights

1. Common minimum standards are necessary condition for effective functioning of mutual recognition principle
2. Common minimum standards promote freedom of movement within EU borders
3. Common minimum standards serve to raise the level of protection of procedural rights



## Harmonisation of procedural rights

1. Rights of the victims
2. Rights of the suspect and defendant



## Victims in criminal proceedings

1. Crucial source of information
2. In case of some offences – decision on investigating and prosecuting an offence
3. Right to be present at trial/right to be heard
4. Party to the proceedings?



## Restorative justice

Restorative justice views crime as more than breaking the law – it also causes harm to people, relationships, and the community. So a just response must address those harms as well as the wrongdoing. If the parties are willing, the best way to do this is to help them meet to discuss those harms and how to about bring resolution

(<http://restorativejustice.org>)



## Restorative justice

**Restorative Justice** is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet, although other approaches are available when that is impossible.

The foundational principles of restorative justice have been summarized as follows:

- Crime causes harm and justice should focus on repairing that harm.
  - The people most affected by the crime should be able to participate in its resolution.
  - The responsibility of the government is to maintain order and of the community to build peace.
- (<http://restorativejustice.org>)



## Rights of the victims

### Tampere conclusions 1999:

32. Having regard to the Commission's communication, **minimum standards should be drawn up on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.**



## Rights of the victims

First legal act aiming at harmonisation of the rights of the victims

**COUNCIL FRAMEWORK DECISION  
of 15 March 2001  
on the standing of victims in criminal  
proceedings  
(no longer in force)**





## Rights of the victims

- (8) The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.
- (9) The provisions of this Framework Decision **do not, however, impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings**



## Rights of the victims

### COUNCIL DIRECTIVE 2004/80/EC of 29 April 2004 relating to compensation to crime victims

„Community law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. Measures to facilitate compensation to victims of crimes should form part of the realisation of this objective”.

Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed



## Rights of the victims

### Compensation to crime victims

Directive sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of **violent intentional crime**, committed in their respective territories. Therefore, a compensation mechanism should be in place in all Member States.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0080>



## Rights of the victims

### Compensation to crime victims

#### Article 1

Member States shall ensure that where a **violent intentional crime** has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the **applicant shall have the right to submit the application to an authority or any other body in the latter Member State.**

#### Article 2

Compensation shall be paid by the competent authority of the Member State on whose territory the crime was committed.



## Rights of the victims

### Compensation to crime victims

#### Article 3

Member States shall establish or designate one or several authorities or any other bodies - **'assisting authority or authorities'** – the role is to provide information for the victims and in case of transnational case - forward applications abroad to respective authorities of another Member State

Member States shall establish or designate one or several authorities or any other bodies to be responsible for deciding upon applications for compensation - **'deciding authority or authorities'**.

[https://e-justice.europa.eu/content\\_compensation\\_to\\_crime\\_victims-448-es-en.do?member=1](https://e-justice.europa.eu/content_compensation_to_crime_victims-448-es-en.do?member=1)



## Rights of the victims

### Compensation to crime victims

The system should ensure that **crime victims could always turn to an authority in their Member State of residence and should ease any practical and linguistic difficulties that occur in a cross-border situation.**

In Poland e.g. you can address yourself to the district prosecutor who serves as assisting authority. His/her role is to advise and forward application to the competent authority in other Member State.



## Rights of the victims

### Stockholm Programme 2010

2.3. Living together in an area that respects diversity and protects the most vulnerable

2.3.4. *Victims of crime, including terrorism*

The European Council calls on the Commission and the Member States to:

- examine how to improve legislation and practical support measures for the protection of victims and to improve the implementation of existing instruments,



## Rights of the victims

### Stockholm Programme 2010

The European Council calls on the Commission and the Member States to:

- offer better support to victims in other ways, possibly through existing European networks that provide practical help, and put forward proposals to that end,
- examine the opportunity of making one comprehensive legal instrument on the protection of victims, by joining together Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, on the basis of an evaluation of these two instruments.





## Rights of the victims

### Stockholm Programme 2010

Victims of crime or witnesses who are at risk can be offered **special protection measures** which should be effective within the Union.

The rights of the victims are also mentioned in the context of approximation of national laws in the area of human trafficking, sexual exploitation, racism and xenophobia.



## Rights of the victims

2011

**COMMUNICATION FROM THE COMMISSION TO  
THE EUROPEAN PARLIAMENT, THE COUNCIL, THE  
ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**Strengthening victims' rights in the EU**

**RESOLUTION OF THE COUNCIL**

**of 10 June 2011**

**on a Roadmap for strengthening the rights and  
protection of victims, in particular in criminal  
proceedings**

**„The Budapest Roadmap”**



## Rights of the victims

The EU objective is to ensure that victims:

1. are recognised and treated with respect and dignity;
2. are protected from further victimisation and intimidation from the offender and further distress when they take part in the criminal justice process;
3. receive appropriate support throughout proceedings and have access to justice;
4. have appropriate access to compensation.



## Rights of the victims

**DIRECTIVE 2012/29/EU OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
of 25 October 2012**

**establishing minimum standards on the rights,  
support and protection of victims of crime, and  
replacing Council Framework Decision  
2001/220/JHA**

**DIRECTIVE 2011/99/EU OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
of 13 December 2011**

**on the European protection order**



## Rights of the victims

### DIRECTIVE 2012/29/EU

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>

Victims of crime should be **recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind** based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, **the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.**



## Rights of the victims

### DIRECTIVE 2012/29/EU

'victim' means:

(i)

a **natural person** who has suffered **harm, including physical, mental or emotional harm or economic loss** which was **directly** caused by a criminal offence;

(ii)

family members of a **person whose death was directly caused by a criminal offence** and who have suffered harm as a result of **that person's death**;

(b)

'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;



## **Rights of the victims**

### **DIRECTIVE 2012/29/EU**

- 1. Right to understand and to be understood (recognition and protection of dignity)**
- 2. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.**
  - Victim can be accompanied by the person of his/her choice.**
  - The information related to the proceedings should be given in accessible and simple language**



## Rights of the victims

### DIRECTIVE 2012/29/EU

3. Right to information (i.a. on compensation, participation in the proceedings, legal aid, support, complaint procedures, interpretation and translation, right to information about the course of the case)
4. Right to receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.





## Rights of the victims

### DIRECTIVE 2012/29/EU

#### 5. Right to interpretation/translation

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned **are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.**



## Rights of the victims

### DIRECTIVE 2012/29/EU

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with **translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge**, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.



## Rights of the victims

### DIRECTIVE 2012/29/EU

6. Right to have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.



## Rights of the victims

### DIRECTIVE 2012/29/EU

#### 7. Right to be heard

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

8. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the **right to a review of a decision not to prosecute**. The procedural rules for such a review shall be determined by national law.

Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute.



## Rights of the victims

### DIRECTIVE 2012/29/EU

9. Member States shall ensure that victims have access to **legal aid**, where they have the status of parties to criminal proceedings.
10. Member States shall afford victims who participate in criminal proceedings, **the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings**, in accordance with their role in the relevant criminal justice system.
11. Member States shall ensure that, following a decision by a competent authority, **recoverable property which is seized in the course of criminal proceedings is returned to victims without delay**, unless required for the purposes of criminal proceedings.



## Rights of the victims

### DIRECTIVE 2012/29/EU

11. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain **a decision on compensation by the offender**, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.
- + **specific provisions related to vulnerable victims** (e.g. right to avoid contact between victim and offender, minimum number of interrogations and medical examinations, protection of privacy)



## Rights of the victims

### European Protection Order

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0099>

Directive sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has been adopted with a view to protecting a person against a criminal act by another person which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in accordance with the national law of the issuing State.

‘European protection order’ means a decision, taken by a judicial or equivalent authority of a Member State in relation to a protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any appropriate measure or measures under its own national law with a view to continuing the protection of the protected person;



## Rights of the victims

### European Protection Order

‘protection measure’ means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions:

- a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- a prohibition or regulation on approaching the protected person closer than a prescribed distance.

are imposed on a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity.





## Rights of the victims

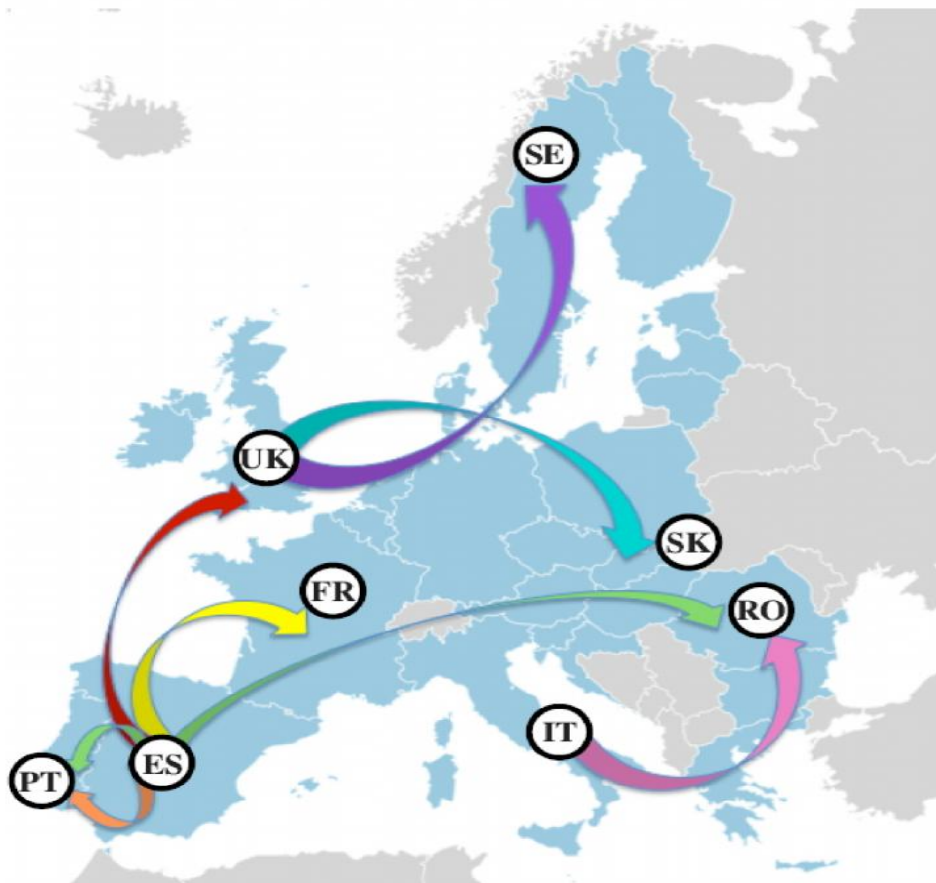
### European Protection Order

A European protection order may be issued, **at the request of the protected person**, when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

Before issuing a European protection order, the **person causing danger shall be given the right to be heard and the right to challenge the protection measure**, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.

## European Protection Orders

Issued and received



- Issuing State: SPAIN / Executing State: UNITED KINGDOM
- 2015
- Type of violence: Intimate partner violence
- Victim: Female

- Issuing State: SPAIN / Executing State: PORTUGAL
- 2016
- Type of violence: Intimate partner violence
- Victim: Female

- Issuing State: SPAIN / Executing State: FRANCE
- 2016
- Type of violence: Intimate partner violence
- Victim: Female

- Issuing State: SPAIN / Executing State: PORTUGAL and ROMANIA
- 2016
- Type of violence: Intimate partner violence
- Victim: Female

- Issuing State: UNITED KINGDOM / Executing State: SLOVAKIA
- 2016
- Type of violence: domestic common assault
- Victim: Female

- Issuing State: UNITED KINGDOM/ Executing State: SWEDEN
- 2016 (?)
- Type of violence: -
- Victim: -

- Issuing State: ITALY / Executing State: ROMANIA
- 2016 (?)
- Type of violence: family ill-treatment and rape
- Victim: Female



## **Rights of the victims**

**Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims**

**Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography**

**Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA**



## Rights of the victims

Member States shall ensure that investigations into, or prosecution of, offences covered by this Directive **are not dependent on a report or accusation made by a victim of an offence or other person subjected to the offence**, at least if the acts were committed on the territory of the Member State.

Member States shall ensure support services for victims, right to information, right to legal aid, right to compensation, support and special measures for children victims of offences – e.g. special rules related to interviews with children



## Rights of the victims

Member States shall take the necessary measures to ensure that in criminal investigations :

- (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
- (b) interviews with the child victim take place, where necessary, in premises designed or adapted for this purpose;
- (c) interviews with the child victim are carried out by or through professionals trained for this purpose;
- (d) the same persons, if possible and where appropriate, conduct all interviews with the child victim;
- (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purpose of criminal investigations and proceedings;
- (f) the child victim may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.