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Crime victims' rights in Bulgaria. Are we continuing to stay beyond time?

Introduction

Bulgaria is far from being considered a vanguard in victim protection policies, legislation, and practices. Victimology as a science for victims of crime and victimisation as a process is a relatively new knowledge domain in Bulgaria. It has been developed predominantly as part of criminology during the last decades. However, some literature has already been published, mainly in the past and less recently¹.

While victimology is a young science in Bulgaria and victims of crime protection is a relatively new priority for Bulgarian legislators and relevant institutions, significant strides, albeit with a relatively late date, have been made. In the last two decades, in an earnest effort to align with the relevant instruments of the United Nations, Council of Europe and the European Union, numerous statutory and by-law acts have been adopted, and practical measures have been taken for effective victim of crime protection and support. It is heartening to see that the victim has finally been “rediscovered” and recognised.

It must be acknowledged that, both internationally and nationally, there has been a significant evolution in the approach and treatment of crime victims. Although their rights have not been raised to the level of fundamental human rights yet, or at least not explicitly enshrined as such, in the main universal and regional international instruments, in the constitutions and national legislations of all modern developed countries claiming to be rule-of-law, the

¹ B. Stankov, *Victimology* [Виктимология], Varna 2001; M. Chinova, M. Ivanova, *Victims of crimes and the minimum standards of the European Community* [Пострадалите от престъпления и минималните стандарти на Европейската общност], „Юридически свят” 2004, No. 2, pp. 30–50; B. Panev, *Global sources for the criminalisation and victimisation of modern society* [Глобални източници за криминализация и виктимизация на съвременното общество], „Юридически свят” 2004, No. 2, pp. 77–94.

protection of the victims of unlawful acts violating their legal rights and interests is an inevitable commitment of the institutions of public authority. This understanding is supported by Art. 13 of the European Convention on Human Rights and Art. 47 of the EU Charter of Fundamental Rights governing the right to an effective remedy. The doctrine, as well as the legislature, accepts that victims of crime have a right to access justice, and the function of criminal justice systems is to “make things right” and to restore justice. Therefore, when a crime is committed, and the victim’s rights are affected, they can reasonably expect – and even demand – to be protected. This is natural and compatible with the concept that human dignity and rights should be upheld in a rule-of-law state. A similar interpretation is contained in the European Court of Human Rights jurisprudence. A paradigm shift in the victim-state relationship is underway, and more specifically, a change from rhetoric based on victims’ needs to an approach based on their human rights. The victim does not need to ask for help based on their vulnerability. Instead, it requires the state to take it seriously and protect it. The state is no longer in its comfortable patriarchal position of the generous “good Samaritan”; it is an indebted subject to the victim – a rights holder under its jurisdiction².

The status quo

The primary national act in Bulgaria that explicitly regulates the victim’s legal status in criminal proceedings is the Penal Procedure Code 2006³, which has many subsequent amendments and supplements. For the first time, a specific chapter was dedicated to the procedural position and rights of the “injured party” (the terminology used in the Code) during pre-trial proceedings. Furthermore, their opportunities to participate as a private (accessory) prosecutor, private complainant or civil claimant in the court proceedings were stipulated. Measures for the protection of witnesses and victims during proceedings were envisaged. It could be claimed that the injured parties currently enjoy a high status in the criminal proceeding, they are not only “witnesses”. Given the procedural quality of the injured party at the court stage, corresponding rights are provided. At the same time, it should be pointed out that they and the rights of the injured in the pre-trial phase reflect an earlier understanding and are not entirely in line with the modern concepts yet (to be further discussed).

² European Union Agency for Fundamental Rights, *Victims’ rights as standards of criminal justice. Justice for victims of violent crime. Part I*, Office of the European Union, Luxembourg 2019, p. 17.

³ State Gazette No. 86/200 (last amended State Gazette No. 39/2024), <https://www.lex.bg/bg/laws/ldoc/2135512224> (accessed: 2.06.2024).

The Support and Financial Compensation to Victims of Crime Act 2006⁴ and the Rules for its implementation, which regulate the extra-procedural protection of crime victims, are the following significant acts. Besides compensation by the state, although somewhat limited and only for the most severe crimes, psychological, health, and other assistance are provided. A particular body with considerable competence was established – the National Council for Assistance and Compensation to Victims of Crime⁵.

Several other acts, such as the Protection of Persons Threatened with Criminal Proceedings Act 2005, Protection against Domestic Violence Act 2005, Combating Trafficking in Human Beings Act 2003 and various by-laws, have also been enacted. Thus, the victims of crime in general and some particular types of victims were gradually receiving increasing attention from the Bulgarian legislator, who, with the development of the democratic processes in the country, endeavoured to adhere more fully to the international standards for victims of crime.

Since 2007, Bulgaria has been a member of the European Union and should strictly observe European rules and transpose European law in its domestic legislation, including that concerning victims of crime. It is well known that the crime victim is high on the agenda of politicians, legislators, legal practitioners and scholars, as well as the general public within the European Union, that, regrettably, does not always correspond in full with the Bulgarian policy in justice matters. According to one of the latest surveys⁶, victimisation on a European scale is increasing, which entirely applies to Bulgaria. The adopted 2011 European Commission Roadmap for Strengthening the Rights and Protection of Victims of Crime, in particular in the framework of criminal proceedings⁷, aimed at improving Union law and practice and the considerable volume of followed-up legislation (directives, regulations, etc.), do have a positive domestic impact, at least to some extent.

Different measures have been taken as a result of the transposition of Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012, establishing the minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA⁸ (Victims' Directive). Changes have been made to the Penal Procedure Code, Support and Financial Compensation to Victims of Crime Act, and others. However, despite several legislative initiatives, these changes were minimalistic, and the transposition was incomplete.

⁴ State Gazette No. 105/2006 (last amended State Gazette No. 84 /2023), <https://lex.bg/bg/laws/ldoc/2135540550> (accessed: 2.06.2024).

⁵ <https://www.compensation.bg> (accessed: 2.06.2024).

⁶ European Union Agency for Fundamental Rights, *Crime, safety and victim rights*, Office of the European Union Luxembourg 2021.

⁷ Official Journal of the European Union C 178, 28.6.2011.

⁸ Official Journal of the European Union L 315/57, 14.11.2012.

The European Commission Staff Working document from 28 June 2022 for the large-scale Evaluation of Victims' Directive⁹ explicitly reconfirms that the EU Member States had to transpose the Directive into their national legal systems by 16 November 2015. It is stated that in January 2016, the Commission launched infringement proceedings against 16 Member States that had not communicated their transposition measures by that date, Bulgaria included. Due to the progress made after several reports about the implementation of the Directive, the Commission has progressively closed almost all infringement proceedings for incomplete transposition of the Directive. As of January 2022, the Commission has one ongoing infringement proceeding – against Bulgaria, which is still lasting. Moreover, on 16 November 2023, the European Commission decided to refer Bulgaria to the Court of Justice of the European Union to impose financial sanctions on Bulgaria for failure to communicate the measures transposing the Directive into national legislation¹⁰.

As it is well-known, in 2019, the counsellor to the European Commission president, Ms Joëlle Milquet's special report entitled *Strengthening victims' rights: from compensation to reparation*, contained many good proposals, was published. In 2020, to continue improving the rights of victims of crime across the EU, the Commission adopted the first EU Strategy on Victims' Rights 2020–2025. In addition to this, the Commission and the Member States continue working on implementing numerous strategies and initiatives relevant to victims' rights. These include the Gender Equality Strategy 2020–2025, the Strategy on the Rights of the Child 2021–2024, the Strategy on European judicial training 2021–2024, the LGBTIQ Equality Strategy 2020–2025, the EU Anti-racism Action Plan 2020–2025, the EU updated framework for Roma equality, inclusion and participation 2020–2030, the Strategy for the Rights of Persons with Disabilities 2021–2030, the Security Union Strategy 2020–2025, etc. These initiatives support several of the United Nations' Sustainable Development Goals (SDGs). In particular, this is SDG 10, target 10.3, which aims to ensure equal opportunities and reduce outcome inequalities by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action on victims' rights. SDG 16, target 16.3 is also relevant: to promote the rule of law nationally and internationally and ensure equal access to justice for all. Appropriate actions from the Bulgarian government in all directions are still expected to be undertaken.

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022SC0179> (accessed: 2.06.2024).

¹⁰ https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=EN&typeOfSearch=true&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=BG&DG=JUST&title=&submit=Search,%20%20accessed%20%20on%20%2030%20%20January%202022%20https:%2F%2Fhudoc.echr.coe.int%2Fbul#%7B%22itemid%3A%22001-126982%22%5D%7D (accessed: 2.06.2024).

Perhaps because of the situation during the last three years – the COVID-19 pandemic, turbulent political times (in Bulgaria were held five parliamentary elections and one presidential - that means a missing acting parliament for a long time), war, many other crises, etc., the crime victims seem lost priority in the national agenda, no significant legislative proposals for improvement were adopted, and the support practices were not enhanced. Despite many efforts invested, mainly from academics and interested non-governmental organisations (NGOs), the status of crime victims in Bulgaria remains rather dissatisfactory.

It could be claimed that gaps and imperfections in the legal framework concerning crime victims at a national level are observed, which do not allow complete protection of their rights in criminal proceedings and outside of it. The regulation of the standing of victims of crime in the Bulgarian criminal justice system is characterised by relative fragmentation and inconsistency, both among many rules of varying degrees and within themselves. There is also particular normative neglect of groups such as victims of hate crimes and gender-based violence. Further, the rules are not applied correctly by the competent authorities. That is why there is a need for a complete rethinking of the systematics of the legal framework regarding victims, developing significantly more comprehensive norms in the procedural law and regulation outside it.

Which are the primary crime victim-related problems that need an immediate response?

The transposition of the Victims' Directive (and other acts) was carried out in a "Bulgarian way", incomplete and incoherent; thus, the comprehensive approach to victims' rights was not achieved, and many groups such as women, children and foreigners, remain insufficiently protected. Moreover, the partial transposition of European norms is combined with traditional weaknesses of the Bulgarian legislative process and practice, such as insufficient specialisation of those involved in the system for working with vulnerable groups and adequate guarantees to protect their rights.

There are numerous inconsistencies in the current Bulgarian legislation regarding the Victims' Directive. One of them concerns the very concept of the victim. As mentioned, the Bulgarian legislator still uses the term "injured party" mainly, which is narrower. Therefore, the subject of future harmonisation is promoting the notion of the victim in the broader sense of the Directive and its integration into criminal procedure legislation and all relevant domestic acts, including the perception of direct and indirect victims. The aggrieved legal entity should keep its position, which would differentiate it from the position of the natural person – victim and its place in procedural law. Howe-

ver, the entity's rights should be consolidated in separate provisions, systematically placed after the chapter on victims' rights.

A task for the future legislator is gradually introducing the "particularly vulnerable victim" category. The European and global standards provide many examples of victims whose treatment is initially subject to specific rules. Among them are children, the elderly and victims of sexual and gender-based violence. They may also be included in such a definition in Bulgarian law, and their vulnerability could be initially established (as opposed to the victim with specific protection needs, which are a subject of expert examination). Particularly vulnerable victims can also be considered the victims of specific serious crimes – murder, grievous bodily harm, trafficking in human beings, people with disabilities, victims with posttraumatic stress disorder, etc. Victims of hate crimes/crimes with a discriminatory element have not received specific rights under Bulgarian law, either. *De lege ferenda* consideration should be given to including them in the future category of "particularly vulnerable victims", too. An expression of enhanced protection would be the envisaging of legal aid and, namely, explicit enumeration of cases of mandatory representation of particularly vulnerable victims by a lawyer.

The principle of applying the gender dimension in any contact with victims is the next issue to be regulated in the Penal Procedure Code and other relevant acts, as well as the requirement for victims to be notified "from the first contact" with the competent authority "in a simple and accessible language". This will put Bulgarian legislation in compliance with contemporary treatment standards for victims.

The sharpest problem, in my opinion, is the continuing non-transposition of Art. 12 of the Victims' Directive, regularising the access to and safeguards for the victim while in contact with restorative justice services. Although cautious, the Directive stimulates a restorative climate in criminal justice systems. Unlike other European states that have provided this option to victims of crime, Bulgarian politicians still lack interest in the issue, although, according to many surveys, society accepts and expects restorative justice (RJ). The fourth principle of the Concept of Crime Policy 2020–2025 is closely connected with crime victims and promoting restorative justice. Regrettably, further corresponding measures are missing, and so far, no actions have been undertaken. However, the legislator should respond soon as, in 2018, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec (2018) 8 to the Member States concerning Restorative Justice in Criminal Matters¹¹. The Recommendation considers RJ's numerous benefits to criminal justice systems and victims. At the same time, it is explicitly noted that the develop-

¹¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3 (accessed: 2.06.2024).

ment of RJ practices in the countries is different, flexible and asymmetrical, and the RJ's potential is not fully utilised. In the literature, it is already claimed:

The value of the Recommendation comes mainly from the new strong impetus given to the Member States, which should provide their citizens with the privileged opportunity to benefit from the RJ. This is necessary because all European citizens should have equal rights and options. It is unacceptable that, from an orthodox legal point of view, due to inaction or negligence of their commitments, states deprive individuals under their jurisdiction of the merits of the RJ. Therefore, the Recommendation urges the governments of the Member States to comply with the principles set out in the Annex there to¹².

More attention is necessary to ensure proper protection of the victims and their family members from repeat and secondary victimisation, intimidation, and retaliation, as well as of the victims with specific protection needs. Some regulations do exist nationally, but they are too palliative. Additionally, the victim is often excluded from the proceedings of plea bargaining (Art. 381–384 of the Penal Procedure Code). When an agreement is reached at pre-trial proceedings, the injured party is notified barely after the court approves the agreement that they can file a civil claim for non-pecuniary damages in civil court. However, this is less favourable, as they must initiate and lead the process. Only when an agreement is reached in court proceedings is it approved after the consent of all parties.

It should be recognised that enacting and enforcing the Support and Financial Compensation to Victims of Crime Act 2006 is an achievement. With the subsequent amendments of the Act, the informing of victims about their rights under this law was improved. Measures were provided to help them understand and be understood in the criminal proceedings. The range of persons entitled to support and financial compensation from the state and the range of severe intentional offences – a ground for these – were expanded. However, the casuistic enumeration risks leaving some serious crimes outside the scope of the law and the care of the state respectively, which is contrary to the requirements of the Council of Europe Convention on the Compensation of Victims of Violent Crimes 1983 and the EU Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims which require a general regime for compensating the victims of all intentional violent crimes committed on the territory of the respective country.

The policy of compensation is based on the idea of the social contract. Indeed, immediately after the payment of the financial compensation, the Minister of Justice brings a recourse action against the perpetrator of the

¹² D. Chankova, *New challenges in crime victims protection in Bulgaria*, „Dyskurs Prawniczy i Administracyjny” 2020, No. 1, p. 42.

crime or their heirs to recover the amount of money paid. Nevertheless, the support of the state remains even in cases where the perpetrator is not identified or cannot be prosecuted or punished. And then the help for medical expenses, funerals, etc., although too basic, is precious.

With a recent amendment of the Support and Financial Compensation to Victims of Crime Act, the possibility of providing financial compensation was envisaged not only after a conviction and in some cases of termination and suspension of criminal proceedings but also in plea bargaining cases. The limit of the amount of compensation was raised to 10,000 BGN (Bulgarian leva) (approximately 5000 EUR). *De lege lata* minors receive financial compensation of up to 10,000 BGN for each person. However, even this change cannot be accepted as sufficient. Moreover, the payment is usually determined to be 1–2–3 thousand BGN. The sum is indeed pre-supposed by the country's financial capabilities, but this compensation is insultingly low, especially when the case concerns the “cost” of human life.

The practice of applying the Act mentioned above remains too limited. Although the National Council for Assistance and Compensation to Crime Victims has been functioning for a long time, the Act and the opportunity for state compensation are still unknown. Bulgarian society is highly victimised, and if the state cannot provide security for its citizens, it should at least take care of them when they become victims of crime. Even though our country's monetary resources are limited, the foreseen compensation amounts remain unacceptable compared to other countries.

It is reasonable and justifiable to compensate the victims in advance – when the compensation is most necessary, shortly after the crime, when they feel most vulnerable and helpless, and not after the conviction, respectively, settlement or dismissal of the case. It would be appropriate to provide compensation from the state, along with redress from the perpetrator. Without invoking the concept of unjust enrichment or even positive discrimination, it can be assumed that the victim deserves privileged treatment beyond civil law equivalence because of the exceptional nature of the circumstances in which the victim has been found. In this regard, one should go beyond the concept of solidarity and empathy and consider the victims as holders of rights that should be guaranteed and their dignity respected. From its comfortable position as a “patron”, imperium, the state should begin to perform the function of an obliged subject towards specified individuals¹³.

In addition, the mechanism of work of the National Council for Assistance and Compensation to Victims of Crime should be administratively eased and further developed. The Council has to be made into a central body to assist

¹³ J. Milquet, *Strengthening victims' rights: from compensation to reparation. For a new EU victims' rights strategy 2020–2025*, Brussels 2019.

victims with possible local units, at least in the centres of Bulgaria's five appellate districts. In the long term, a part of the functions of the Bureau for Protection with the Minister of Justice under the Protection of Persons Threatened in Connection with Criminal Proceedings Act may be incorporated into such a structure.

New dimensions of victimisation

Lately, in Bulgaria, cybercrime and the following victimisation have become a global concern. Unlike many traditional crimes, cyber offenders' victims are drawn from all ages, all social backgrounds and all areas of the world, meaning that no one who regularly uses a computer can feel safe. Cyber victimisation is already a well-explored issue abroad¹⁴. However, not enough attention is paid to this problem in Bulgaria, hence the numerous cyber attacks lately against individuals, state institutions, corporations, etc. There are many existing typologies of Cyber Victimization, but this paper accepts those of Jaishankar¹⁵, namely Cyber Victimization of Governments, Cyber Victimization of Corporations, Cyber Victimization of Individuals or Interpersonal Cyber Victimization and Victimless Crime. While developing this study, a particular focus was put on the victimisation of individuals.

In 2022, a small-scale survey was launched among a random population in Sofia (the capital) and Blagoevgrad (a university city). One hundred adult people of all ages, genders, educational backgrounds, and professions were asked several questions in writing. An excellent response rate could be marked. Although the results are not representative, they somewhat indicate the current state of cyber victimisation among the interviewed.

1. The first question was: Have you been a victim of cybercrime/crime committed online? The data obtained is more than eloquent – 69% answered positively, and 31% responded negatively. That fact undoubtedly shows that this type of victimisation is widespread in Bulgaria, among young people, who most often use computers and online services, and among the older generation, who are somewhat sporadic users. Both men and women are victims of these crimes, with a preponderance of women and young girls.

¹⁴ D. Thomas, B. Loader (eds.), *Cybercrime. Law enforcement, security and surveillance in the information age*, London 2000; L. Roberts, *Cyber-victimization in Australia: extent, impact on individuals and responses*, „Briefing Paper” 2008, No. 6.

¹⁵ K. Jaishankar, *Cyber victimology: a new sub-discipline of the twenty-first century victimology*, [in:] J. Josep, S. Jergenson (eds.), *An international perspective on contemporary developments in victimology*, Cham 2020, pp. 7–8.

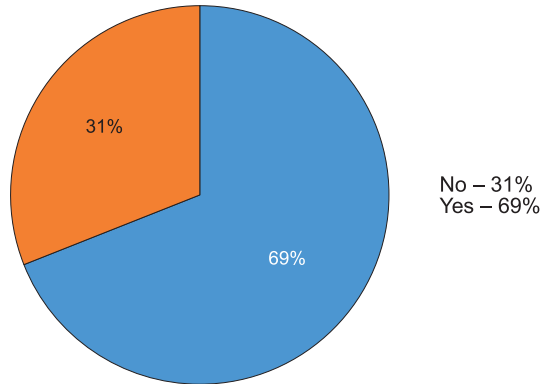


Figure 1. Have you been a victim of cybercrime/crime committed online?

2. Further, those who responded affirmatively were asked: What kind of cybercrime exactly are you a victim of? The following responses were received:

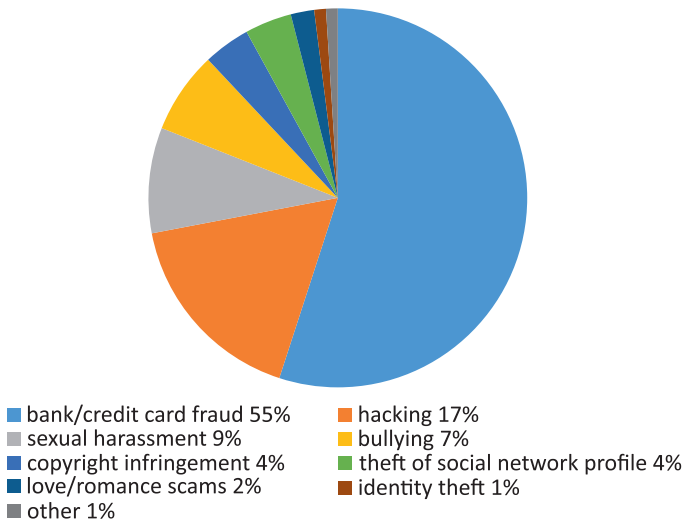


Figure 2. What kind of cybercrime exactly are you a victim of?

The data generally correspond with other national, European and global surveys. They testify to the weak links in the respective sectors, the services they provide, and the new “criminal habits” of the population.

3. To the question: Do you think that the state and the institutions have taken sufficient measures to reduce and prevent cybercrime? a vast majority of 91% answered negatively, believing this was far from the case. In comparison, only six per cent claimed the measures were adequate. Three per cent of the respondents have no opinion.

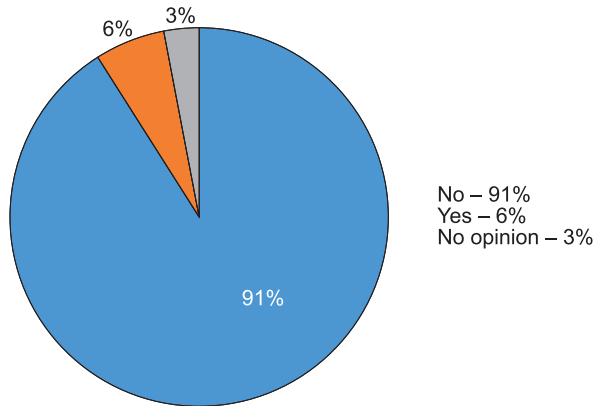


Figure 3. Do the state and institutions take sufficient measures to reduce and prevent cybercrime?

Those who answered negatively most often put forward the following arguments:

- the state and the institutions do not show sufficient interest and do not invest the necessary efforts and resources;
- even when trying to react, the state does so belatedly and incompletely;
- there is a lack of competent state specialists in the bodies authorised for countermeasures;
- ineffective investigation and lack of punishment help to reproduce these crimes;
- as a rule, these types of perpetrators of illegal acts are incredibly inventive, educated and often especially motivated;
- the state and schools do not take sufficient measures to educate young people and the general population, who sometimes show naivety and do not observe safety measures.

One respondent even doubted that some computer crimes are carried out with the help of persons from the relevant systems. Another believes the state controls people's lives and activities but is never used for their good.

The six per cent who answered affirmatively to the question find that sufficient protective mechanisms are in place at all levels. They believe in security measures, strictly implement them, and work cautiously online.

Undoubtedly, digitisation, e-government, and other online activities are helpful for the modern person. However, they still allow breaches in the protection of personal data and private space, finance, and intellectual property and increase the feeling of insecurity when working in an online environment, as many of those asked shared. All these pose the need for prioritisation of the topic by law enforcement authorities, online service providers, etc.

Victims and Restorative Justice

This issue deserves special attention as it is the field where Bulgaria registers the most considerable delay. The concept of restorative justice is no longer new to Bulgaria. Although marked in several strategic documents in our country over the past more than 15 years (National Strategy for Assistance and Compensation to Victims of Crime 2006; Strategy for Continuing the Reform of the Judiciary in the Conditions of Full EU Membership 2010; Concept for Justice for children 2011, Updated strategy for continuing the reform of the judiciary 2014 and a Roadmap for its implementation from 2016 Concept of Crime Policy 2020–2025, etc.), RJ is not a legal fact yet. This seems to be a system problem in Bulgaria – the massive gap between words and actions. However, in the global criminal crisis, the deficits in the criminal justice system’s functioning could be successfully, if not completely eliminated, then at least mitigated through RJ mechanisms. Individual scientists and representatives of non-governmental organisations have embraced the idea and, since the beginning of this century, have been working hard to introduce RJ models. Despite the political difficulties and considerable resistance from some of the interested legal circles, the idea of mediation and its application in criminal and criminal procedure law and restorative justice gradually found a place in Bulgarian reality, especially in theory and pilot projects, mainly launched by NGOs. It should be acknowledged that the current state of mediation as a universal Alternative Dispute Resolution instrument in our country, in general, despite the Mediation Act adopted in 2004 and the accumulated practice in its implementation, is still unsatisfactory. The disputants do not fully use the mediation potential despite adopting new acts and amendments to several laws. The situation regarding mediation in penal matters and other instruments of restorative justice is even more severe. Although the Mediation Act¹⁶ in Article 3, para. 2 stipulates that mediation is also conducted in the cases provided for in the Penal Procedure Code, in the last Code, in force since 2006, mediation between the victim and the offender did not find a place (this is still valid today). The arguments that have been confronted while discussing the ready-made bills prepared and submitted to the Ministry of Justice and the National Assembly, primarily by non-governmental organisations and academics, were: crime rate is still high, society is not ready yet, RJ is a new and unknown option, etc. And this has been repeated since 2005. Indeed, conservatism is good in law, but excessive conservatism is harmful. In practice, it hinders the realisation of this new vision of penal policy.

¹⁶ State Gazette No. 110/2004 (last amended State Gazette No. 11/2023), <https://lex.bg/bg/laws/ldoc/2135496713> (accessed: 2.06.2024).

At the same time, several European and other research and action pilot projects¹⁷ have been successfully implemented in the country, promoting the application of mediation in criminal cases and restorative justice. Theoretical works have been translated¹⁸ and written¹⁹ to explain restorative justice's ideology, principles, and benefits. Conferences, information campaigns, and sociological surveys have been conducted²⁰, which confirmed the readiness and willingness of the prevailing public and many law enforcement agencies to take advantage of the RJ tools. Training is provided in schools, universities, and the judiciary, although not on a national scale yet.

The general situation of RJ in Bulgaria can currently be summarised as follows: there is a sporadic implementation of projects by NGOs with a limited number of users, mainly in the field of institutionalised clients: persons sentenced to imprisonment, released from prisons, children from institutions or children at risk, as well as in social services provided in the community. There is still a lack of a 'fixing' norm in the existing legislation, which is crucial for the civil law system; the philosophy, values and basic principles of restorative justice continue to be poorly understood by politicians and legislators, which is reflected in the adverse reaction to the periodically proposed legislative changes; there is a lack of continuity and determination in the implementation of the new penal policy. An eloquent example of this is the postponement of the adoption of the Bill on Deviation from Criminal Proceedings and Imposition of Educational Measures on Juveniles, which was ready in 2016 and provided for restorative measures against this most indisputable category of offenders. This, in turn, suspends the implementation of the Concept of Justice for Children from 2011. All these and many other omissions lead to the conclusion that Bulgaria is one of the few countries that lag significantly behind European and international trends in applying RJ.

Although *de lege lata* possibilities for applying RJ instruments do exist, and some far-sighted practitioners of the criminal justice system use them successfully, this issue needs to be explicitly regulated. It cannot be postponed

¹⁷ Cost Action A21 *Restorative justice development in Europe, 2002–2006; The 3E model for a restorative justice strategy in Europe, 2011–2013*, Criminal Justice Program of the European Commission; *Promoting the development of restorative justice practices in criminal proceedings*, Operative Program „Good Governance”, 2021–2022, etc.

¹⁸ H. Zehr, *The little book of restorative justice*, Charlotte NC 2002; K. Pranis, *The little book of circle processes*, Charlotte NC 2005.

¹⁹ D. Chankova, *Victim-offender mediation* [Медиация между жертвата и извършителя на престъплението], Sofia 2002; D. Chankova, *Restorative justice. A comparative analysis* [Възстановителното правосъдие. Сравнителноправен анализ], Sofia 2011.

²⁰ Prison Fellowship Bulgaria, *Problem map of restorative justice in Bulgaria. Assessment and analysis of the state and opportunities to develop restorative justice practices in criminal proceedings* [Проблемна карта на възстановителното правосъдие в България. Оценка и анализ на състоянието и възможностите за развитие на практики на възстановителното правосъдие в наказателното производство], <https://pfbulgaria.org> (accessed: 2.06.2024).

because a particularly vulnerable category of victims needs increased protection and support – the juvenile victims for whom RJ works well. The Bulgarian people and institutions' affection for legal regulation is well known. Everyone seems to feel safer and more comfortable when they can invoke the LAW. This, by the way, is inherent in the continental system of written law. Taking the risk of doing something that is not explicitly regulated, nevertheless by no means *contra lege*, is not typical.

On the other hand, the Bulgarian legislator has long proved that it is not one of the most progressive. That is why RJ did not receive a legal framework for 20 years. As mentioned, politicians and decision-makers, as well as part of the legal community, show stubborn rigidity and resistance, refusing to put this issue on the current agenda of society under various pretexts but primarily defending their “preserved interests and monopoly” in criminal justice. At the same time, the crisis with the COVID-19 pandemic, its reflections on prisons and the neglect of a significant part of the offenders – juveniles – raises the issue with particular urgency. As an instrument supporting the crime victims, RJ allows them to negotiate with the perpetrator personally and quickly. It provides adequate compensation, actions to repair the damage, apology, refrain from specific behaviour, training, therapy, etc. RJ is much more favourable for the offenders, too, as their criminal responsibility and stigmatisation can be avoided, and they would get a chance for reintegration, which is especially important for young wrongdoers. However, reaching a more harmonious and homogeneous society – the aim and dream of the scholars and NGO sector – in the current turbulent times in Bulgaria seems to be a mission that is extremely difficult or impossible. In the never-ending transitional period and permanent political, economic and institutional crisis, such a profound justice system reform is apparently not a priority.

There are opportunities and needs for RJ application, e.g., in police activities. The Ministry of Interior Act 2014 does not use the concept of restorative practices, models and programs. It remains highly administrative in spirit – the police prefer to use warnings, orders, protocols, etc. To step out of their body's comfort zone of exercising power and move to horizontal measures of coordination, negotiation, etc., is probably unattractive to most police officers. Additionally, this commitment is missing in the law. Interviews with some investigative police officers, although highly unrepresentative, found that some of them voluntarily acted as mediators to resolve the conflict, even with the practical idea of “saving” further work. The reported results are more than satisfactory. However, from the “shadow of the law” practice of individual visionaries, RJ should become an opportunity provided at a national level.

Training for working with victims and education in victimology

Another weak point while working with victims in Bulgaria is the lack of proper training despite the requirements of many international instruments. Training is perhaps the most underdeveloped element in victims' matters. There are few well-educated professionals, most of whom are from the non-governmental sector and have received specialised training abroad. Hence, there comes the immense opportunity for secondary victimisation, even in the frames of the criminal justice process.

This could be easily explained – there is no, as a rule, neither in the schools nor in universities, time and courses for studying the process of victimisation, victims' rights and protection, or even prevention from victimisation. The victimological culture in society, dare say, is relatively low. Only after significant incidents (and lately, they are more and bigger) does this issue receive attention.

Victimology is a well-developed part of the university curricula abroad, but in Bulgaria, it was a tiny part of the university study of criminology for a long time. Nowadays, only a few universities offer elective or facultative courses in victimology, mainly in their law faculties. In the newly adopted regulation on the uniform state requirements for obtaining higher education in the speciality of “law” and professional qualification “lawyer”²¹, victimology is not even included in the recommended elective courses, although there was intense lobbying from representatives of the academia and indisputable evidence for the need of this knowledge among professionals from the criminal justice system, not to mention the compliance of our higher education with the European and global standards. Moreover, the practice shows daily that such knowledge is essential for police officers, social workers, journalists, health specialists, etc. That is why education and training for working with victims and, in particular, studying victimology should become a mandatory part of the curricula of the relevant faculties (law faculties, social care faculties, etc.) of the universities and all units of the criminal justice system, as well as for medical professionals and social workers, without delay. Moreover, enough relevant information in the appropriate form should be spread in schools and communities, as raising the victimological culture and building a victim-friendly society is a long-lasting process.

²¹ Adopted with a Decree of the Council of Ministers No. 165 from 12 July 2022 (State Gazette No. 55/2022).

Conclusions

The Bulgarian criminal justice system and doctrine are not alien to the general trend of strengthening the role of victims in criminal procedure. The rights of victims of crime are subject to the periodic introduction of new legislative provisions and intentions to improve the existing ones. The legislature and the competent authorities are under severe public pressure to address the situation of these individuals in criminal proceedings more effectively and equitably and offer them various forms of assistance, especially in the cases of gross criminal offences that provoke the reaction of citizens. Given the reported deficits in protecting victims' rights, there is a need for a critical rethinking of the regulation of the approach of criminal justice authorities to them. The current legal framework should be carefully examined in light of previous and accompanying European and global standards, as well as standards for individual groups of victims, to indicate where the existing national norms can be improved. However, such a critical systematic review would not be possible without a conceptual discussion of the basic principles and approaches in the Bulgarian criminal process in general and the human rights-based approach to both victims and defendants.

References

- Chankova D., *New challenges in crime victims protection in Bulgaria*, „Dyskurs Prawniczy i Administracyjny” 2020, No. 1.
- Chankova D., *Restorative justice. A comparative analysis* [Възстановителното правосъдие. Сравнителноправен анализ], Avangard Prima Publishing, Sofia 2011.
- Chankova D., *Victim-offender mediation* [Медиация между жертвата и извършителя на престъплението], Feneya, Sofia 2002.
- Chinova M., Ivanova M., *Victims of crimes and the minimum standards of the European Community* [Пострадалите от престъпления и минималните стандарти на Европейската общност], „Юридически свят” 2004, No. 2.
- European Union Agency for Fundamental Rights, *Crime, safety and victim rights*, Office of the European Union, Luxembourg 2021.
- European Union Agency for Fundamental Rights, *Victims' rights as standards of criminal justice. Justice for victims of violent crime. Part I*, Office of the European Union, Luxembourg 2019.
- Jaishankar K., *Cyber victimology: a new sub-discipline of the twenty-first century victimology*, [in:] J. Josep, S. Jergenson (eds.), *An international perspective on contemporary developments in victimology*, Springer, Cham 2020.
- Milquet J., *Strengthening victims' rights: from compensation to reparation. For a new EU victims' rights strategy 2020–2025*, European Commission, Brussels 2019.
- Panев B., *Global sources for the criminalisation and victimisation of modern society* [Глобални източници за криминализация и виктимизация на съвременното общество], „Юридически свят” 2004, No. 2.

- Pranis K., *The little book of circle processes*, Good Books, Charlotte NC 2005.
- Prison Fellowship Bulgaria, *Problem map of restorative justice in Bulgaria. Assessment and analysis of the state and opportunities to develop restorative justice practices in criminal proceedings* [Проблемна карта на възстановителното правосъдие в България. Оценка и анализ на състоянието и възможностите за развитие на практики на възстановителното правосъдие в наказателното производство], <https://pfbulgaria.org>.
- Roberts L., *Cyber-victimization in Australia: extent, impact on individuals and responses*, „Briefing Paper” 2008, No. 6.
- Stankov V., *Victimology* [Виктимология], Chernorizets Hrabar, Varna 2001.
- Zehr H., *The little book of restorative justice*, Good Books, Charlotte NC 2002.

Summary

Crime victims' rights in Bulgaria. Are we continuing to stay beyond time?

Keywords: EU law, victims' rights in Bulgaria, victims of crime, compensation for victims, Council of Europe legislation.

This study delves into the latest development of crime victims' related policies and practices in Bulgaria and the protection of victims' rights. The purpose of the article is to identify and analyse the newest achievements and to scrutinise the relevant operative legislation, commenting on both the strong and the weak points of its implementation. The central thesis is that the protection of victims of crime on a national scale, although improving in the regulations, especially in recent times and for some types of victims, still lags behind the development of public relations, the protection provided by other countries, and in terms of transposition of the relevant European Union directives, the EU Strategy on Victims' Rights and Council of Europe acts. The conclusions are that along with the progress in the recognition and further settlement of victims' rights, the system ensuring victims' participation in criminal proceedings and their support shows several imperfections that should be addressed immediately. The current legal framework should be carefully examined in light of European and global standards. The urgency of introducing restorative justice is underscored as an indisputable instrument in favour of the victims.

Streszczenie

Prawa ofiar przestępstw w Bułgarii. Czy nadal pozostajemy poza czasem?

Słowa kluczowe: prawo UE, prawa ofiar w Bułgarii, ofiary przestępstw, odszkodowanie dla ofiar, prawodawstwo Rady Europy.

W niniejszym artykule prześledzono rozwój polityki i praktyki dotyczących ofiar przestępstw w Bułgarii oraz ochronę ich praw. Celem artykułu jest identyfikacja i analiza najnowszych osiągnięć oraz dokonanie przeglądu obowiązujących przepisów prawnych, z uwzględnieniem zarówno mocnych, jak i słabych punktów ich wdrażania. Główną tezą jest stwierdzenie, że ochrona ofiar przestępstw w skali kraju, choć poprawia się w świetle przepisów, szczególnie w ostatnim czasie i w przypadku niektórych typów ofiar, to z drugiej strony nadal pozostaje w tyle za rozwojem *public relations*, ochroną zapewnianą przez inne kraje oraz w zakresie transpozycji odpowiednich dyrektyw Unii Europejskiej, strategii UE dotyczącej praw ofiar czy dokumentów Rady Europy. Wnioski są takie, że wraz z postępem w uznawaniu i dalszym ustalaniu praw ofiar przestępstw system zapewniający ofiarom udział w postępowaniu karnym i ich wsparcie wykazuje szereg niedoskonałości, którym należałoby natychmiast zaradzić. Zdaniem autorki trzeba dokładnie zbadać obowiązujące ramy prawne z perspektywy standardów europejskich i światowych, a nadto podkreślić pilną potrzebę wprowadzenia sprawiedliwości naprawczej, jako niekwestionowanego instrumentu na rzecz ofiar przestępstw.