

## **THE IMPACT OF THE EU'S DIRECTIVE 2012/29/EU ON ESTABLISHING MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME TO THE MACEDONIAN CRIMINAL PROCEDURE**

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### **Abstract**

The authors of the paper discuss the compliance of the Macedonian criminal justice system with EU's Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime. The purpose of this Directive is to establish minimum standards for ensuring that the victims of crime receive appropriate information, support and protection and whether they are able to participate in the criminal proceedings. In this fashion it is recommended to the member states to ensure that victims are recognized and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner including specific guarantees when the victim is a child. Furthermore, any treatment of the child victim should take into account its best interests and shall be approached on an individual basis, considering the child's age, maturity, views, needs and concerns. Moreover, the authors are scrutinizing whether these standards are properly incorporated into the Law on Criminal Procedure and they provide substantial recommendations for additional changes and amendments to the law in order to achieve the abovementioned criteria into Macedonian national law.

### **I. INTRODUCTION**

EU's Directive 2012/29/EU<sup>1</sup> on establishing minimum standards on the rights, support and protection of victims of crime in further text (EU Victim's Directive) has set up the common minimum standard on European level regarding the protection of the victims during the criminal trials. This directive has replaced the previous Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings<sup>2</sup> due to the fact that this directive was in a way obsolete, general and did not provide sufficient protection of the victims particularly

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<sup>1</sup> See: 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, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>

<sup>2</sup> See: 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceeding, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001F0220>

victims of terrorism<sup>3</sup>. The EU Victim's Directive as a successor of the EU' Framework decision of 2001 has provided one codified and complete approach towards the protection of the victims' rights during the criminal trials<sup>4</sup>. This Victim's Directive is considered as bedrock for establishment of common standards on the EU level for minimum protection of the victim's rights. Together with the previous Framework Decision this Victim's Directive have paved the road of increased interest for the victims in the modern development of the protection of the human right during the just criminal trial<sup>5</sup>. Despite the fact that prior to these legal text victim's rights were neglected or even unconsidered<sup>6</sup>, the enactment of these legal text particularly of the Victim's Directive has focused the interest over the one also very important actor of the criminal trial, due to whom, together with the public interest of fighting crimes of course, the criminal procedure in most of the cases is commenced.

It is needles to mention the importance of the victims and proper protection of their rights during the criminal procedure in order to maintain the public impression of the criminal procedure as just, public and focused upon just and deserved punishment of the exact offender. Furthermore such treatment of the victims increases the public trust and confidence into the criminal justice system.

Due to the importance of this Victim's Directive, together with the fact that Republic of North Macedonia is candidate member state of the EU and needs to have its national legal system harmonized with the EU acquis, particularly bearing on mind the legal status of the directives for the EU member states<sup>7</sup>, we think that it is justified to examine how much this Victim's Directive is incorporated within the national law. Victim's rights during the criminal procedure are regulated within the Law on Criminal Procedure (further in text LCP), which was enacted in 2010<sup>8</sup>.

Since the Victim's Directive is enacted after the enactment of the Macedonian LCP it is understandable that the provisions from this Directive would not be incorporated within the LCP. However, since with the enactment of the LCP a new concept of the criminal procedure in Republic of North Macedonia was accepted, with several drastic changes of which, maybe, the biggest changes were of the role of the public prosecutor during the investigative phase together with the transformation of judge led investigative phase into the investigative phase with active prosecutor and with judge who sits as an guarantor and protector of human rights of the suspect. Furthermore, through the acceptance of adversarial elements during the main hearing together with the passive judge whose role is to decide upon the facts and to implement the law, while the parties are obliged to persuade the judge beyond reasonable ground into their case scenario, together with the possibility of guilty plea and sentence bargaining procedure as possibility for accelerating the criminal trials, the Macedonian LCP has joined towards the adversarial type of

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<sup>3</sup> See explanatory part of the Directive.

<sup>4</sup> See: Alvaro, G. and D'Andrea, A., The Impact of Directive 2012/29/EU on the Italian System for Protecting Victims of Crime in Criminal Proceedings, in *Human Rights in European Criminal Law, New Developments in European Legislation and Case Law After Lisbon Treaty*, Stefano Ruggeri ed., Springer, 2015, p. 308-311

<sup>5</sup> See: Braun, K., *Victims Participation Rights, Variation Across Criminal Justice Systems*, Palgrave Macmillan, 2019, or Rafaracci, T., New Perspectives on protection of the Victims In the EU, in *Human Rights in European Criminal Law, New Developments in European Legislation and Case Law After Lisbon Treaty*, Stefano Ruggeri ed., Springer, 2015, p. 231-235.

<sup>6</sup> For example see: Wemmers, J. A., Where Do They Belong? Giving Victims a Place in the Criminal Justice Process. *Criminal Law Forum*, 20(4), 2009, p. 395-416.

<sup>7</sup> See: Ambos, K., *European Criminal Law*, Cambridge University Press, 2018, p. 20-30.

<sup>8</sup> See: Official Gazette of Republic of North Macedonia, No. 150/2010.

criminal justice system rather than previous euro-continental and mixed inquisitorial criminal justice system.

Due to these major changes of the concept of the criminal procedure in Republic of North Macedonia several practical problems with the provisions of the LCP have emerged in the last period of its implementation. These problems were mostly based upon several normative lacunas or ambiguities which were mainly based upon the swift of the concept, and in practice were not implemented as they were envisioned by the legislator, primarily due to lack of commentary to the meaning of the legal provisions of the LCP, or lack of judgments by the Supreme Court in order to provide unanimous implementation of the LCP. Furthermore, in several cases additional provisions was necessary to be added into the LCP in order to make specific institutes from the LCP properly administered. Furthermore, since in the past decade EU has been also active in the legislative field of protection of the defendant's rights during the criminal trials<sup>9</sup>, these EU's efforts were also needed to be implemented into the LCP, since they are benchmark of the further development of the LCP on European level.

Considering the abovementioned reasons a working group from Ministry of Justice was formed in order to produce changes and amendments to the LCP<sup>10</sup>. This work group has provided Draft Law on Changes and Amendments to the LCP<sup>11</sup> which has intervention into more than 2/3 of the provisions of the LCP, however not changing its original concept established in the law of 2010. This Draft Law at this moment is in Parliamentary procedure and still has not been enacted.

Hence, since this Draft Law on Changes and Amendments to the LCP should consider latest developments as determined within the EU legislative documents we thought that it was appropriate to evaluate whether these legal provisions from the EU Victim's Directive were properly addressed within the LCP, or more precisely into the Draft Law on Changes and Amendments to the LCP.

In this text we would use the comparative legal method with direct comparison of the provisions of the EU Victim's Directive with the national provisions in order to determine the extent of harmonization between these two legal documents. This text could also serve as a tool for legal harmonization or transposition of the Directive into the LCP in Republic of North Macedonia.

## **II. LEVEL OF HARMONIZATION BETWEEN THE EU VICTIM'S DIRECTIVE AND MACEDONIAN CRIMINAL JUSTICE SYSTEM**

The role of the victim within the Macedonian criminal justice system is regulated within the Law on Criminal Procedure. Since Macedonian Law on Criminal Procedure has been enacted in 2010, we can freely conclude that the most of the provisions from the Victim's Directives of 2012 were

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<sup>9</sup> Particularly in this sense are the Directives that are considered as core in the area of protection of defendants right and their right to fair trial delivered by the EU: Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings; Directive 2012/13/EU on the Right to Information in Criminal Proceedings; Directive 2012/29/EU on Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime; Directive 2013/48/EU on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings, and on the Right to Have a Third Party Informed Upon Deprivation of Liberty and to Communicate With Third Persons and With Consular Authorities While Deprived of Liberty; Directive (EU) 2016/343 on the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to be Present at the Trial in Criminal Proceedings and Directive (EU) 2016/1919 on Legal Aid for Suspects and Accused Persons in Criminal Proceedings and for Requested Persons in European Arrest Warrant Proceedings.

<sup>10</sup> See Government's Plan for Reform Priorities, or Action plan 3-6-9, at: <https://vlada.mk/plan-3-6-9>

<sup>11</sup> Available at <https://ener.gov.mk/Default.aspx> for public information and further discussions.

not incorporated within this Law. This does not mean that the Macedonian Law on Criminal Procedure does not tackle the victim's rights at all, but on a contrary, it is more accurate to say that this Law is in line with then current trends for the procedural protection of the victims. Due to this, it is needless to mention that Macedonian LCP does not contain the current victim's protection provisions as they are regulated within the Victim's Directive.

As mentioned earlier, the Macedonian LCP from 2010 has introduced significant changes within the criminal procedure where it shifted its focus from previous mixed euro-continental inquisitorial system towards the adversarial criminal procedure with dominant public prosecutor while the investigative phase and passive judge during the main hearing from the criminal procedure, after the several years of its implementation the first signs of unequal interpretation and legal lacunae have appeared. This means that due to these severe changes of the concept of the criminal procedure, several weak points regarding the protection of the defendants' and victims' rights, together with the courts efficiency were observed.

The reason for this longer explanation of the current status of the LCP is that the draft version for amendments of the LCP does contain transposed provisions from the EU's Victim's Directive. Meaning that the subject of the analysis of this text will be the level of transposition of the EU Victim's Directive into the Macedonian Draft Law on Changes and Amendments to the LCP and not to the actual LCP, since as we have established earlier the Directive supersedes the LCP.

Another important factor for analyzing the level of harmonization between the Macedonian draft LCP and the EU Victim's Directive is based upon the fact that these changes and amendments to the LCP are still in the draft phase, so any further meticulous analysis of this Directive could provide substantive conclusions which can be than incorporated within the Draft Law on Changes and Amendments to the LCP for its further improvement.

Bearing on mind the actual situation with the Draft Law on Changes and Amendments of the LCP which are inevitable, the most suitable method of analysis of this EU Directive is to analyze its content in connection with the proposed changes, simultaneously elaborating the amendments of the LCP. This means that within this analysis simultaneously three legal texts will be elaborated. First one is proposed Law on Changes and Amendments to the LCP, discussing the reasons for amending the LCP; second analyzed legal text would be the current LCP and the third analyzed legal text would be the EU's Victim's Directive and its level of implementation within the Draft Law on Changes and Amendments to the LCP.

Structurally we would follow the EU's Victim's Directive organization of the provisions and examine their level of implementation in the national legal system.

Having stated this, from the beginning we would start with the analysis of the level of harmonization and transposition of the provisions from the first part of the EU's Victims Directive into the national legal system.

1.1. First part of the Directive deals with the objectives of the Directive and more important the legal definitions of the victim. Following the articles of the LCP we can conclude that these provisions of the Victim's Directive are not incorporated within the Macedonian criminal justice system. Due to this within the Draft Law on Changes and Amendments to the LCP there are significant improvements regarding the legal definition of the victim, definitions of the persons from the victim's family and legal definition regarding the victim's persons of trust. Furthermore, the Draft Law for Changes and Amendments to the LCP contains legal definition regarding the children victims as regulated within the article 2, paragraph c of the Victim's Directive. Bearing on mind these amendments to the LCP we can conclude that

Macedonian legislator has put an effort to incorporate these first parts of the Victim's Directive into the proposed changes of the LCP in order to harmonize its text with the one of the Directive. However, there are no legal definitions regarding the restorative justice neither in the existing LCP nor in the proposed Law on Changes and Amendments to the LCP. This might be due to the fact that restorative justice in Macedonian legal system so far is considered as theoretical concept which is elaborated into the legal textbooks, while this definition is not considered as legal mater. However, bearing on mind that theoretical consideration of the concept of restorative justice might be differently considered by the courts and other legal practitioners, we think that it might be better to provide its definition within the LCP as regulated within the definition of the Victim's Directive.

1.2. Second part of the directive deals with the procedural rights of the victims. These provisions in some extent are implemented within the LCP, but completely restructured and improved are within the Draft Law on Changes and Amendments to the LCP. This means that besides following the structure and provisions of the Victim's Directive Macedonian legislator within the Draft Law on Changes and Amendments to the LCP has made significant and substantive improvement of these provisions. Due to this we would comment only the provisions from the Draft Law on Changes and Amendments to the LCP and not commenting the provisions which are in force from the actual LCP.

At the beginning it is obvious that Macedonian Draft Law on Changes and Amendments preserves the concept of division of the victims' rights and rights of the indemnified person. This means that, similar to the provisions of the Victims' Directive Macedonian Draft Law on Changes and Amendments to the LCP, initially regulates the general victims' rights (including rights for indemnification as part of the victims' rights), and consequently are regulated the procedural rights of the person who have requested indemnification. Or considering the articles, initially, within the article 53 of the Draft Law on Changes and Amendments to the LCP the general rights of the victims' are regulated, while the procedural rights of the victims in case when they have decided to submit a request for indemnification are regulated within the articles 57 to 68 of the Draft Law.

Henceforward, we can conclude that Macedonian Draft Law on Changes and Amendments to the LCP unlike the actual LCP, contains all major rights of the victims concerning both their substantive rights as regulated within the article 3 to 9 of the Victim's Directive together with the procedural rights of the victims as regulated within the articles 10 to 17 of the same Directive.

However, despite the fact that these provisions of the Draft Law in comparison to the actual LCP are completely refurbished and improved, it is obvious that there is still possibility for improvement of the Macedonian legislation. Due to the fact that even the Draft Law on Changes and Amendments to the LCP does not have several guarantees regarding the victim's rights as regulated within the Victims' Directive, for example in the paragraph 1 and 3 of the article 5, dealing with the right to receive written acknowledgement of their formal complaint and this written acknowledgement to be received in language that they understand in cases when they need translation.

Additional remark is that Macedonian legislator did not provide the type of the form of the bill of victim's rights which is delivered to them. Meaning that within the article 53 it is stated that these rights will be provided to the victims, but it isn't stated in which type, written or oral, will be actually delivered. Bearing on mind the Victim's Directive wording we can conclude that the bill of rights can be delivered in both ways either in written form or orally, but in any case we

think that the type of the bill of rights provided to the victims should be determined within the provisions of the LCP.

If we go into detailed explanation of the articles containing victims' rights of the Victim's Directive and their harmonization with the Draft Law on Changes and Amendments to the LCP we can see that the provisions from the article 3 are simplified and regulated within the article 53 of the Draft Law, while the victim's right to receive information from the first contact with the competent authority and the list of rights which should be provided to the victims as regulated within the paragraph 1 of the article 4 of the Victim's Directive are regulated within the lines 1 to 12 of the paragraph 1 of the article 53 of the Draft Law, together with the remaining paragraphs (2 to 5) of the same article.

However, several rights as regulated within the article 4, paragraph 1 of the Victim's Directive are not properly regulated within the Draft law on Changes and Amendments to the LCP. Hence, rights from the lines: (f) concerning the interpretation and translation; (h) regarding the procedural rights in case of not respect of their rights during the criminal procedure are not provided within the Draft Law on Changes and Amendments to the LCP, while rights from the line (g) are not applicable to Republic of North Macedonia, since we are still not member state of the EU. However, we deem that this paragraph should be implemented within the Draft Law in order to provide future application of our national law and to avoid the necessity of these interventions into the LCP after our future EU accession.

Due to this, we deem that despite the fact within the Macedonian Draft Law on Changes and Amendments to the LCP victims' rights are generally well treated, maybe, for the sake of clarity of these provisions, these rights should be written in form and with wording similar to the article 4, paragraph 1, of the Victim's Directive. Having on mind such legislative solution it would be easier for the state bodies having the first contact with the victims while explaining their rights, to be able to determine and explain their rights with plain and understandable words using legally defined content of the bill of victims' rights.

Naturally, this suggestion would not harm the current situation of the Macedonian bill of victim's rights as determined within the article 53 of the Draft Law, where the extent of the victim's rights is expanded particularly concerning the specific types of victims, such as victims of serious offences or victims of violent crimes, as regulated within the paragraphs 2 and 3 of the article 53 of the Draft Law on Changes and Amendments to the LCP.

Unfortunately, despite the fact the Macedonian Draft Law on Changes and Amendments to the LCP mostly contains the envisioned guarantees for the victims' rights as regulated within article 6 of the Victim's Directive we have detected several important issues that we think should be also contained within the national LCP. Hence forward, we think that national LCP should contain the guarantees as regulated within the paragraph 5 and 6 of the article 6 of the Victim's Directive. This means that national LCP should furthermore contain guarantees for informing the victim in case when the offender has escaped and due to this fact the court has issued several measures for personal protection of the victim, together with the possibility of not informing the victim of the fact that the offender has escaped, if there is risk of harm to the offender.

Finally, as we have mentioned earlier, but in this occasion in light of the article 7 of the Victim's Directive we deem that there should be additional provisions within the Macedonian Draft Law on Changes and Amendments to the LCP regarding the right to translation to the victims and possibility of written translation of the essential documents of the case. This remark is given with specific attention to the article 9 of the Draft Law on Changes and Amendments to the LCP, due to the fact that in this article the right to interpretation and translation is provided to every

participant in the criminal procedure and during the trial, but it is not specifically guaranteed to the victims within their first contact with the authorities, particularly while reporting the crime to the police or to the public prosecutor, which in this case is still not considered as commenced criminal procedure, since according to the provisions of the LCP the criminal procedure is officially started with the prosecutor's decision to commence the initial stage - investigative phase of the criminal procedure.

Considering the guarantees for the victims Macedonian Draft Law on Changes and Amendments to the LCP should also include the possibility of introduction of specific programs for support of the victims, as envisioned in the article 8 and 9 of Victim's Directive. Due to this, in collaboration with the ministry of Social Wealth Care such programs should be established into our justice system, since so far we do not have such specific victim's support services.

1.3. Third part of the EU Victim's Directive constitutes the victim's rights as a participant during the criminal procedure. These rights generally might be considered as being a witness and right to claim indemnification. For the first right/position, normally there are not any preconditions, since witnesses are generally considered as necessary part-participants of the criminal procedure, for establishing of the facts during the trial, while in such cases victims as witnesses might need some additional procedural guarantees for protecting them either from re-victimization or protecting their physical wellbeing. While second right constitutes victim as actively involved participant in the criminal procedure with person interest from the outcome of the criminal procedure. That is why in second case several additional rights for the victims are on the set during the criminal procedure. Due to this the victims' guarantees in this phase of this article are focused upon the victims as participants in the criminal trials.

Within this part several procedural rights are regulated within the Victim's Directive, such as right to be heard, victim's rights in case of prosecutor's withdrawal of the right to prosecute, right to legal aid, right to reimbursement of the expenses, right to return of the victim's property. These victim's rights within Macedonian Draft Law on Changes and Amendments to the LCP are regulated within the articles 57 to 68, where the first article regulates the procedural rights of the victims while enforcing their right to indemnification, while the rest of the articles are regulating the situation where the victim acts as private prosecutor, meaning that for specific crimes the criminal procedure is commenced only by the private indictment submitted by the victims and for specific crimes the public prosecutor is authorized to commence the criminal procedure only in cases when there is formal request submitted by the victims<sup>12</sup>. Difference between these two different situations is that in the first one the criminal procedure is commenced and finished only through the private indictment submitted to the court from the victim and in such cases the public prosecutor is not involved. While in the later cases the criminal procedure is led by the public prosecutor, but only upon the written request by the victim.

Having stated this, we can conclude that the procedural rights which are defined within the Victim's Directive are in full observed by our national law. Meaning that, in cases of indemnification, private prosecution or prosecution upon request of the victims, victims have the rights to: a legal aid by an attorney; to reimbursement of their expenses; to a translation; to return of a property in the same case or to file a civil claim for return of the property and damages in other civil procedure, as regulated within the articles 57 and the following.

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<sup>12</sup> For more see: Kalajdziev G., Buzarovska G., Misoski B. and Ilikj Dimoski D., Criminal Procedure Law, Skopje 2015, and also articles 57-68 of the LCP..

Considering the protection of the victim's rights in the case of restorative justice, within Macedonian LCP and Draft Law on Changes and Amendments to LCP the position of the victim within the possibilities within the law for restorative justice we can conclude that the victims' role is properly protected due to the fact that the contracts made between the public prosecutors and defendants in case of plea bargaining must provide written statement for the request of indemnification from the victim. While in case of mediation, which is real restorative justice element, the mediator can't conclude the procedure for mediation if the rights of the victims are not properly addressed<sup>13</sup>.

For the cases of legal remedy in cases when the public prosecutor has decided to withdraw from the prosecution, Macedonian legal solution for protection of the victim's rights is placed upon the right to submit a formal request for evaluation of this prosecutor's decision to the higher prosecutor, which under the rules of hierarchy and subordination is entitled to have active control over the subordinate prosecutor's decisions and if the higher prosecutor decides that the act of hers subordinate was a mistake than higher prosecutor can order to the subordinate prosecutor to continue with the criminal procedure. This legal situation for protection of the victim's rights against ill-founded or biased prosecutorial decisions is based upon the German experience of hierarchical control of the higher prosecutors over their subordinate first level prosecutors.<sup>14</sup>

1.4. The fourth part of the Victim's Directive is elaborating the protection of the victims and recognition of the victims with specific protection needs.

This part contains the rights to protection of the victims, right to avoid contact with the offender, together with the specific rights for reducing the possibility of repeated victimization of the victims during the criminal procedure. Furthermore, in this part of the EU Victim's Directive the individual assessment of the victims is regulated together with the elaboration of the specific protection of the victims with specific needs and children victims.

Bearing these Victim's Directive provisions on mind we can conclude that these protective provisions are for the first time introduced into Macedonian criminal justice system with the Draft Law on Changes and Amendments to the LCP.

Hence, within the article 53, particularly lines 6 and 8 of the paragraph 1, of the Draft Law specific provisions for protection of the privacy are proposed considering the right of the victims for protection against repeated victimization and intimidation as regulated within the article 18 of the Victim's Directive.

Considering the rights to the protection of the victims during the criminal investigations we can conclude that these Victim's Directive provisions are fully transposed within the article 53, paragraph 1 lines 8 and 9. Within these lines the Macedonian legislator have regulated the victim's rights regarding the conduction of the interviews with victims without delay or keeping these interviews to a minimum and only conducting them in cases when it is strictly necessary while victims can be accompanied with person of their choice. However, in this fashion Macedonian legislator, unfortunately has omitted to regulate the right of reduction of the medical examination of the victims and conducting these examinations only in cases when they are necessary to the criminal justice process, as regulated within the paragraph (d) of the article 20 of the Victim's Directive. Due to this, we suggest that Macedonian legislator should incorporate this right together with the aforementioned rights as guaranteed within the article 53 of the Draft

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<sup>13</sup> See: Law on Mediation, Official Gazette No. 188/2013 with amendments and changes published in Official Gazette No. 148/2015, 192/2015 and 55/2016. Also see article 495 of the LCP.

<sup>14</sup> See: Braun, K., *op. cit.*



Law on Changes and Amendment to the LCP, due to the fact that there aren't any sustainable reasons or objections from the practical nor theoretical point of view for not incorporating this victim's right within the national criminal justice system.

Considering the protection of victim's privacy as regulated within the article 21 of the Victim's Directive, we can note that this right is regulated in several articles (55 and 232 of the Draft Law on Changes and Amendments to the LCP) where the general public can be restrained while victims are giving their statement during the main hearing upon the victim's request or due to court's order upon its own discretion.

Unfortunately, neither LCP nor Draft Law on Changes and Amendments to the LCP does contain provisions which establish the victim's right, in accordance to the article 19 of the Victim's Directive, where it is guaranteed that court premises will have special waiting areas both for victims and for defendants. Understandably this is due to the fact that this right is more connected with the court facilities and it is not of a procedural nature, due to this it should be more addressed either within the Law on Courts or within the Court Book of Orders where these specific waiting rooms maybe can be organized.

Individual assessment of victims for identification of the need for specific protection is great novelty regarding the protection of the victim's rights which we can safely conclude, is introduced within the Draft Law on Changes and Amendments to the LCP, due to the EU's Victim's Directive direct influence. Hence in the article 54 of the Draft Law it is regulated that the individual assessment should be performed upon the same criteria as regulated within the article 22 of the Victim's Directive. Meaning that the reasons for individual assessment into Macedonian criminal justice system, paragraph 2 of the article 54 of the Draft Law, are based upon the same criteria such as victims personal characteristics, type, nature and circumstances of the crime, as determined within the paragraph 2 of the article 22 of the Victim's Directive.

Henceforward, the same safety mechanisms as regulated within the article 22 of the Victim's Directive, regarding the individual assessment of the child victims are transposed into the same article, article 54 of the Macedonian Draft Law on changes and Amendments to the LCP.

While the types of particularly vulnerable victims as defined within the paragraph 3 of the article 22 of the Victim's Directive are identically transposed within the paragraph 3 of the same article of the Macedonian Draft Law on Changes and Amendments to the LCP.

Finally, victim's wish for not benefiting of the implementation of the specific protection measures as defined within the paragraph 6 of the article 22 of the Victim's Directive are identically transposed within the paragraph 4 of the article 54 of the Draft Law.

Right to protection of the victims with specific protection needs and the definition of the types of protective measures is another example where Macedonian legislator has completely transposed article 23 of the EU's Victim's Directive into the article 55 of the national Draft Law on Changes and Amendments to the LCP. This means that the Macedonian legislator has transposed the same protection measures for the same specific type of victims, only excluding the guarantee that during the whole criminal procedure such victims should contact preferably with the same person, as regulated within the line (c) of the paragraph 2 of the article 23 of the Victim's Directive. This is due to the fact that under the national law in different stages of the criminal procedure different state body undertakes the procedural steps. Meaning that it is impossible under the virtue of the Law to have the same person, for example the police officer, from the victim's first contact with criminal justice system to conduct every consequent victims interviews including, for example, interview by the public prosecutor or interview by the judge.

Other than this, we can conclude that with the articles 55 and 232 of the Macedonian Draft Law on Changes and Amendments of the LCP has completely harmonized its national legislation with the EU's Victim's Directive, involving even the modern types of use of the technological assets such as videoconference link in order to avoid physical contact in the courtroom between the victim and the defendant.

Finally, considering the right of the child victims in the light of the article 24 of the Victim's Directive, despite the fact the Macedonian legislator has generally harmonized its legislation with the provision of this article, we think that there is still slight space for improvement of these provisions. Hence, we think that Macedonian legislator should introduce into the law the possibility of conflict of interest between the parents and the child and to make this provision more feasible within the articles of the Draft Law on Changes and Amendments to the LCP. This is due to the fact that although we can indirectly conclude that children interests might be protected also by persons from trust to the child other than the child's parents, when child's interests differ from parent's one, but we think that this distinction should be made clearer into the Law.

Due to these reasons we deem that the Draft Law on Changes and Amendments to the LCP should contain additional paragraph similar to the line (b) of the paragraph 1 of the article 24 of the Victim's Directive.

Furthermore, we think that Macedonian Draft Law should also contain the provision from the paragraph 2 of the article 24 of the Victim's Directive covering the situations when the court is not certain regarding the children's age. In such cases we deem that Macedonian legislator should introduce the legal presumption that in such cases this person should be considered as a child, granting him/her procedural rights and guarantees as those to the child victims.

1.5. Regarding the last part of the Victim's Directive containing the provisions for training and cooperation of the services, we can conclude that Macedonian legislator has only shortly determined that for undertaking such activities is authorized Ministry of Justice. This means that the procedural law does not have any other jurisdiction for establishing such relations between the state bodies and that practical functioning, improvement and coordination of these state bodies which should undertake the protective measures for the victims as regarded within the EU Victim's Directive remains to the Ministry of Justice. Considering the nature of the LCP we also deem that there is no more space for transposition of the provisions from the articles 25 and 26 of the Victim's Directive into the Draft Law on Changes and Amendments to the LCP other than aforementioned duty to the Ministry of Justice within the article 54, paragraph 6.

### **III. CONCLUSION**

Bearing on mind that the EU Victim's Directive has been enacted in 2012, while Macedonian Law on Criminal Procedure has been enacted in 2010 it is quite normal that Macedonian Law on Criminal Procedure is not harmonized with this Directive. However, this Law contains several provisions which has several guaranties for the victims, together with a specific set of rights and guarantees regarding the right to indemnification for the victims, but these provisions are not providing sufficient protection of the victims during the criminal trials as particularly as the established rights and guarantees within the Victim's Directive.

After years of implementation of the Law on Criminal Procedure from 2010 several problems have emerged on surface. Hence, several of the LCP's provisions in practice have shown to be unclear or were not-understandable for the practitioners and as result to these factors unequivocal implementation in practice of the LCPC's provisions have been noted. Furthermore, several of its legal situations have shown to be unregulated or contained legal lacunas and needed to be improved. Finally, new trends have emerged in the meanwhile and it was necessary to modernize the existing LCP. Such was the case with the enactment of the EU Victim's Directive which due to the fact that Republic of North Macedonia is EU candidate member state, needs to have its national legal system fully harmonized with the EU law.

In order to meet this current situation an extensive amendments to the LCP were performed and they are encapsulated in the Draft Law on Changes and Amendments of the LCP which is in its final phase, but still not entered into the Parliamentary phase for enactment.

Having on mind these changes and amendments through the legal method of direct comparison of the provisions of the Draft Law on Changes and Amendments to the LCP and the EU Victim's Directive we have performed the evaluation of the level of transposition and conformity of these two legal texts.

We have concluded that Draft Law on Changes and Amendments of the LCP in most part is in conformity with the EU Victim's Directive and bears the same ideas for protection of the victims during the criminal trials.

However, several weak points which should be properly addressed in order to fully implement the EU directive into the Macedonian criminal justice system were detected. Fortunately these weak points does not mean straying from the idea behind the EU Victim's Directive by Macedonian legislator, but simple omission of implementation of several minor provisions. We deem that these omissions are not based upon the fact that they can't be implemented into the Macedonian criminal justice system due to the fact that they are not bearing the same idea or legal reason between the laws. Instead, these omissions are based upon the fact that Macedonian legislator thought that that this situation was already covered by some other norm, or simply thinking that they are not necessary to implement. However, having on mind the codified manner of the EU Victim's Directive, together with the clarity of the legal norms within, we deem that Macedonian legislator should incorporate these detected provisions into the Draft Law on Changes and Amendments to the LCP.

### **Bibliography:**

1. **Alvaro, G. and D'Andrea, A.**, The Impact of Directive 2012/29/EU on the Italian System for Protecting Victims of Crime in Criminal Proceedings, in *Human Rights in European Criminal Law, New Developments in European Legislation and Case Law After Lisbon Treaty*, Stefano Ruggeri ed., Springer, 2015.
2. **Ambos, K.**, *European Criminal Law*, Cambridge University Press, 2018.
3. **Braun, K.**, *Victims Participation Rights, Variation Across Criminal Justice Systems*, Palgrave Macmillan, 2019.
4. **Kalajdziev G., Buzarovska G., Misoski B. and Ilikj Dimoski D.**, *Criminal Procedure Law*, Skopje 2015.
5. **Rafaracci, T.**, New Perspectives on protection of the Victims In the EU, in *Human Rights in European Criminal Law, New Developments in European Legislation and Case Law After Lisbon Treaty*, Stefano Ruggeri ed., Springer, 2015.
6. **Wemmers, J. A.**, Where Do They Belong? Giving Victims a Place in the Criminal Justice Process. *Criminal Law Forum*, 20(4), 2009.

***Legal texts and statutes:***

7. Law on Mediation, Official Gazette No. 188/2013 with amendments and changes published in Official Gazette No. 148/2015, 192/2015 and 55/2016.
8. Law on Criminal Procedure, Official Gazette of Republic of North Macedonia, No. 150/2010.
9. EU Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceeding.
10. Directive (EU) 2016/1919 on Legal Aid for Suspects and Accused Persons in Criminal Proceedings and for Requested Persons in European Arrest Warrant Proceedings.
11. Directive (EU) 2016/343 on the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to be Present at the Trial in Criminal Proceedings.
12. Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings;
13. Directive 2012/13/EU on the Right to Information in Criminal Proceedings;
14. Directive 2012/29/EU on Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime;
15. Directive 2013/48/EU on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings, and on the Right to Have a Third Party Informed Upon Deprivation of Liberty and to Communicate With Third Persons and With Consular Authorities While Deprived of Liberty;
16. Government's Plan for Reform Priorities, or Action plan 3-6-9, at: <https://vlada.mk/plan-3-6-9>