

Strasbourg, 14 February 2017

CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

Questionnaire for the preparation of the CCPE Opinion No. 12 (2017):

“The rights of victims, witnesses and vulnerable persons”

In your answers, please do not send extracts of your legislation but describe the situation in brief and concise manner, including briefly what is happening in practice.

Introduction

The Opinion deals, in general, with the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, and, in particular, with the role of prosecutors in protecting these rights.

The first section deals with the definition of victims, witnesses and vulnerable persons in the way in which it exists in different member states of the Council of Europe. The second section deals with their rights. The third section concerns the role of prosecutors in protecting these rights. **This section, due to the mandate of the CCPE, is the key section of the Opinion.**

The Bureau and the Secretariat of the CCPE would like to strongly thank you for your cooperation and contributions.

1. Definitions

- 1.1 Is there in your country **a definition** of a victim or a witness of crime? If yes, is it established in the law or other legal instruments?

ANS: Yes, definition of a victim is provided by Art.87., paragraph 25 of the Penal Code. The definition of a witness is not strictly provided, but the Criminal Procedure Act

provides in Art. 283.Para1. that a person who is likely to give information about the crime, the perpetrator and other relevant information is to be summoned as a witness.

- 1.2 Are there in your country **special regimes** for victims of certain types of crimes, for example, domestic violence, sexual abuse, trafficking in human beings? If yes, can you list them?

ANS: Yes, the regime is provided by Art. 43. of the Criminal Procedure Act. The victims are entitled to efficient psychological and other types of aid provided by the State, right to participate in the criminal proceedings, right to receive information from the State Attorney on actions taken regarding the charges filed by the victim, right of complaint to a higher State Attorney, If a person is a victim of a crime punishable by imprisonment of 10 or more years, and suffers serious psycho-physical damage or other grievous consequences of a crime, the victim is entitled to an expert advisor before giving testimony, or filing a property damage request. A victim of a violent crime committed with intent has a right to receive a pecuniary remuneration from the State budget. The victims are to be informed of their rights by the police, State Attorney and the Judge, and the information on their rights will be noted in the record.

Furthermore, a child victim is provided with further rights under Art.44 of the Criminal Procedure Act;

- an attorney provided by the State
- escort by a person of trust while the actions are conducted
- secrecy of personal information
- exclusion of public from the proceedings

Under Art. 45. of the Criminal Procedure Act, a victim of a sex crime or a victim of trafficking has additional rights:

- to talk to a counselor before being questioned
- to be questioned at the police and at the State Attorney's Office by the person of the same sex
- to be questioned in the presence of a person of trust
- to withhold the answer to unnecessary questions regarding strictly personal life of a victim
- to demand to be questioned by the use of audio-visual device
- secrecy of personal information
- exclusion of public from the proceedings

- 1.3 Is there in your country **a definition** of vulnerable persons, either in general sense, or particularly within the framework of criminal procedure? If yes, is it established in the law or other legal instruments?

ANS: No, there is no general definition. The Criminal Procedure Act provides in Art. 292. Para.2. that a child over 14 and under 18 years of age, especially if it is aggrieved by a crime, will be questioned by the Judge of The Investigation, and the questioning will be conducted considerately.

2. The rights of victims, witnesses and vulnerable persons

- 2.1 Are there in your country specific rights of victims, witnesses and vulnerable persons within the framework of criminal procedure, in addition to human rights in general?

ANS: Yes, see above, under 1.2.

2.2 If yes, are they established in the law or other legal instruments?

ANS: See above, under 1.2.

2.3 Please enumerate briefly these specific rights (e.g. the rights to protection, to be treated fairly and with dignity, to be notified, to be present and to be heard at court proceedings, to seek restitution, to the respect of privacy, to make a complaint about infringement or denial of their rights).

Victim: see above under 1.2.

Witness: the witness has a right to withhold the answer if the answer could lead to great shame, serious damage or criminal prosecution of him or a close relative. If a child under 14 years of age is a witness it will be questioned without the presence of the parties, by using a psychologist and an audio-video device. If a witness is a child over 14 years of age the questioning will be conducted by the Judge of Investigation. Also, older persons or persons of poor health may be questioned at their home or place of residence, and by the use of audio-visual device.

2.4 How are victims, witnesses and vulnerable persons informed of their rights? Are there any formal arrangements or informal mechanisms, free access to relevant information and databases etc.?

ANS: The victim receives a written instruction of rights, and a witness is instructed of his rights in a written invitation, and at the beginning of his questioning.

2.5 What kind of penalties and sanctions are established for violation of these rights?

ANS: Disciplinary sanctions. Also, a record of the questioning may be deemed inadmissible, pending on the scope of the violation of rights.

2.6 Are there in your country specific rights of vulnerable persons due to their age (children, elderly people) or disability (physical or mental), either as victims or as witnesses?

Ans: Yes, see above 1.2.

2.7 When a decision in criminal matters is likely to affect the rights or the situation of a vulnerable person, is it brought to the attention of other bodies dealing with the rights of that person (e.g. a measure prohibiting contact with his wife for a husband in the event of domestic violence brought to the attention of the court responsible for ruling on the custody of children)?

ANS: Yes

2.8 Can such vulnerable persons bear testimony alone or only following authorisation by their legal representatives, and in this latter case, in what conditions?

ANS: Alone, see above under 2.3.

- 2.9 Is the refusal to bear testimony admissible, for instance as regards children or mentally disabled persons? In what conditions?

ANS: Yes, see above 2.3.

- 2.10 Who proceeds to the evaluation of vulnerable persons and how the risk is assessed? Can the vulnerable person play a role in assessing such a risk? Which protective measures may be adopted and by whom?

ANS: the body conducting the proceedings is evaluating (State Attorney or a Judge), and if necessary, requests expert help.

- 2.11 Are there, in your country, any special procedures that allow testimony to be filmed, recorded and/or given from behind a screen? If so, in what circumstances can this occur?

ANS: Yes, see under 2.3

- 2.12 How is the prevention of repeated victimisation ensured?

ANS: See under 1.2

- 2.13 Are the rights of victims, witnesses and vulnerable persons foreseen only for nationals or also for foreigners? Under which circumstances?

ANS: The rights are foreseen for nationals and foreigners alike

3. Role of prosecutors in protecting the rights of victims, witnesses and vulnerable persons

- 3.1 How are the rights of victims, witnesses and vulnerable persons within the framework of criminal procedure enforced and guaranteed? What is the role of prosecutors in this matter?

ANS: see under 1.2.

- 3.2 Is this role of prosecutors established in the law or other legal instruments? Is this role established in the rules of ethics and professional conduct of prosecutors?

ANS: The role is established by Criminal Procedure Act, see under 1.2.

- 3.3 How is this role fulfilled in practice? How do prosecutors cooperate with other organs of state in fulfilling this role, and do prosecutors have supervisory or monitoring functions?

ANS: The roles are fulfilled in practice by cooperation with the police, and Centers for social care, as well as with the Center for special guardianship, and other state bodies.

- 3.4 Can victims, witnesses and vulnerable persons apply directly to prosecutors for protection of their rights?

ANS: Yes, they can apply to the police, prosecutors and courts, under Art. 46. of the Criminal Procedure Act.

- 3.5 Can prosecutors, at their own initiative, start legal action for protection of the rights of victims, witnesses and vulnerable persons?

ANS: Yes, the prosecutor can inform the Center for social care or other state bodies on their own initiative.

- 3.6 Concerning assistance to victims, witnesses and vulnerable persons, do the prosecutors interact with other state bodies, private entities or NGOs?

ANS: Yes, see above.

- 3.7 Do the prosecutors benefit from specific training on the protection of the rights of victims, witnesses and vulnerable persons? Does such training also involve prosecutorial staff and law enforcement agencies? Do the prosecutors play a role in carrying out such training?

ANS: Yes, there are education projects organised by the Judicial Academy.

- 3.8 Any other relevant point you wish to raise.