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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. 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?

Definitions of victim of crime on one side and witness of crime on the other are separated in our criminal procedure law. However, at the same time one can be a victim and a witness of the crime. At this point relevant articles for both apply.

According to Criminal Procedure Act (hereinafter CPA) the comparable expression used to define a victim is *the injured party*. This term denotes the person whose personal or property rights have been violated or jeopardised.

The witness of crime is a person likely to give some information about criminal offence, the perpetrator and other material circumstances. Such person shall be summoned as a witness and shall testify, except in circumstances defined by CPA.

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?

In criminal procedures which are taking place due to criminal offences against sexual inviolability, the criminal offence of neglect of children and cruel treatment and the criminal offence of trafficking in human beings, the child – injured party must from the initiation of the criminal procedure have an authorised person to care for their rights, particularly in connection with the protection of their integrity during examination before the court and during the exercising of property law- demands. Children - injured parties who have no authorised person shall be assigned one from among lawyers by the court ex officio. In a preliminary and criminal procedure the child injured may be accompanied by a trusted person. Other injured party may also be accompanied by such person when he or she is a victim of violence.

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?

Within the framework of Slovenian criminal law there is no legal term as “vulnerable persons”. However, children, elderly persons and persons with physical or mental disability could be identified under mentioned term. Special regimes are provided for those categories when they appear before court as witnesses and will be outlined further below.

As the term “vulnerable persons” implies for that persons to be more protected in procedure, it is important to mention Article 141a of CPA that refers to obligation of providing personal security of witnesses who face real danger for their life or body, for their close relatives and other endangered persons. On this ground the Witness Protection Act which regulates the conditions and procedures for the protection of witnesses and other persons who are endangered due to co-operation in criminal procedures was adopted. Protection is guaranteed in pre-trial, during and after criminal procedures for determined criminal offences.

2. The rights of victims, witnesses and vulnerable persons

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?

The injured party (victim) has following rights:

- to use the language he/she understands;
- to be accompanied with trusted person of his/her own choice;
- to be notified of the course of the proceedings;
- to be notified of their role in the proceedings;
- to petition property rights claim;
- to be notified of provisions of Compensation to Crime Victims Act;
- to be notified of the right to appeal;
- to provide themselves an assistance of a lawyer;

- to be notified with governmental /non-governmental organisations for helping and supporting victims of crimes;
- to be notified with provisions of Family Violence Act;
- other rights explained further below.

The witnesses do not have such wide scope of rights. The rights of a witness comply with their role in procedure and are in more detail described below.

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

Some of them are fundamental rights established in the Constitution of RS, some of them originate from sectoral laws.

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).

Please see the answer under 2.1.

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.?

The victims, witnesses and vulnerable persons can be informed of their rights in two ways; formal and informal.

Every competent authority shall inform victims of their rights before performing an action. The police has to, for example, prevent further jeopardising of a victim of other persons, ensure the victims get needed help, provide sufficient information for victims also on different possibilities and competent institutions they can get help from, inform them of the rights they have according to the Family Violence Act and inform them of the consequences of the false reporting of the crime. Because the state prosecutor does usually not have the first contact with a victim, the police provides all those information in all matters. After the criminal matter is put before the court, the judge is responsible to take care of a victim's rights.

The informal ways of informing are leaflets and web sites of different organisations (competent authorities, NGO's,...).

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

The penalty/sanctions depend on the seriousness of the violation and the type of the violated rights.

The violation of human rights and basic freedoms provided by the Constitution results inadmissibility of evidence gained on such basis. The same rule applies when some of the provisions of criminal procedure are violated. In these situations the court is not permitted to base its decision on such evidence.

Victims or witnesses whose rights were violated are entitled to bring an action before civil court to claim compensation.

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?

Within the criminal procedure a special regime is provided for children and elderly people when they are requested to testify:

- minors under the age of sixteen shall be summoned as witnesses through their parents or legal representative, except where that is not possible for reasons of urgency or some other circumstances (Art. 239/II of CPA);
- witnesses who by reason of old age, illness or serious disability are unable to comply with the summons shall be examined in their dwelling places (Art. 239/III of CPA).

Furthermore, according to Article 240/IV of CPA, a person under age, especially if that person has suffered damage from the criminal offence at issue, should be examined considerably to avoid producing harmful effect on his state of mind. If necessary, a pedagogue or some other expert should be called to assist in the examination of a minor. When interrogating witnesses younger than 14 years, a person whom the witness trusts may be present. For children Article 65 of CPA, as explained above, also applies.

If the witness is deaf he shall be asked questions in writing, and if he is dumb he shall answer questions in writing. If the interrogation cannot be carried out in that way, a person who knows how to communicate with the person shall be invited to act as interpreter.

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)?

None of the competent authorities in criminal procedure inform other bodies of decisions in criminal matters on their own initiative. If a decision-making body needs information on the matter it has to officially ask for them.

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

If a person is called to testify he or she has to do so. There is no provision in our criminal law that would excuse a person from testifying on a basis of that person's vulnerability. However, there are special provisions on examination of children at the main hearing that can be seen as a way to protect children from exposure and secondary victimisation:

- if a person is under fourteen the panel may order that the public be excluded from the examination;
- if a minor participates in the main hearing as a witness or the injured party, he shall be removed from the courtroom as soon as his presence is no longer required;
- direct questioning of persons under 15 years of age who are victims of criminal offences referred to in the third paragraph of Article 65 of this Act shall not be permitted in the main hearing. In such instances, the court shall decide that the records of previous questioning of such persons be read.

In instances from the above, parties may pose indirect questions. If the panel recognises that the questions are reasonably grounded and necessary for clarification of the factual situation, the panel may decide to request that investigating judge perform particular actions necessary for elucidation of certain facts if the performance of such actions at the main hearing would entail a considerable delay of proceedings or other serious difficulties. When the investigating judge acts under such a request of the panel, the provisions relating to investigative acts shall apply.

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

No refusal to bear testimony is admissible except in cases prescribed by CPA:

- according to Article 235 of CPA the following may not be examined:
 - o a person who, by giving testimony, would violate the obligation to keep an official or military secret, until the competent body absolves him of that obligation;
 - o defence counsel, on matters confided to him by the accused, unless the accused himself requests so.
- according to Article 236 of CPA the following shall be exempt from the duty to testify:
 - 1) the spouse of the accused or the person with whom he lives in domestic partnership;
 - 2) persons related to the accused by blood in direct line, persons related to him collaterally at three removes and persons related to him by marriage at two removes;
 - 3) the adopter or adoptee of the accused;
 - 4) a father confessor, on matters confessed to him by the accused or by another person;
 - 5) lawyer, doctor, social worker, psychologist or another person, on facts he came to know in the exercising of his profession, if bound by the duty to keep secret what he learns of in the exercising of his profession, except in instances referred to in the third paragraph of Article 65 of this Act, or if statutory conditions are fulfilled under which such persons are absolved from the duty to keep secret or are bound to disclose confidential information to competent bodies;
- according to Article 238 of CPA a witness shall not be obliged to answer those questions by which he would be likely to disgrace, inflict considerable material damage or make liable to criminal prosecution himself or his close relatives as defined above.

With reference to the question of mental ability of a witness the court itself has the obligation to ensure that witnesses is capable of understanding the legal instruction (duty to speak the truth and that he or she may not withhold anything, whereupon he or she shall be warned that a false testimony is a criminal offence, witness shall also be instructed that he or she need not answer questions referred to in Article 238 of this Act (see above)) and capable of testifying. The court shall proceed in this manner regardless of whether a witness is a child or an adult. Only experts - specialists possessing the necessary expertise, can be engaged for determination or assessment of proper mental ability of a person.

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?

Current legislation does not provide for the evaluation of vulnerable persons.

11. Are there, in your country, 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?

According to CPA the investigating judge may order that an act of investigation be recorded by a sound recording or video recording device. The investigating judge shall inform thereof the person to be interrogated in advance. The recording shall immediately be reproduced and corrections and explanations shall also be recorded in case the interrogated person requests so. The investigating judge may order that the sound recording be completely or partly transcribed on paper. The transcription shall be examined and certified by the investigating judge and enclosed with the record of the act of investigation performed. This article applies also for the main hearing.

The examination of a witness is performed, using modern technical devices that include computer technology, electronic communications networks and other devices for the transmission of images and sound:

1. if a witness has a status of endangered person under provisions of Witness Protection Act and a real danger to his/her life or body, or the life or body of another endangered person exists;
2. if a witness's identity is concealed and a real danger to his/her life or body, or the life or body of another endangered person exists in case he/she would come to the authority that conducts investigatory measure;
3. other circumstances that excuse a person to appear before court and testify.

12. How is the prevention of repeated victimisation ensured?

The prevention of repeated victimisation is ensured:

- audio - video recording;
- examination with assistance of an expert;
- deletion of all or certain data from the criminal file;
- the marking of all or some of the data from the preceding point as an official secret;
- the issuing of an order to the defendant, his counsel and the injured party or his legal representative and counsel to keep certain facts or data secret;
- the assignment of a pseudonym to the witness;
- the taking of testimony using technical devices (protective screen, devices for disguising the voice, transmission of sound from separate premises and other similar technical devices);
- video conference;
- exclusion of the public from trial;
- if the victim is under age and the victim of domestic violence the authorities are not allowed to publicly disclose any information that may reveal victim's identity irrespective of parents' consent.

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

Nationality cannot be a factor for being treated differently in proceedings. There are some additional rights to facilitate the participation of the foreigner in the investigation. Foreigners have the right to use the language they understand. An interpreter free of charge will be provided to assist them when they attend investigative actions. Documents and other pieces of evidence will also be translated for them free of charge.

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

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?

The rights of parties in criminal procedure shall be enforced and guaranteed in all phases of procedure. Depending on the phase, the competent authority shall safeguard the rights constantly.

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?

There are no special legal provisions for prosecutors for this role. The Code of Ethics of State Prosecutors contains only general provisions. The Code stipulates that in performing duties, a state prosecutor is independent of any direct or indirect illegal instructions, influences, incentives, threats, pressures or interference in their decision-making process, irrespective of from where, and for what reasons, such unauthorised interventions originate and shall protect fundamental human rights and freedoms, and the human dignity and personality of all participants in proceedings in all actions.

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?

Vigilance of the state prosecutor is required to make sure all actions in all phases of procedure are legal. In case of violation of any provision the prosecutor is obliged to eliminate the violation by himself if possible, warn the court of violation or file a motion for exclusion of illegally obtained evidence.

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

They can but it is not specially regulated.

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

Under current provisions the State Prosecutor General shall file applications for the admission of the endangered witness into the protection programme with the Commission on the proposal of the competent state prosecutor. This legal action is the only one regulated for now in our criminal procedure law.

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

There is no direct cooperation between prosecutors and other state bodies, private entities or NGO's. The major role concerning assistance to victims, witnesses and vulnerable persons play the police officers who first come in touch with those persons.

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?

There are no such activities planned for prosecutors.

8. Any other relevant point you wish to raise.

Legal provisions mentioned above are those currently in force. It is expected that within a short period of time the Amendment CPA will be adopted. With reference to the subject matter of this questionnaire we can report that proposed amendments are moving in the direction of a greater protection for victims of crimes, with particular focus on protection of vulnerable group of victims. The Amendment CPA implements 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.

In light of the above, these are the most important changes:

- added new definition of the “*injured party with specific protection needs*”, whose personal or property rights were considerably harmed and because of personal characteristics of the victim or vulnerability, the type, nature or circumstances of the crime or because of conduct of perpetrator or injured party in pretrial/criminal procedure phase or outside the procedure, a specific need to protect their mental integrity during specific acts in the procedure exists. The terms *injured party with specific protection needs* and *injured party* refer to family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;
- not only children and victim of violence (Article 65 of CPA) but also other victims when their personal characteristics or vulnerability, the type or nature of the crime require for them to be accompanied with a person of their choice, except in cases where such assistance could be in contrary to the interests of criminal procedure or interests of injured party;
- imposes an obligation on the police and prosecution service to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact;
- wider range of information that have to be communicated to the natural person/ injured party from the first contact with competent authority in pre-trial phase or during criminal procedure. Among those also the right of injured party to be notified when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention;
- formalised procedure for assessment of victims to identify specific protection needs. The police in the first place will carry out the assessment with possibility for the prosecutors to upgrade it when necessary. This procedure aims for identification of specific protection needs and determination whether and to what extent they would benefit from special measures in the course of criminal proceedings due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. Those special measures are sound recording or video recording of an act of investigation,
- medical examinations shall be limited and carried out only for the purposes of criminal procedures;
- interviews with the victim being carried out in premises designed or adapted for that purpose;
- obligatory recording of interview with the child victim (under 15) for enslavement, criminal offences against sexual integrity, criminal offences against marriage, family and youth.