



27th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Yerevan (12-13 October 2006)

**VICTIMS:
PLACE, RIGHTS AND ASSISTANCE**

*Address by Mrs. Judit LÉVAYNÉ FAZEKAS,
State Secretary, Ministry of Justice and Law
Enforcement of Hungary*

www.coe.int/minjust

Ladies and Gentlemen, Dear Colleagues,

Criminal offences cause serious and often irreparable consequences to victims. Victim support means ensuring victim's rights are met, on the one hand, and provision of practical assistance, on the other. These measures may substantially improve the situation of victims and lessen harmful effects of criminality.

Victim's rights are covered by several legal acts in Hungary.

Let me present you those provisions of the Code of Criminal Procedure that serve the protection of victims.

The law uses the term "injured party" instead of "victim" for persons suffering from criminal offences. According to the definition of the Code of Criminal Procedure, an injured party is a person whose rights or rightful interests were harmed or endangered by a criminal offence.

In Hungarian criminal procedure, an injured party may have several standings. Thus, an injured party can be "only" an injured party, a civil suitor, a substitute civil suitor, or a civil party. He can be a witness and the subject of expert examination in the evidencing procedure.

The standing of the injured party as civil suitor or substitute civil suitor is of outstanding importance since in this case he may act on behalf of the prosecution with regard to a particular criminal offence. In these cases, he is also entitled to the rights deriving from the representation of the accusation, together with those of the injured party.

According to the law, a person acting as an injured party in a criminal procedure is entitled to the following rights:

- presence at procedural actions;
- inspection of documents concerning him/her;
- right of motion and to make comments in any phase of the criminal procedure;
- right of questioning and right of motion for query;
- receiving information about his/her rights and obligations in the criminal procedure.

These rights of the injured party in regard of the criminal procedure may be exercised through a representative as well, except where he/she is obliged to participate in person. Rights of the representative are identical with the procedural rights of the represented person, including the respective rights of presence, inspection of documents, making motions and comments, questioning, asking for information and speaking.

I also emphasise that the Hungarian Code of Criminal Procedure pays special attention to the age-related features of the injured party. Legal provisions may contain derogations at certain places if the injured party or the witness is a minor. In this case, it should be ensured that the criminal procedure may not affect the development of the minor to his/her detriment, if possible. This is what the provisions of the Code aim at where lay down limitations regarding the possibility to hear minors as witnesses, and where they provide for an extraordinary criminal procedure.

In my view, it is important to lay stress on the technical possibility of conducting trials through closed-circuit telecommunications networks, thanks to technical development. This means that the trial is held without the members of the court, the person to be heard and the participants of the trial being present together in the trial room, and their contact is ensured only by the application of an audiovisual system capable of transmitting moving pictures and sounds, which means that they can see and hear each other at the same time. Its introduction was justified by the importance of showing consideration to, and ensuring protection for, the witnesses as well as of the quick and safe conduct of the procedure.

Besides the possibilities already mentioned for the protection of the injured party, I also call your attention to two legal institutions deemed as new ones in Hungarian law of criminal procedure, i.e. keeping distance and mediation.

First, let me tell you some words about the institution of keeping distance.

As from 1 July 2006, the Code on Criminal Procedure was supplemented by a new coercive measure against the defendant, namely his/her obligation for keeping distance.

Keeping distance means that the right of the defendant to free movement and the free choice of the place of residence are restricted. It may be applied only in cases where the suspicion regarding a criminal offence liable to imprisonment is well-founded but to order preliminary arrest is not justified while it is reasonable, however, to assume that, with regard to the category of the criminal offence, the conduct of the defendant before and during the procedure and the relationship of the defendant and the injured party, the defendant would prevent, render more difficult or endanger the evidencing procedure by influencing or intimidating the witness if left in his/her residence.

The Court has to examine whether the category of the criminal offence giving rise to the procedure is such (e.g. criminal assault and battery or any other kind of violent offence) as to cause justified fear for the injured party from the defendant. What the Court should also pay attention to within the frames of judicial examination are the relationship between the defendant and the injured party, whether the situation and living conditions of the defendant and the influence by the defendant on the injured party justify the Court to order keeping distance, the extent to which the conduct of the injured party gave rise to the action serving as grounds for the ordering of keeping distance, and, finally, the Court should take into consideration the defendant's conduct during the procedure.

When the Court passes an order, according to the foregoing, on keeping the defendant distant, the person subject to the order should, according to the rules laid down in the court decision,

- leave the specified place of residence, and keep away from it for a period as defined by the Court order;
- keep distant from the specified person or the places where this person resides and works at, the educational and health institutions regularly attended by this person for medical treatment and the building that he/she regularly attends for the purpose of exercising his/her religion for a period as determined by the Court;
- refrain from contacting the specified person either directly or indirectly. This latter includes the prohibition of personal meeting and contact through telecommunications means such as phone or e-mail.

Keeping distance is an alternative to preliminary arrest; when ordered, distance-keeping means a level of the restriction of freedom close to the legal disadvantages of other coercive measures

resulting in deprivation of liberty. Although the individual's free movement is only partially restricted when ordered to keep distance, he/she may, however, be subject to serious restrictions in other respects, namely as regards his/her right to his/her property and the way he/she is allowed to exercise this right. For, when the Court passes an order on keeping a person away from the injured party, he/she may not only be obliged to leave his/her place of residence but, when he/she and the injured party work at the same place, he/she may as well be prohibited from going to work, thus his/her subsistence may also be endangered.

Therefore, application of the above-mentioned coercive measure should be conditioned upon careful judicial examination of the given circumstances of the case and any other relevant conditions, as well.

Finally, let me tell you about a new instrument of modern penal policy, namely mediation.

Ensuring legal conditions for the application of mediation is a long-felt need in Hungarian criminal procedure.

Recommendation No. R(99) 19 of the Ministerial Committee of the Council of Europe on mediation applied in criminal procedure called the attention of the national legislator on the proper recognition of the agreement reached between the offender and the injured party and the weight of the resulting compensation within the criminal procedure. The Recommendation lays down principles to be followed in national legislation.

Also, Framework Decision No. 2001/220/JHA of the Council of the European Union on the standing of victims in criminal proceedings has a main focus on the promotion of the agreement between the offender and the injured party and on taking this agreement into account in the criminal procedure. Article 10 of the Framework Decision requires the Member States to promote the mediation in criminal matters regarding the criminal offences as defined by their own legislation. The Framework Decision defines the institutional framework and the general rules of mediation; but, at the same time, it stipulates that its provisions have to be applied by the Member States in accordance with their respective domestic laws, i.e. the Member States are obliged to establish rules of implementation in line with their domestic legislation, by freely choosing the applicable forms and methods.

In line with the above-mentioned international trends, mediation was introduced into Hungarian criminal procedure as from 1 January 2007.

Mediation is a procedure conducted in parallel with the criminal procedure; its linking points with the latter one, i.e. the conditions of its ordering and the legal consequences of a successful procedure are established by the Code of Criminal Procedure, but a special Act will lay down its detailed rules.

The aims of mediation are to promote providing compensation for the consequences of a criminal offence and to ensure the suspect's law-abiding behaviour in the future. During mediation, the aim is to reach an agreement between the suspect and the injured party, giving rise to the active regret of the suspect.

Mediation is only possible in case of criminal offences against persons, traffic violation, or crimes against property liable to punishment of not more than five years' imprisonment. In these cases, providing compensation for the damage to the injured party is a priority interest compared with the

damage caused by the breach of the legal order, which is considered by the public prosecutor, as secondary, except for cases which led to so serious consequences that the State may not dispense with the enforcement of its sanctioning power even if the defendant and the injured party reach an agreement.

A case may be referred to mediation only once during the criminal procedure, and mediation is only applicable subject to the preliminary consent of the parties thereto by free will. Should mediation proves to be successful, the public prosecutor terminates the procedure.

Thank you for your attention.