

Consultative Council of European Prosecutors (CCPE)

- The Secretariat of the CCPE
- To the hands of Mr. Artashes Melikyan

Dear Sir,

Subject: My answer to the questionnaire for the preparation of the
CCPE Opinion No. 12 (2017)

1. Definitions

1. There is a definition of a victim in the commentary to the Criminal Law, for example in connection with the offense „rape“ or „trade in human beings“ but not in the Criminal Code itself.
2. There are not special regimes for victims without the institution of a „Safe House“ in the case of atrocities at home against women or children, and in case of international trade in human beings, the institution of an „Immigration Center“.
3. A definition of vulnerable persons is laid down in the following law codes: the law of public welfare and social security, the law on health care, the law on patriarchy and the law on protection of mother and child.

2. The rights of victims, witnesses, vulnerable persons

1. Within the framework of criminal procedure the law on protection of witnesses does exist for years. For witnesses it schedules the right to appear on court with a new identity or under initials.
2. Law on protection of witnesses, see above 1.
3. In the above mentioned law the complete scale of rights to the witnesses in a criminal procedure is scheduled, beginning with the protection of his identity if necessary and ending with his hidden appearance in the final conviction of the criminal and including the right of complaint about an infringement of the prosecutor or his staff.
4. The witnesses or other victims or vulnerable persons are informed about their rights by reading them their rights by hand a prepared paper. This information is officially given them by the police officer or the prosecutor respectively according to the law of criminal procedure.
5. A witness who bears false testimony could be sentenced by prison up to six months. To affect a witness can be sentenced by prison from six months up to five years.

6. The specific rights of children, juveniles, persons of mental incapacity or mental illness as well as of physical disabled persons are scheduled in the Criminal Code of Conduct.
7. Decisions which affect the rights or the social situation of a vulnerable person are for example brought to the attention of the parents, the family's advocate, the guardian, the court of guardianship, in case of compensation for the victim, to the attention of the Social Court and in case of the adjudication of a juvenile, to the probation officer.
8. Such vulnerable persons alone cannot bear testimony but only following authorization and/ or presence of their parents or their guardian respectively. Before a testimony of such vulnerable persons, his/ her mental responsible capacity, in case of a criminal offense his/ her criminal responsibility has to be assessed.
9. In principle children as well as mentally disabled persons cannot bear testimony. The obligation to assess who is a mentally disabled person is given in the hands of the court's physician. The right to refuse to give evidence is guaranteed by the criminal law for all persons only in case that they are personally involved in the crime concerning.
10. Vulnerable persons are evaluated by the responsible prosecutor. who has to assess the personal risks concerning the witness of a crime. The same prosecutor has to decide about protective measures of the witness of a crime. Such measures could be to give a new identity before or after the testimony.
11. The special procedures for bearing testimony of a witness of crime depend on the dimensions of the crime and the risks for the life of the witness or the danger from the side of criminals or the criminal organization involved. The testimony itself could be filmed or recorded and/ or given from behind a screen.
12. There is not a special manual to prevent a repeating victimization. In case of outrage against the wife or the children at home a reiteration of such attacks cannot be prevented at all. In other cases of violence could be prohibited the entering the house of the victims by the former attacker.
13. in general foreigners have the same rights as the nationals.

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

1. So far as the criminal procedure is concerned, the above mentioned rights of victims, witnesses and vulnerable persons are enforced and guaranteed by the management of the Prosecutor's Office. The prosecutor in charge of the case is the dominant actor in this matter. It is visible that his role will be further reinforced in the upcoming changes of our Code of criminal conduct.
2. See above 1.
3. In practice the prosecutor is directed to cooperate with the police, the other courts involved in the case and special state's institutions responsible for vulnerable persons, victims or witnesses. The prosecutors in general are strongly supervised by the hierarchy of the Prosecutor's Office on the

different levels of Bosnia and Herzegovina. In case of mistakes by the prosecutor or his staff there are sanctions under the authority of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

4. Victims etc. could apply directly to prosecutors for protection of their rights.
5. Prosecutors need the approval of the judge to start legal actions protection of the rights of victims etc.
6. Interaction for example takes place with other state bodies as the above mentioned institutions for social welfare, the police and the different courts on the three levels of the state Bosnia and Herzegovina. The cooperation with private entities, so far they exist at all, is not quite usual at the moment. But some NGOs are helpful by providing education of prosecutors and judges in modernizing our social law in general. Policemen, prosecutorial staff and law enforcement agencies are usually included in the educational seminar.
7. See above 6.
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