

THE VICTIMOLOGIST

Volume 3 Number 2 October 1999

NEWSLETTER OF THE WORLD SOCIETY OF VICTIMOLOGY

Crime Victims in the Bulgarian Judicial System

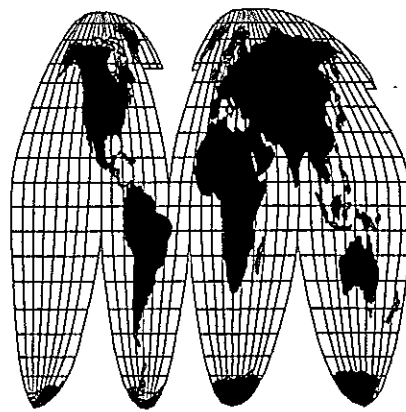
The Implementation of the UN Declaration of Basic Principles of Justice on Victims of Crime and Abuse of Power in Bulgaria

Dobrinka Chankova

For many years it was claimed that the Bulgarian legislators provided adequate protection of the victim and this is a traditional achievement of Bulgarian legislation. However, in Bulgaria we had totally forgotten the victim for a long time. Despite the democratic changes after 1989, legislators paid more attention to the offender than to the victim.

While some basic protection for the victim of crime has traditionally been provided, we have not achieved the full implementation of the UN Declaration of Basic Principles of Justice on Victims of Crime and Abuse of Power. Many of the recommendations of the UN Declaration of Basic Principles of Justice on Victims of Crime and Abuse of Power were and still are "too luxurious requirements",

according to our domestic policy-makers, and therefore not applicable to the Bulgarian reality. Nevertheless some positive developments can be pointed out.



... the victim is entitled to participate in the trial...

In the following a brief description of the traditional position of victims of crime in Bulgaria will be given. Next, recent changes in the legal status of victims of crime are presented. The article closes with a brief discussion of some of the remaining shortcomings of the system.

Traditional provisions for victims of crime

Who is a victim?

The basic quality of the victim is that he/she is a participant in the social relations directly affected by the crime. A victim can be a natural person, a legal person or the state. Collective bodies cannot be victims because of the lack of legal personality. In this situation there will be numerous individual victims.

Only the subject, whose rights explicitly indicated in the corpus delicti are threatened or harmed, can be a victim. It is not necessary for the victim to sustain real damages in order to be considered a victim. He /she is an object of protection even in cases of attempt as well as in cases of preparation to the crime.

In numerous codifications the legislator has specified that certain qualities and states of the victim can lead to a more severe penalty. For example some personal qualities such as age (very young or very old), some social qualities such as nationality, religion, race as well as some special states as illness, unconsciousness, helplessness.

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Private prosecution

According to the Bulgarian Criminal Procedure Code the victim is entitled to participate in the trial as a witness, a private accuser, a private complainant and plaintiff. He/she defends his/her rights personally or with the help of an attorney.

The person, who has sustained material or immaterial damages by the crime that is being prosecuted by the public prosecutor, has the right to take part in the trial as a private accuser. After his death this right passes on to his legal heirs.

The person who has suffered from the crime that is prosecuted on the ground of a complaint by the victim could raise and uphold an accusation as a private complainant.

In order to provide better protection of the victim the law permits a civil claim to be lodged both against the accused and against other persons who carry

civil liability for the damages caused by the crime. Because of the low rate of detection of crime and of sentenced persons a significant part of the victims cannot avail themselves of their rights in accordance with the relevant procedure. The extremely long, torturous trial even causes a secondary victimization.

Dignity and respect

We have to admit that the only special provision somehow related to treatment of the victims with compassion and respect for their dignity is Art. 99 of the Criminal Procedure Code. According to this provision, minors shall be interrogated as witnesses in the presence of pedagogue or psychologist, and where necessary, also in the presence of the parent or guardian. Underage witnesses shall be interrogated in the presence of the above-mentioned persons, if the respective body finds this necessary. With permission of the body conducting the interrogation,

these specialists may put questions to the witness.

Recent Developments

During the last decades all over the world the policy-makers, criminal justice practitioners and criminologists have become more and more concerned with the victim's position in the criminal justice process and with protecting the victim's interests. In recent years this favourable climate expanded to the former socialist countries, including Bulgaria. Trying to follow this tendency Bulgarian legislators, executive, judiciary and scientists have concentrated their efforts to protect the rights of the victims (real and potential).

The trial

The criminal procedure has been changed recently. The three-instance court system has been adopted. It is highly controversial whether this long procedure is the best way for securing the victim rights. However, some positive steps have been taken, speeding up and optimizing the preliminary proceeding and admitting evidence gathered by special intelligence. The latter must, however, be in accordance with the basic principles of democratic state, the rule of law and human rights. In this way the possibilities to establish the perpetrator increase and the interest of the victim could indeed be better protected.

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From The Editor's Desk ...

Jo-Anne Wemmers

In this issue of *The Victimologist*, we continue our series on the implementation of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in countries around the world. In her article, Dobrinka Chankova, presents the Bulgarian situation.

In his Message, the President, Jan van Dijk informs the members of recent developments in and around the Society. An important event is of course the upcoming symposium in Montreal. Members are encouraged to respond to the call for papers found in this issue.

Another important development is the launching of the victimology website (www.victimology.nl): The website

includes information on the UN Declaration as well as the recently completed Handbook for Practitioners and the Guide for Policymakers. In addition, the makers of the website - a joint project of the UN, the WSV and the Ministry of Justice of The Netherlands - want to develop a database of best practices in victim services. To this end, a questionnaire was included in the December 1998 issue of *The Victimologist*. Unfortunately, the response to this questionnaire by the WSV membership was very low. The purpose of the database for best practices is to facilitate the implementation of the UN Declaration around the world. It is hoped that by sharing information on what works and what doesn't we can learn from each other and thereby

improve the level of services available in each of our countries. With 400 members around the world, the members of the WSV can play an important role in the enhancement of the position of victim of crime throughout the

President's Message

MEETINGS OF COMMITTEES

Jan van Dijk

The executive committee was scheduled to meet in Dubrovnik, during the victimology course. Due to the war situation in the region this meeting had to be cancelled. Instead members of the EC met twice in Vienna. Highlights were the consultations with the Canadian organisers of the next symposium and the upgrading of the Society's administration. It is now possible to pay membership dues with credit cards. It is hoped that this option will facilitate payments and help to increase membership. A new membership directory and a brochure are in the making. Unfortunately the publication of the proceedings of the Amsterdam symposium was delayed because two keynote speakers kept the editors waiting for their papers. The book is now scheduled to be released in the autumn. The EC has welcomed the offer of South Africa to host the symposium after Montreal. The Research Committee met for the second time in May this year, under the chairmanship of Prof. Marc Groenhuysen. Nine members as well as Marie Marthe Cousineau, of the Scientific Committee of the next Symposium, attended the meeting. A new version of the research agenda will be finalised by Jo Goodey. The Committee takes pride in its research agenda and hopes that

it will be appreciated by the members - or annoy them- but in any case trigger many responses through the website (SEE BELOW).

VICTIM SUPPORT INTERNATIONAL

In April this year, the United Nations Commission on Crime Prevention and Criminal Justice held its eight session in Vienna. The topic of victim support was discussed on the basis of a report of the secretariat. The report reflected the responses of governments to a draft action plan for victim support. Regrettably only some twenty governments had sent in responses. Those governments that did respond expressed support for the action plan. Paul Friday and Maria de la Luz Lima contributed to the debate on behalf the Society.

For a proper understanding of the draft action plan it is important to know that it has been under consideration for some time and that major parts have already been implemented, notably the preparation of a manual and policy guide on the UN declaration on rights of victims and the opening of a website with best practices. The Centre for International Crime Prevention will shortly publish the said documents in several UN languages. They are also available on the newly opened website: WWW.

VICTIMOLOGY.NL. Members are invited to visit the site and make an active use of it. The site should be seen as an important

tool for the society to exchange information and facilitate communication worldwide.

The commission has decided to make the proposal for national and regional action plans on victim support as well as the proposal to explore the feasibility of an international Fund for victim support part of the agenda of the Congress on Crime Prevention and Criminal Justice which will take place on 10-17 April in Vienna next year. These proposals are integrated in the draft for the political Declaration of the Congress.

The topic of victim support is also otherwise central to the agenda of the Congress. One of the four themes of the Congress is Offenders and victims: accountability and fairness in the justice process. As most members know, the UN's current crime programme focuses on transnational crime. The centrepiece is the draft Convention against Transnational Organised Crime that will be ready for adoption in September/October 2000. This does not imply less attention for victim issues, though. The draft convention itself contains an article on the protection of witnesses and victims (Art. 18). Paragraph four reads as follows:

"States Parties shall take measures to provide assistance to victims of crimes covered by this convention, enable views and concerns of victims to be presented and considered at appropriate stages of the criminal proceedings against the offender in a manner not prejudicial to the

President's Message continued...

rights of the defence, and establish procedures relating to restitution by offenders to victims of such crimes ". Attached to the convention will be protocols against trafficking in human beings, in particular women and children and against smuggling of migrants. It goes without saying that victim protection is an integral part of these protocols.

Victim protection is particularly important in cases of trafficking in women and children. Organised crime syndicates involved in this evil but profitable trade are rarely brought to justice because the women and children involved refrain from reporting or testifying. The Centre has recently started with a global programme against trafficking. A mission headed by Winnie Sorgdrager, former minister of Justice of the Netherlands and speaker at the Amsterdam symposium, will initiate technical cooperation in the Philippines. Strengthening of local support facilities in countries of destination for victims might well be one of the priorities.

In the meantime the European Commission has taken up an interest in provisions for travellers within the Union who are victimised by crime as part of its policies to ensure the free flow of persons in the Union. A policy document on a possible initiative of the Commission is soon to be released for consultation. The document will mainly cover practical assistance, legal aid and state compensation for tourists but also touch on over all provisions for crime victims in the Union. Several members of

the WSV have advised the Commission on these issues as members of an expert committee. The administrative responsibility lies with Mrs Gisele Vernimmen of the Task Force for Cooperation on Justice and Home Affairs, Judicial Cooperation.

SARAJEWO

The war in Kosovo has cast a shadow over the first months of 1999. Many citizens were victimised. Victim support in the Balkans will remain an important priority. The WSV- affiliated Victimology Institute in Sarajewo has had a difficult start. The political situation in the country is a complicating factor. A study was carried out on the needs of repatriated refugees at the request of the German government. The Dutch Ministry of Justice has pledged to continue its financial support for the Institutes overhead. More contributions are needed. Members who take an interest in the institute's work are kindly invited to contact its office. The address is:

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The board is now in the process of appointing a new visiting director. The institute will focus on the evaluation of victim support delivered and on the training of police and other professionals.

TO CONCLUDE

The cancellation of the course in

Dubrovnik and the various other meetings planned in relation to it, was a major setback. It was the only right decision, though. It was irresponsible to bring students to Dubrovnik at the time. Let's hope the situation will be much better next year. Fortunately some fifteen members were able to meet and consult with each other in Vienna. In the meantime modern means of communication have become available. Let's make use of the website: VICTIMOLOGY.NL.

10th International Symposium on Victimology

Research and Action for the Third Millennium

August 6 - 11
2000

Montreal, Canada

Bulgaria

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Witness protection

Protection of the witnesses during the criminal proceedings has recently been introduced.

According to Art. 97a of the Criminal Procedure Code, "the bodies of the preliminary proceedings or the reporting judge shall, upon request or with the consent of the witness, take measures for his/her protection, should there be sufficient grounds to presume that due to the testimony there has arisen or may arise real danger to the life, health or the property of the witness, his relatives of ascending or descending line, brothers, sisters or spouse". The protection shall be provided by means of keeping his/her identity secret (so called anonymous witness) and providing guards. The legislator considers that the witness will be motivated to testify when he/she does not risk becoming the next victim. The next step for the government is to provide funding and elaboration of the programs for the protection of the witnesses and persons having collaborated with the judiciary.

Victim assistance

A new Ministry of Interior Act entered into force at the beginning of 1998. This Act provides for the establishment of the Constabulary, a unit that is new to the Bulgarian system. The Constabulary operates within the framework of the Ministry of Interior. The assisting of crime victims as well as the citizens in risky situations, safeguarding the public order, detection and elimination of crime determinants (reasons and conditions for committing crime) are among the priorities of this unit.

At present, some NGOs are very active in victim assistance. They successfully compensate the delay or the lack of governmental actions. Worthy of mentioning is the ANIMUS Association, a NGO for the protection of women. The activities of ANIMUS include women as victims of crimes such as domestic violence and sexual harassment. A telephone hotline has been opened and now every crime victim can express her psychological problems and receive specialised help and advice. Together with the local government of Sofia, ANIMUS plans to soon open a centre for the rehabilitation of women-victims of violence.

Another NGO is the Assistance Centre for Torture Survivors (ACET). It has been working actively since the beginning of 1997. The medical specialists provide psychological, psychiatric and other qualified support to the victims of torture (refugees, prisoners, etc.) and their families.

Informal mechanisms

A particularly important part of the activities of some governmental bodies and NGOs is devoted to the elaboration and experimentation of a model of mediation as an alternative to the traditional justice system. Mediation strengthens the role of the victim and satisfies the victims' needs, both material and emotional. Within the restorative justice model he/she will be treated with real compassion and respect for his/her dignity. Undoubtedly, access to justice and fair treatment are essential victim's rights but they are not enough. The 21st century needs

something more - faster, more efficient, less expensive procedures. Relevant responses are mediation, reconciliation, arbitration, reparation negotiation programs, family and community group conferences etc. Guided by the principle that the restoration and restitution is of significant importance, in Bulgaria we have started discussions and pilot projects on mediation as an alternative to the trial. Presently, these efforts have been met with resistance - mainly from the judicial society, which strongly defends its interests, but we are optimists.

Crime prevention

Some progress in the crime prevention and victim related policies has already been achieved. An important element of the state policy is the protection of citizens from victimization. Victimological research identifies certain groups of people with a higher risk of becoming victims of crimes (women, children, disabled persons) and the typical mistakes in their behaviour. Using this information, comprehensive recommendations can be developed for potential victims, thereby reducing the likelihood of victimization. Mass media play an important role in pursuing the policy of protection of the citizens from victimization. They have launched various information campaigns on how to avoid violent crimes and financial fraud.

A very good example is the campaign related to the recent Bulgarian currency denomination. Mass media pay special attention to children as well. There are specialized educational TV

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broadcasts on avoiding children victimization. More than ten NGOs have developed projects designed to prevent street children and children in especially difficult circumstances from becoming crime victims.

In the National Strategy for Combating Organized Crime, the fight against organized crime and corruption was declared a first priority of the Government. New crimes have been penalized and more severe sanctions have been introduced in our Penal Code. It is difficult to say that this is the best way to protect society, but this is a relevant remedy for prevention.

Education

Nowadays we are paying more attention to the problems of victims in the educational process. The respect of human rights as well as the victim rights is not an inherent instinct of the personality and has to be shaped under the influence of the outside reality. We consider that this education has to begin in the primary schools or even earlier and should continue throughout

the child's education, while turning into a life-long education of the adult person. I am happy to say that the range of people involved in this education is expanding. Presently, not only pupils and students are involved, but also police and prison staff, journalists, barristers, magistrates, members of the armed forces, medical practitioners, social workers, civil servants. Special programs and courses have been developed and a lot of training workshops, colloquia, conferences, etc., have taken place.

Shortcomings

Of course, the Bulgarian victim-relating policy has many shortcomings. Although the idea of victim compensation through public funds is not alien to the existing legislation, it is not fully realized. The State Liability Act for Damages Caused to Citizens of 1988 provides for special compensation of persons who are victims of illegal actions by the state authorities, including judicial authorities, but it is only a partial decision. Based on economic difficulties, the Government of Bulgaria has not implemented the relevant part of

the UN Declaration and has not yet signed the Council of Europe Convention on the Compensation of the Victims of Violent Crimes. The economic difficulties are a good excuse, but it is high time something more was done for the crime victims. When the state is not in a position to guarantee the security of its citizen (Art.5 of the European Convention of Human Rights) and they become crime victims, the state should compensate them. And this will be an additional stimulus to be more efficient in prosecuting the offenders.

The Government of the Republic of Bulgaria has always declared that the protection of the interests of the victims of crime is one of the fundamental functions of criminal justice and it is doing its best to implement the measures, contained in the United Nations and the Council of Europe instruments on assistance to victims and the prevention of the victimization. It is high time that more concrete measures are undertaken.

1 On 5 July 1999 new notes were put into circulation. One new Bulgarian lev is equal to 1000 old Bulgarian levs

INTERNATIONAL REVIEW OF VICTIMOLOGY

Book Reviews

The International Review of Victimology is looking for people willing to write book reviews for the journal. The books reviewed in the journal cover a number of different topics, all relevant to victimology. For a list of books available and the guidelines for reviewers please contact:

Dr. Brian Williams,

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E-mail: bwilliam@dmu.ac.uk

A NEED FOR PAPERS AND IDEAS: A CALL FOR PROPOSALS!

The X International Symposium on Victimology calls out to all practitioners, professors and researchers in the field of victimology.

How can anyone be indifferent to an event that will bring together experts from across the globe? The Symposium will provide a unique opportunity to share experiences and knowledge, to pool our efforts to prevent victimization and to provide a better response to the needs of victims. We invite you to be part of this Symposium held in Montreal.

We ask you to send us the abstract of your paper you want to present. Or, if you have an interesting project and would like to share your knowledge and expertise, we strongly invite you to submit a project proposal. Whether you are part of the research community or involved in field intervention, the Scientific Committee awaits *your contribution to our symposium!*

Your proposal can be in the form of a paper session, debate, round table, poster session or a training session. However, abstracts or proposals must meet certain criteria. Thus, it should consist of no more than 500 words and must be submitted on the official abstract submission form. It must give a clear summary of the presentation and should describe the innovative aspect or nature of the contribution.

The closing date for the submission of proposals is **October 15, 1999.**

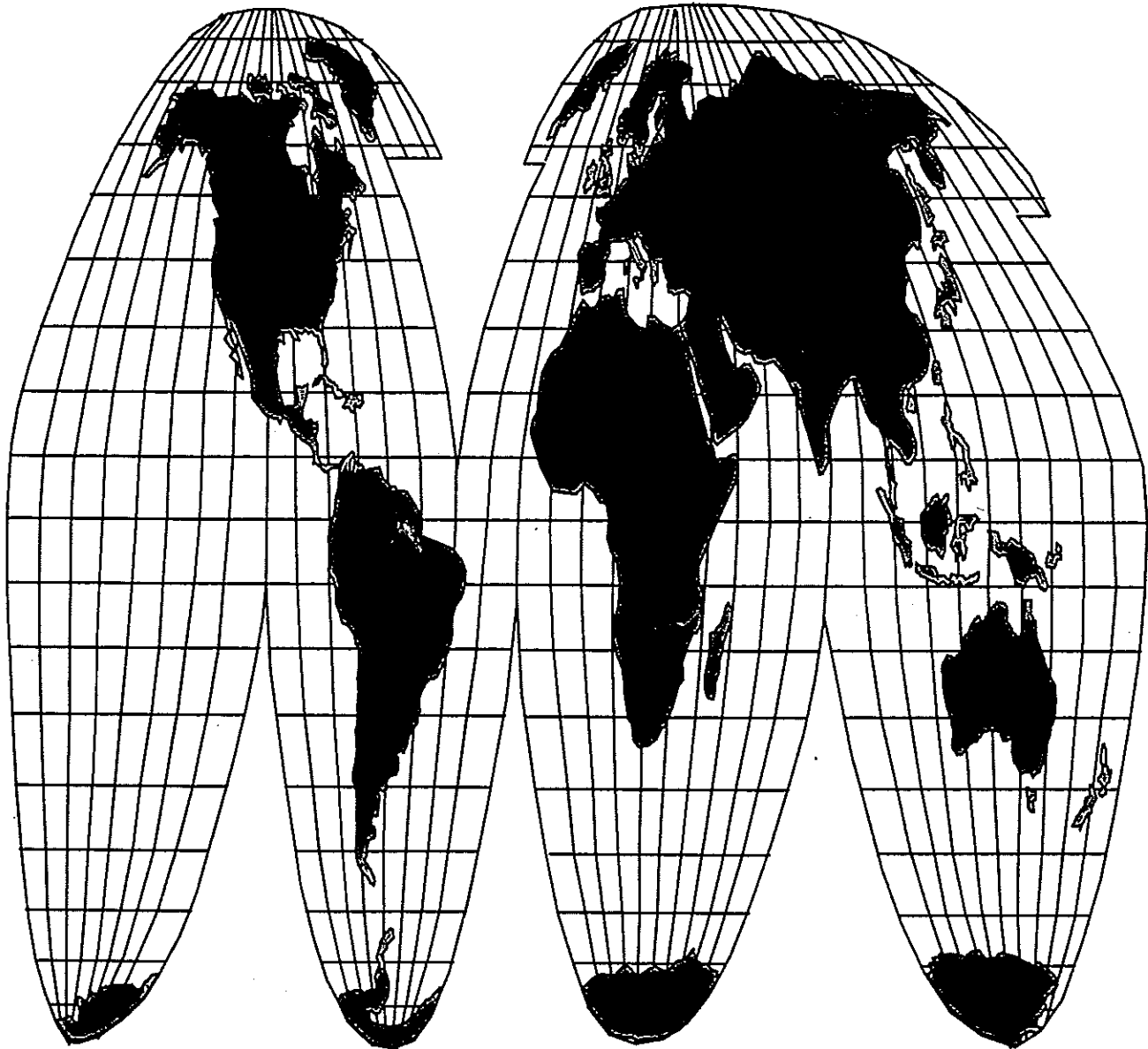
All proposals will be evaluated according to the project's interest, relevance, originality and feasibility. Following the evaluation, the Scientific Committee can accept or reject the proposal, or suggest that the communication be presented in another format.

The Committee's final decision will be announced no later than February 2000.

Summaries of the accepted proposals will be published in the Symposium Proceedings and all registered participants will receive a copy.

For more information on submission and selection criteria, you can refer to the preliminary program. If you have not yet received the preliminary program or if you would like an official abstract submission form, please visit our website at www.victimology-2000.com or contact us at:

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