

Viacheslav Tuliakov
Dr Hab, Professor of Criminal Law and Criminology
National University Odesa Law Academy

PATH TO THE EU: PROTECTION AND SUPPORT FOR CRIME VICTIMS

In 2018, an Italian court ordered a man convicted of murdering his former partner to pay compensation to the victim's family members. Since the convicted man was found insolvent, the Italian state paid a reduced compensation, initially allocated only to the victim's children and her ex-husband, from whom she had separated years earlier. The victim's parents, sister, and children appealed to the Venice District Court in Italy, seeking a "fair and adequate" compensation to reflect the harm they suffered as a result of the murder. In this context, the Italian court referred a question to the Court of Justice of the European Union (CJEU): Does national legislation that automatically excludes certain family members of a victim of a violent crime from receiving compensation if the victim died as a result of that crime comply with the EU Crime Victims Compensation Directive?

On November 7, 2024, the CJEU ruled that this directive requires member states to establish a national compensation scheme that can cover not only direct victims of violent intentional crimes but also their close relatives who suffer as indirect victims due to the consequences of the crime. Additionally, the Court reiterated that this directive obligates each member state to create a compensation scheme for victims of violent intentional crimes that guarantees fair and appropriate compensation. Although member states have some discretion in this regard, they may not limit themselves to purely symbolic or clearly inadequate compensation given the gravity of the crime's impact on these victims. The compensation must adequately redress the suffering experienced by these victims to restore both the material and moral damages caused.

Furthermore, if a national scheme sets compensation at a fixed rate, the compensation scale must be sufficiently detailed to avoid any scenario in which the compensation awarded for a particular type of violence would be clearly insufficient. Thus, the Court held that a national system that automatically excludes certain family members from any right to compensation solely due to the existence of other family members, without considering additional factors (such as the financial consequences for these family members due to the victim's death, or the fact that they were financially dependent on or living with the deceased), cannot achieve "fair and appropriate" compensation. (Case C-126/23 [Burdene] –

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=E69FCD6BA15FF9E63F3A091AEF7A73BE?text=&docid=292051&pageIndex=0&doclang=E&mode=req&dir=&occ=first&part=1&cid=4931148>)

Indeed, in EU countries, crime victims face certain challenges in accessing fair satisfaction and compensation. On the one hand, the EU has already adopted a robust set of legislation on victims' rights. The Victims' Rights Directive (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, and replacing Council Framework Decision 2001/220/JHA) includes the right to access information, support, and protection according to the victims' individual needs, as well as a range of procedural rights. Other relevant EU instruments include the Compensation Directive (Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims), EU rules on European Protection Orders (Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order and Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters), among others.

Moreover, recognizing the challenges in implementing Directive 2012/29, the EU has adopted tools to further protect victims' interests in specific crime contexts (e.g., terrorism, sexual violence). Despite this progress, recent reports indicate that victims of crime still cannot fully rely on their rights in the EU. Victims' difficulties in accessing justice are mainly related to a lack of information, insufficient support, and inadequate protection.

For this reason, the EU Strategy on Victims' Rights (2020–2025) aims to further develop and improve member states' legislation on effective communication with victims, creating a safe environment for victims to report crimes, improving support and protection for the most vulnerable victims, facilitating victims' access to compensation, strengthening cooperation and coordination between all relevant actors, and enhancing international protection of victims' rights. (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0258>)

What about Ukrainian legislation?

Beyond special issues regarding victim protection during wartime (noting that the ratification of the Rome Statute would directly require compensation, restitution, and satisfaction for victims of crimes against peace and humanity), these are urgent issues of transitional justice that must be addressed. Provisions of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" stipulate a special rule whereby the Russian Federation, as the occupying state, bears full responsibility for compensating Ukraine, legal entities, public associations, Ukrainian citizens, foreign nationals, and stateless persons for material and moral harm resulting from temporary occupation, with relevant court practice in place.

However, there are also general issues that require analysis and consistent implementation by the Verkhovna Rada of Ukraine. The Civil Code of Ukraine in Article 1177 stipulates that damage caused to an individual as a

result of a criminal offense shall be compensated from the State Budget of Ukraine in cases and in the manner prescribed by law. The obligation of the state to compensate for harm caused by injury, other health impairments, or death resulting from a crime is enshrined in Article 1207 of the Civil Code of Ukraine. These provisions are merely referential!

The absence of relevant regulations has been widely criticized. The problem is not just a lack of funds. It is intriguing to consider where fines, often substantial, are allocated. A rhetorical question, perhaps, and no wish to comment on the gap between the slogan "4000 dollars for teachers" and the hypothetical \$4000 payments received by numerous elites. The meme "pensions for prosecutors" has become widespread. Not to mention... You know what I mean.

However, the starting point should be the adoption of the Law of Ukraine on compensation for damage to victims of criminal offenses. Ultimately, the Verkhovna Rada of Ukraine needs to ratify the European Convention on the Compensation of Victims of Violent Crimes (ETS No 116) of 24 November 1983. (https://zakon.rada.gov.ua/laws/show/994_319#Text) Notably, Ukraine signed this Convention in 1985! Yet, 39 years later, ratification remains pending. While Bill No. 3892 – the Draft Law of Ukraine “On Compensation to Victims of Violent Criminal Offenses” and related bills (https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69541) exists, it was removed from consideration. For some reason... although the ratified Istanbul Convention demands it.

Finally: "The state's failure to provide such compensation undermines trust in the state and government authorities and contradicts the Constitution of Ukraine." This phrase from the Constitutional Court of Ukraine's Decision No. 4-r(II)/21 (<https://ccu.gov.ua/.../43920-pravo-na-kompensaciyu-za...>) highlights the significance of a fair evaluation of the neglect of victims' rights.

The European Court of Human Rights (ECtHR) adds: "Thus, the court notes that the absence of a quality law establishing the procedure and conditions for the state to compensate the harm caused to the victim of a crime in the event of the offender's insolvency precludes the issuance of a justified, fair, and lawful court decision to recover funds as compensation for such harm from the state represented by the State Treasury of Ukraine. Therefore, the claim must be denied." (European Court of Human Rights (ECHR), Zolotyuk v. Ukraine 3958/13, 16/12/2014. <https://hudoc.echr.coe.int/eng?i=001-150834>)

Just a reminder.