Editorial

On Victim’s Rights and its Impact on the Rights of the Accused

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1 Introduction

On 16 November 2015 Member States must have brought their legislation in compliance with Directive 2012/29 on Victim’s Rights. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. As the role of the victim in criminal proceedings will increase, it raises the question how this relates to the rights of the defence. The EU legislator discovered the victim already quite some years ago and only more recently started to look at the position of the defence. However, thus far, there is no visible attempt to bring the two and their interests in line with each other. It is almost as if they are unrelated. This editorial argues that a single issue policy pro-victim can be detrimental not only to the rights of the accused, but also to the efficiency and

1 This Directive replaced, as of 16 November 2015 Framework Decision 2001/220 on the Standing of Victims.
2 In Dell’Orto, the Tribunale di Milano requested the Court to confirm precisely who and what is a “victim” under the Framework Decision. 28 June 2007, Case C-467/05, criminal proceedings against Giovanni Dell’Orto (2007) ECR 1-5557. Is the Framework Decision also applicable in a situation where the victim is not a natural person but a legal person? The Court held that the Framework Decision only relates to natural persons. Confirmed in 21 October 2010, Case C-205/09, criminal proceedings against Emil Eredics, Mária Vassné Šápi (2010) not yet reported.
fairness of the proceedings as a whole. In the end, it also raises the question what benefit the victim may have from it.

The new Directive creates a general set of rules applicable to victims. Article 2 Directive 2012/29 on Victim's Rights gives the definition of what a victim is: “a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence”. This main category of victims is extended by a derivative form of victimhood: “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.” Directive 2012/29 on Victim's Rights divides the various measures of the directive into four categories. The first deals with the provision of information and support (Articles 3–9). The second relates to the participation in criminal proceedings (Articles 10–17), the third with the protection of victims and recognition of victims with specific protection needs (Articles 18–24). The fourth and last section deals with miscellaneous provisions (Articles 25–32). I will follow this order and will subsequently compare with the position of the defence.

2 Information and Support

Article 3 gives the victim the right to understand and to be understood. In essence, this provision entitles the victim to a tailor-made treatment. Member States must ensure that victims are understood from the first contact and during any further necessary interaction. Member States must also communicate in simple and accessible language, both orally and in writing, taking into consideration the personal characteristics of the victim. Member States must allow a victim to be accompanied by a person of their choice in their first contact (Article 3, paragraph 3). Article 4 contains a list of various forms of support

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3 Directive 2012/29 provides for the general framework for victims' rights and assistance. Two other Directives contain more specific rules for separate categories of victims: Directive 2011/92 on Sexual Abuse of Children (Articles 18–25) and Directive 2011/36 on Trafficking in Human Beings (Articles 11–18). Declaration 19 on Article 8 tfeu asks Member States to take all necessary measures to support and protect the victims of domestic violence.

4 Obviously, the legislator was inspired by the case of law the Court. See 12 July 2012, Case C-79/11, criminal proceedings against Maurizio Giovanardi and others, par. 46, where the same wording was used. Harm as a result from an administrative offence committed by a legal person is too far away. The Framework Decision does not entail a definition of the offender, see in this respect Opinion of AG Sharpston of 15 May 2012, point 50, in Giovanardi.

5 Article 2, paragraph 2 Directive 2012/29 on Victim's Rights allows for certain restrictions based on national law.