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The Standing of Victims in Criminal Proceedings – Legal and Factual Situation in Bulgaria

SAFEGUARDING HUMAN RIGHTS IN EUROPE – A ROUNDTABLE DISCUSSION (PART II) IN BULGARIA. THE INTRODUCTORY SPEECH BY DR. STEFANIE RICARDA ROOS, DIRECTOR OF RULE OF LAW PROGRAM SOUTH EAST EUROPE KONRAD-ADENAUER-FOUNDATION

**Dear colleagues,
Esteemed participants,
Ladies and Gentlemen!**

On behalf of the Konrad-Adenauer-Foundation's Rule of Law Program South East Europe, and our co-operating partner, the Bulgarian Lawyers for Human Rights, I would like to welcome you to our roundtable discussion on the legal and factual situation regarding the rights of victims in criminal proceedings in Bulgaria.

My name is Stefanie Ricarda Roos. I am the director of the Rule of Law Program South East Europe of the Konrad-Adenauer-Foundation.

Thank you all very much for agreeing to participate in our follow-up seminar on the rights of the victims in criminal trials, a very important and relevant topic, I should say!

During our last roundtable discussion which took place in Sofia in June, we discussed the rights of the suspects/accused and their defense in criminal proceedings. Back then, I discussed the theme of the historical antithesis between power and freedom; the antithesis between the State's right to punish in order to protect the community from crime, and the individual's right to freedom. The laws of criminal procedure reflect a state's decision on how these interests should be balanced. It is a genuine political

decision which is symptomatic of the relationship between the state and the individual in a respective society.

With today's seminar our perspective shifts from the safeguards given to the suspects/accused to those afforded to the victims of crime. The topic of our roundtable discussion, "The Standing of Victims in Criminal Proceedings", addresses another important function of the state and criminal justice: to meet the needs and safeguard the interests of the victim in criminal proceedings thereby enhancing the confidence of the victim in the criminal justice system.

As you probably know, the preoccupation with the rights of victims of crime is not a new one. Although, it often seems that the rights of the accused have been more visible in public debates. The rights of the victims became a special matter of concern in the 1960s when several Council of Europe member states began devising compensation schemes for the victims of crime. Yet, it is only in the 1980s that international documents dealing with this specific category of rights were drafted and signed.

At the European level, a Convention on the Compensation of the Victims of Violent Crimes was adopted as early as 1983. This Convention envisaged the obligation of member-states to pay compensation to the victims of crimes committed in their territory. The Convention was soon followed by

a Recommendation of the Committee of Ministers addressing the obligations of every actor involved in a criminal trial: the police, the prosecution, the court (including the questioning of the victim), the enforcement bodies and the media. With regard to the EU, the preoccupation for victims' rights is concomitant with the idea of creating an area of freedom and justice throughout the Union. It originates in the European Commission's Communications on standards and actions regarding the rights of victims preceding the Tampere European Council in 1999.¹ Further on, the Council of the EU adopted a Framework Decision on the Standing of Victims in Criminal Proceedings (2001), followed by a Directive in 2004 relating to the compensation of crime victims designed to promote the alignment of Member States legislation on criminal procedures so as to guarantee victims' rights.

Under the UN aegis, a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was put forward in 1985, which pressed for the adoption of international standards and ethical norms in dealing with victims in criminal trials. It also offered a comprehensive definition of the notion of "victim"² and emphasized the idea of preventing and reducing further victimization.

Before discussing the specific rights provided to the victims in criminal trials, it is worth mentioning the US "model". In the US, every state has a set of legal rights for crime victims in its code of laws, often called a "victims' bill of rights". Moreover, there is also an Office of the Victims' Rights Ombudsman pertaining to the Executive Office for US Attorneys. Apart from these

¹ Point 32 of the Conclusions indicates the necessity of achieving common standards in the assistance and protection offered to crime victims, with special emphasis on the access to justice and compensation for damages.

² "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

state mechanisms to enforce victims' rights, a great number of NGOs dealing with this issue are lobbying for the inclusion of a Constitutional Amendment entrenching the "fundamental rights of victims of crimes to be treated with dignity, fairness and respect by the criminal justice system." This last aspect brings us to the types of victims' rights that should be recognized and respected. While the international and regional documents mentioned above are generally concerned with the rights derived from the principles of access to justice and fair treatment, restitution, compensation, and assistance, the list of rights to be actually implemented is far more detailed. It includes the victim's right: to be protected from intimidation and harm, to privacy, to the preservation of property and employment, to be treated with dignity and compassion, to be placed in a separate area in the courthouse, to be notified of the evolution of the trial, and finally, to be informed by the competent authorities of the above-mentioned rights. These rights extend to the family of the victims of crime, as well.

Hence, as a general observation we might say that the rights of victims are not an entirely different and new category of rights. Many of them represent fundamental human rights comprised in international documents, such as the prohibition of torture and degrading treatments, the right to privacy and family life, the right to security and integrity, and the general guarantees in court proceedings, such as the right to a fair trial, the right to a trial within a reasonable time etc.³ On the other hand, the rights of the victim belong to a special category of

³ Probably the most progressive systems of protecting victims' rights are the American and the British ones. Since I have already mentioned the American approach, I would like to draw your attention to the British charters and standards for victims and for witnesses (the earliest dating from 1990). These contain detailed explanations of the rights of the victims (with specifications on the victims of rape or domestic violence) and the obligations of the authorities, and especially the police, the first to deal with the victims of crimes. In the UK the victims have an option to fill in a Victim Personal Statement which can be used in the criminal trial. Moreover, similar guarantees are offered to persons wanting/called upon to testify in criminal trials.

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rights, i.e. the rights granted to victims due to their deprived situation. This latter understanding is also related to the role and function of the state. As such, the state ought to recognize and protect these special rights of the victims since it prohibited personal vengeance, and it failed to deliver its fundamental function which is to prevent crime by means of effective criminal policy.

The topic is very vast, yet I am sure we will be able to discuss all these matters in detail. Apart from strictly dealing with the rights of the victims, we should also reflect upon the state authorities' obligations correlative to victims' rights and the necessity to raise their awareness and provide them with specific training in the field of assisting victims of crimes.

That being said, for those of you who are not familiar with the Konrad-Adenauer-Foundation and its work, please allow me to say a few words about this. The Konrad-Adenauer-Stiftung is an independent, non-profit German political foundation, related to the Christian Democratic movement. Its work is guided by the same principles that inspired Konrad Adenauer's work, in particular the promotion of processes of political democratization, and the promotion of European integration. The Foundation's work in promoting democracy is based on the belief that a functioning "state of the rule of the law" or "Rechtsstaat" as we say in German, is the key to guaranteeing a sustainable democracy. The promotion of rule of law reforms, in particular the support for the establishment and strengthening of fundamental principles of the rule of law is, therefore, one of the core areas of the Foundation's work world-wide.

The Rule of Law Program South East Europe of the Konrad-Adenauer-Foundation was established last year as a regional program which is based here in Bucharest. It is designed to promote dialogue on rule of law issues within and among the countries in South East Europe. Program participant countries are Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Romania, and Serbia. We also try to include in our work, where possible, institutions and ex-

perts from Albania, the Republic of Moldova, and Slovenia.

The Rule of Law Program focuses on five areas:

- Constitutional Law and Constitutional Jurisprudence;
- Procedural Law, in particular Administrative and Criminal Procedural Law;
- Protection of Human and Minority Rights;
- Independence and Integrity of the Justice System, and
- Reconciliation with the Past by Legal Means.

As you can see from this brief presentation, it is only natural that the Rule of Law Program South East Europe of the Konrad-Adenauer-Foundation supports and encourages any initiative dealing with the principles and norms of conducting a criminal trial both with respect to the rights of the accused, and the rights of the victims.

Last, but not least, I would like to express a special thank you to both, our co-operating partner, the Bulgarian Lawyers for Human Rights, in particular Ms. Georgitsa Petkova, for having agreed to organize this roundtable discussion with us, and to our two experts, Mr. Peicho Peev, and Ms. Zlatka Stefanova, for having accepted our invitation to describe the legal and factual situation regarding the rights of victims in criminal proceedings to us. Thank you very much to all of you!

I want to wish all of us an interesting and enriching roundtable which will make a contribution to Bulgarian deliberations on procedural guarantees to victims in criminal proceedings.