

CONTEMPORARY POLICIES AND PRACTICES TOWARDS CRIME VICTIMS IN BULGARIA: ARE WE STILL BEYOND TIME?

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Abstract

This study explores the latest development of crime victims related policies and practices in Bulgaria. The newest achievements are identified and analyzed. The relevant operative legislation is scrutinized. Both the strong and the weak points of its implementation are commented. On the base of sociological survey's findings and statistics data proposals de lege ferenda for its improvement are formulated. The introduction of restorative justice, as an essential element of the modern penal policy orientated towards crime victims, is promoted.

Key words: *crime victims; victimology; compensation; restorative justice; protection of victim's rights*

I.BACKGROUND INFORMATION

The victimology research gain more and more interest in the circumstances of increasing victimization of society in a global aspect for some time past. The very concept of "victimization" is expanding and includes not only the victims of crimes although they still remain the basic part, but also the victims of natural disasters, industrial accidents and even the weather changes.

In Bulgaria this part of science is not enough developed and neither the legislator nor the practice and even the educational institutions give it its due attention.

However, recently, the rights of victims of crime in Bulgaria seem to receive increased attention from governmental institutions, NGOs, academia, etc. (Stankov, 1999). The victims were rediscovered and recognized - from an "invisible" subject of social reality

and criminal proceedings, often isolated from their own case, they have become more noticeable figure in law, political strategies and media. The attention was related to the negotiations and accession process of Bulgaria to the European Union when numerous recommendations for following the minimal standards for victims of crime protection have been sent to the government. Among the most important documents were the National Strategy for the Support and Compensation of Crime Victims (2006), the Strategy to Continue the Judicial Reform in the Conditions of full EU Membership (2010), the National Concept of Penal Policy of the Republic of Bulgaria for the period 2010-2014 and the newest one - the Concept on State's Policy on Juvenile Justice (2011). Having in mind the basic postulates of the Treaty of Lisbon and the Stockholm Program for an Open and Secure Europe Serving and Protecting Citizens, these concepts offer far-seeing perspective in compliance with the common European policy towards victims.

In Bulgaria the universality of the rights of crime victims is not questioned and theoretically they are treated as an inherent part of human rights. Traditionally, even in the customary law, there are mechanisms for their protection. Currently there is relatively modern legislation providing the victims with many rights.

II. LEGAL STATUS OF CRIME VICTIMS IN BULGARIA

1. One of the biggest achievements from the recent times was the Penal Procedure Code 2005ⁱ. Following the requirements of the European Union Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings, the Penal Procedure Code for the first time regularized the procedural status of the injured party in a separate chapter. After the amendments from 2008ⁱⁱ the current standing of crime victims in penal proceedings could be described as follows:

According to the Art. 74 of the Penal Procedure Code injured shall be the person, who has suffered material or non-material damages from the crime. In case of a death, this right shall devolve on his/her heirs. The accused may not exercise the rights of injured in one and the same procedure.

The injured is entitled of specific rights both in pre-trial and court procedure. Most of the rights could be fully exercised during the court proceedings when the injured could be constituted as a private prosecutor, private complainant or civil claimant. However, according to the Art. 75 during the pre-trial procedure *the injured* has the following rights: to be notified of his/her rights in the penal procedure; to receive protection of his/her safety

and his/her close persons; to be informed about the course of the penal procedure; to participate in the procedure; to appeal the acts which lead to disclosure or suspension of the penal procedure; to have a trustee. The injured can enjoy these rights if explicitly has demanded to participate in the pre-trial procedure and has stated a summoning address in the country.

In the court procedure the injured, who has suffered damages from a crime, which is subject to prosecution from the public prosecutor, shall have the right to participate as a *private prosecutor* (in comparative aspect referred as *accessory prosecutor*- Art.76). The private prosecutor shall maintain the indictment at the same time with the public prosecutor. The private prosecutor may also maintain the indictment after the prosecutor declares that he/she does not maintain it (in comparative aspect explained as *subsidiary prosecutor*). The private prosecutor shall have the following rights: to become acquainted with the case and to make the necessary extracts; to submit evidence; to participate in the court procedure; to make requests, notes and objections and to appeal the acts of the court, where his/her rights and legitimate interests are harmed (Art.79).

The injured by a crime, which is a subject to prosecution on a complaint of the injured, may bring and maintain indictment before the court as a *private complainant* (in comparative aspect explained as *private prosecutor* - Art.80). The complaint shall be submitted within six-month period from the day, when the injured learned about the commitment of the crime, or from the day, on which the injured has received a message about discontinuing of the pre-trial procedure on the ground that the crime shall be a subject to prosecution on complaint of the injured. The private complainant shall have the following rights: to become acquainted with the case and to make the needed extracts; to submit evidence; to participate in the court procedure; to make requests, notes and objections and to appeal the acts of the court, where his/her rights and legitimate interests are harmed, to withdraw his/her complaint (Art.82). The injured shall have the right to require assistance from the bodies of the Ministry of Interior for collecting data which they cannot gather by themselves.

The injured and his/her heirs, as well as the legal persons who have suffered damages from the crime, may file a civil claim for a compensation of the damages and to establish themselves as *civil claimants* in the court procedure (Art.84). However, the civil claim cannot be filed in the court procedure if is filed under the procedure of the Civil Procedure Code. The civil claim in the court procedure may be filed as against the

defendant as well as against other persons who shall bear civil liability for the damages caused by the crime. The civil claimant shall have the following rights: to participate in the court procedure; to require securitising of the civil claim; to become acquainted with the case and to make the needed extracts; to submit evidence; to participate in the court procedure; to make requests, notes and objections and to appeal the acts of the court, where his/her rights and legitimate interests are harmed. The civil claimant shall exercise these rights within the limits needed to prove the ground and amount of the civil claim (Art.87).

It could be summarized that the injured currently enjoys a high status in the criminal proceeding, he/she is not only a “witness”.

2. The Republic of Bulgaria transposed the Council of the European Union Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims by the adoption of the Support and Financial Compensation to Crime Victims Act 2006ⁱⁱⁱ. The objective of the Act is recognition and guaranteeing the rights and the lawful interests of the crime victims, according to the European and international standards. Various types of support are regulated (psychological, legal, medical, etc.), as well as provisions of financial compensation from the state, although rather limited. Under the law, support and financial compensation may be granted to the victims, who have suffered damages from the following crimes: terrorism; deliberate homicide; deliberate serious bodily harm; sexual molestation and rape, as a result of which serious health damages have been caused; trafficking of people; crimes, committed by an order or in fulfilment of a decision of an organised criminal group, as well as other serious deliberate crimes as a result of which death or serious bodily harm have been caused as *corpus delicti* consequence.

According to the Art. 3, paragraph 1 of the abovementioned law, under the terms and following the procedure of this law, support may be granted to victims, who have suffered material and non-material damages by the mentioned types of offences, and financial compensation may be granted to victims, who have suffered material damages. In compliance with the Bulgarian legal system, compensation for non-material damages may be granted to crime victims only “by justice” and that is why financial compensation for non-material damages suffered as a result of an offence committed is always provided by a judge. In addition, according to the Art. 3, paragraph 2, where the victim has passed away as a result of the crime, the right of receiving financial compensation and support shall pass to his/her children, parents, spouse or the person, with whom he/she was in actual

cohabitation. In compliance with Art. 1, paragraph 1, support and financial compensation are granted by the state to victims of crime - Bulgarian citizens or citizens of Member States of the European Union (furthermore, under the terms and following the procedure of this law, support and financial compensation may also be granted to foreign citizens in the cases, provided for in international agreements, to which the Republic of Bulgaria is a party – Art. 1, paragraph 2 of the law).

A special chapter of the Support and Financial Compensation to Crime Victims Act is dedicated to informing crime victims of their rights. According to the Art. 6 the bodies of the Ministry of Interior and the victim support organizations shall notify the victims of the organizations to which they can turn to for free psychological help and support, as well as the types of free psychological help and support, which they may receive; their right of legal aid; the bodies which they may address in order to exercise this right; the terms and the procedure of providing legal aid for free; the bodies, before which may be filed signals for the crime committed; the procedures after filing the signal and the opportunities of action of the victims under the terms and the manner of these procedures; their rights in the penal procedure and the possibilities of participation in it; the bodies they can turn to in order to obtain protection for themselves and their next of kin, the terms and the procedure of obtaining such protection; the bodies they can turn to in order to be granted financial compensation by the state as well as the terms and the procedure for the receipt thereof; the opportunities for protection of their rights and interests in case they are foreign citizens, who have become victims of crime on the territory of the Republic of Bulgaria; the opportunities for protection of their rights and interests, if they have become victims of crime on the territory of another state and the bodies they may turn to in such cases.

In compliance with the Art.8 the forms of support to the crime victims shall be: medical support upon state of emergency; psychological consultation and help; free legal aid; practical assistance. The free psychological consultation and help shall be provided by expert – psychologists from the victim support organizations financed by the Ministry of Justice. The crime victims can receive legal aid under the terms and following the procedure of the Legal Aid Act.

Compensation under the Support and Financial Compensation to Crime Victims Act may be granted by the State if the crime victim has not received such compensation in any other way. The compensation is granted after coming into effect of: the conviction sentence, including the cases where the case has been considered in the absence of the defendant; the

prosecutor's or judicial act, by virtue of which the penal proceedings have been terminated (with some exceptions); the prosecutor's or judicial act, by virtue of which the penal proceedings have been suspended due to non-detection of the perpetrator of the crime. The financial compensation is in the form of granting a monetary sum by the state amounting from 250 to 5000 BNG (125-2500 EUR approximately). Where the financial compensation is being provided to persons referred to in Art. 3, paragraph 2 (meaning where the victim has passed away as a result of the crime, the right of receiving financial compensation shall pass to his/her children, parents, spouse or the person, with whom he/she was in actual cohabitation), its total amount may not exceed 10 000 BGN (5000 EUR approximately).

According to the Art. 14 of the law, the financial compensation comprises, jointly or separately, the material damages, being a direct consequence of the crime, which are in the form of: expenses for treatment, except for the expenses paid by the budget of the National Health Insurance Fund; missed income; expenses for payments of court and office expenses; missed financial resources for maintenance; funeral expenses; other material damages. The National Council for Compensation of Crime Victims, which was established at the Ministry of Justice in 2007, is the body competent to consider the filed by the victims applications for financial compensation. According to the Art. 21 of the law, the National Council is liable for the payments of the financial compensations; draws up a model of the application for financial compensation in Bulgarian, English, German and French language, a list of the documents, necessary for its consideration, as well as the application forms; develops the policy, the planning and the presentation of legislative and practical initiatives in the sphere of supporting the crime victims; coordinates the activity of the bodies and the organizations referred to in Art. 6, para 1 in relation to the implementation of the law; gives assistance to Bulgarian citizens, which have become victims of crimes, committed on the territory of another Member-State of the European Union, at filling out the applications for financial compensation and sends them to the competent body of the other Member-State; carries out international co-operation in the field of supporting crime victims.

In connection with the necessity of raising public awareness and the knowledge on the possibilities provided by the Support and Financial Compensation to Crime Victims Act, the Ministry of Justice has worked out a specialised Internet website of the National Council for Compensation of Crime Victims^{iv}. The website intends to make comprehensive information on the Bulgarian compensation scheme available to all persons and foreign institutions. It includes: a model of the compensation form in Bulgarian, English, French

and German languages; the relevant documents, which should be attached to the request; information on the National Council itself, including full contact details; on-line register of all applications filed together with the decision on each request. Furthermore, the Ministry of Justice continues its activity on conducting seminars and workshops on the issues of compensation to crime victims, in view of raising awareness on the topic among legal professionals and representatives of the legal doctrine.

3. In addition, some other relatively new legislative acts - Combating Trafficking of Persons Act 2003, Protection of Persons Threatened in Connection with Criminal Procedure Act 2004, Protection Against Domestic Violence Act 2005 etc. stipulate protection and assistance for separate types of victims.

III. STATE OF AFFAIRS OF PROTECTION OF VICTIMS' RIGHTS

Although there is a quite comprehensive legal framework, many aspects could be criticized. The legislation is far from perfect, and is not properly and fully applied. On the contrary, it is applied selectively or too late. One of the deficits of legal regulation is that the injured is excluded from the procedure of the settlement of the case by the agreement between the public prosecutor and the defence counsel of the accused (plea bargaining). There are not enough efficient procedural mechanisms for the full implementation of the stipulated rights. 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 (Chinova and Ivanova, 2005; Chinova, 2007). In the criminal process the victims still tend to be marginalized, the center of the attention is the accused, his rights are hypertrophied. The lengthy procedure often takes away the due restitution and reparation.

Moreover, the victims of violent crimes are also not well protected by the Support and Financial Compensation to Crime Victims Act. In the period March 2007 – November 2008 (the first years of the functioning of the law) the National Council for Compensation of Crime Victims considered 180 requests (including both requests filed by Bulgarian citizens or by citizens of other Member States) for financial compensation and has approved 30 requests and granted financial compensation in all these 30 cases. The statistics for the latest years is not very optimistic either:

Year	Total number of requests	Approved	Rejected	Other
2009	109	22	54	23
2010	50	15	28	7
2011	26	4	21	1
2012 (till March)	9	2	6	1

Table 1

The relatively short time of the application of the law does not allow any firm conclusions. However, some shortcomings of legal regulation and practice become evident. For example, financial compensation in a case of death, amounting to a maximum of € 5000 and obtained years after the event of crime, could be hardly considered as an adequate expression of compassion and humanity from the state. As a rule, compensation is rather symbolic, includes expenses mainly for funerals, taxes etc. Next, the list of crimes envisaged by the law, is rather narrow - it should be broaden. The compensation should be paid in advance by the state. That is why some legislative changes should be undertaken without delay.

There are problems with the existing infrastructure and coordination between different agencies working in the field. Indeed, a number of non-governmental organizations dedicated themselves to the protection of victims of violence, human trafficking and other forms of organized and conventional crime, have been registered. Usually they are established for the benefits of victims but within the framework of different projects. When their funding comes to an end, the organizations suspend their services. Presently, there are very few specialized governmental structures working in this area.

It should be admitted that at the end of 2011 the foundation of the first genuine organization of victims of crimes was announced. It is expected to defend their rights more vigorously. This is more than necessary as according to the latest sociological surveys, the rights of the victims of crimes are not well known and asserted, often because of lack of faith in state institutions.

Proof of this are the results from a survey conducted by scientists from SWU "N. Rilski " in 2010 (Chankova, 2011b). A written questionnaire was developed and completed by 50 respondents. The results could be summarized and analyzed briefly as follows:

To the question *"Do you know what 'victimology' is?"* 80% of the participants responded positively, but always gave short and inexact answers, most at the semantic level. Twenty percent responded negatively.

Being questioned *"Do you think that the problem of victimization of society is a serious and deserves attention?"* again 80 % responded positively, 6% had negative attitude and 14% had no opinion.

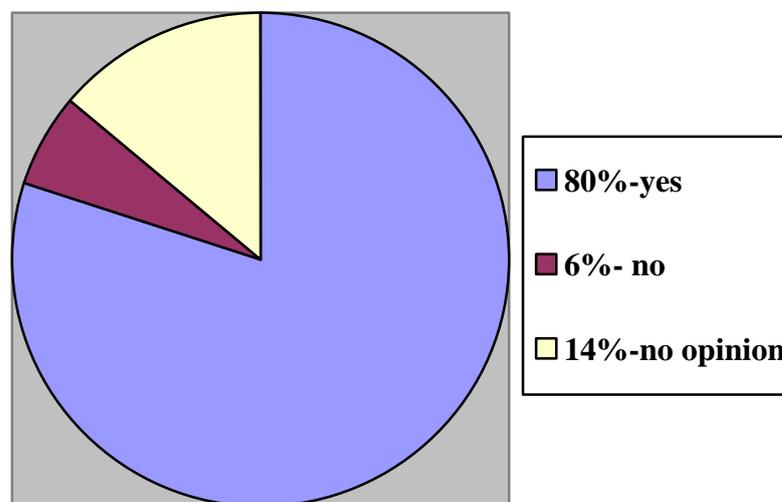


Diagram 1

To the question *"Do you think there is enough information disseminated among victims of crime?"* there was remarkable majority of 98% who responded negatively, while only 2% thought that information was enough.

When asked *"Do you think that crime victims are able to defend their rights?"*, only 2% said it is quite possible to be done by themselves, 88% believed they would need outside assistance, 4% believed that under no circumstances the victims can do that alone, 2% were positive only under certain circumstances /if victims can afford it themselves financially / and 4% had no opinion.

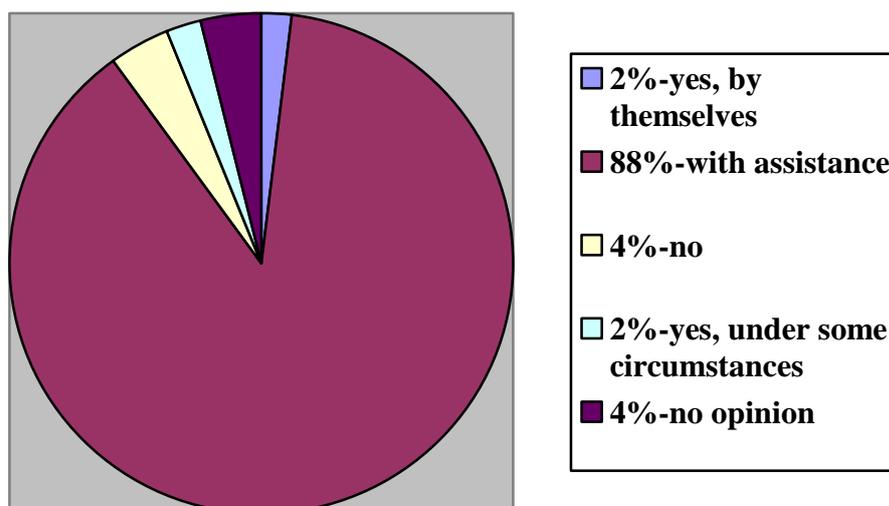


Diagram 2

To the question *“Are you familiar with the Bulgarian legislation for protection of victims of crime?”* 60% answered positively but indicated a few relevant acts – the Penal Code, the Penal Procedure Code, the Protection against Domestic Violence Act, in rare cases Support and Financial Compensation of Victims of Crimes Act; 40% admitted that they did not know Bulgarian legislation.

Even more disturbing was the picture while answering the question *“Do you know the international legislation for protection of victims of crime?”*. Although 20% answered positively they did not mention explicitly or indicated only a few acts of the UN, Council of Europe and the EU. The rest 80% honestly said they did not know the international legislation.

To the question *“Do you think that in Bulgaria there is an appropriate policy for protection of victims of crime?”* the positive answers were only 8%, 56% answered negatively, while the remaining 36% had no opinion.

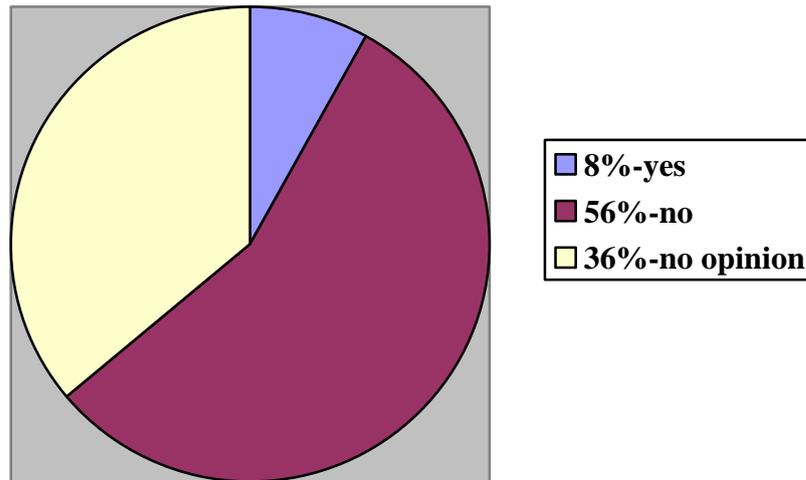


Diagram 3

Related are the answers to the question *"Do you think that in Bulgaria there are good practices for protection of victims of crime?"*. Twelve percent thought this is true, 56% considered that the practices are missing and the remaining 32% had no opinion.

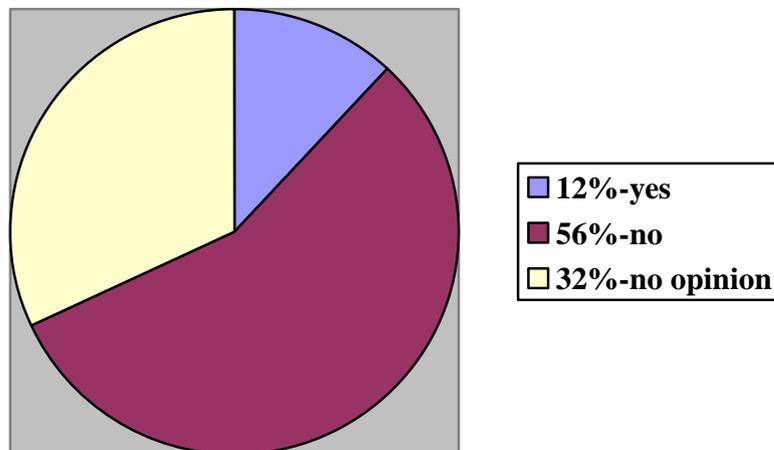


Diagram 4

When asked *"Do you think it is an appropriate idea the victimology course to be introduced into the university curricula?"* clear majority of 94% answered positively, detailing the reasons for the benefits of this knowledge, 4% answered negatively, and 2% had no opinion. The majority of opinions was that the subject should be studied during the fourth

or fifth university year, and should be optional. There were opinions that it could be studied in different majors and have to be facultative but two participants even believed that it should be mandatory.

All these certainly show that in Bulgaria there is a real need of increasing the capacity of academic staff and relevant organizations and institutions for further protection of victims' rights and for accelerating the formation of Bulgarian specialists in the field of victimology and raising of public awareness towards crime victims.

Simultaneously, according to the latest statistics, the number of victims of crime increases with higher rates^v. A survey launched by the non-governmental organization "Center for the Study of Democracy" about the state of crime for the period of 2000-2010 shows that from the beginning of the economic crisis there is an increased tendency for victims to conceal about the crimes. Only for the year 2010 non-conveyed crimes are nearly *half a million*. According to the experts, the main reason is that victims do not expect the police to help them. Many of the crimes are not registered at the police offices, although they are reported by citizens. For example, the data show that the burglaries have increased with over 60%. According to the official statistics of the Ministry of Interior it is only 11% height. Car thefts goes down but the situation with the homicides is complicated - Bulgaria is in the top six of the EU.

This contrast in the data is supported by the latest statistics from the National Statistics Institute^{vi}. It looks like this:

Year	Crimes	Convicted persons
2008	38313	36137
2009	72032	40872
2010	43378	39070

Table 2

Year 2008 is the latest one for which we have official statistics for the crimes registered by the police and they are 126 673. All these suggest that either the crimes are not reported, not registered or not detected and punished, victims' rights remain unprotected.

It is quite understandable why there is no reliable statistics for victims of crime. This is even hardly possible, because the victims of crime are not only directly affected people, but also relatives, even colleagues and neighbors.

There is statistics only for juvenile victims and it looks like this:

Year	Juvenile victims of crime
2008	2606
2009	2009
2010	2090

Table 3

It can not be said definitely to what extent and how their rights have been protected.

It seems there is a large existing "gap" between the declared good objectives and the low level of their implementation. That is why society dissatisfaction is increasing and the risk of raising punitive populism is more than evident. The last good example in this direction was the protest of the parents of children died in car accidents. They insisted on raising penalties for guilty drivers, abolishment of the opportunity for settlements between the defence counsel and the public prosecutor and inapplicability of probation. Although the sentiments of these victims have to be respected, this will lead to imbalance between different punishments and crimes envisaged in the Penal Code. Appropriate balance between due victim protection, punishment of offenders and public interest has to be sought and found, but it should not be forgotten that the penal law is the "last resort". Before, a lot should be done for information dissemination, education, prevention. Many other systems – administrative, controlling, exercising prophylaxis - should start functioning properly. The role of self-controlling civil society is also very important. And finally, criminal justice system should start functioning timely and more efficiently, imposing unavoidable, not necessarily severe penalties.

IV. BULGARIA ON THE ROAD TO RESTORATIVE JUSTICE

In the meantime restorative justice, one of the most attractive modern policies in criminal justice worldwide and a recognized instrument for victims of crime protection, is getting more and more supporters in Bulgaria (Chankova, 1996, 2002 and 2011; Trendafilova, 2001; Salkova, 2008; Panev, 2008).The Bulgarian Mediation Act was adopted

in 2004^{vii}. It introduced mediation as an alternative method for resolution of family, civil, administrative and other disputes between natural and/or legal persons. A much praised achievement of the law is the Article 3, paragraph 2, which provides for mediation in criminal matters, as envisaged in the Penal Procedure Code. Bulgaria belongs to the continental system of law; hence for mediation in penal matters to be implemented, a detailed legislative regulation is necessary. Despite the explicit requirement of the law to that end, the Penal Procedure Code of 2005 did not provide for any cases where mediation could be applied and left this issue to subsequent amendments.

While the Parliament and the Cabinet alike are being convinced that introducing of mediation in criminal matters as an instrument of restorative justice is only a matter of when, not if, a number of NGOs have started and successfully implemented trainings of mediators, judges, prosecutors and other professionals in the field. The National Association of Mediators, the Institute for Conflict Resolution, the Union of Bulgarian Jurists and others work intensively in this area.

The academics, on their part, contribute likewise: special courses in alternative dispute resolution, restorative justice and mediation in criminal matters were introduced in the New Bulgarian University and in South-West University, as well as in the Institute for Postgraduate Studies with the University for World and National Economy. According to the recent surveys, restorative justice enjoys wide support among criminal justice practitioners and society at large (Chankova, 2006; Chankova, Georgieva and Bakalov, 2008). Let's hope that restorative justice will progress until it is a recognized institution in Bulgaria and it will further serve the victims needs.

V. CONCLUDING REMARKS

The unsolved problems of victims of crimes in terms of increasing victimization of society in a global aspect become more and more actual. Reasonably, this engages the attention of the United Nations that prepare a draft-Convention on justice for victims of crimes and abuse of power (Dussich and Mundy, 2009); the European Union, in whose agenda is the draft-Directive on the minimum standards on the rights, support and protection of victims of crime (a part of so called "Victim Package" announced by the European Commission in 2011); the Council of Europe, international non-governmental organizations, academics, etc. Bulgaria is among the Member-States that have declared commitment and respect to the relevant EU, UN and Council of Europe instruments, and intends to support the

newest ones. It is interesting to follow whether in the near future the rights of crime victims will be a tangible reality or chimera in Bulgaria^{viii}.

Notes

ⁱ State Gazette No 83/ 18 October 2005, in force from 29 April 2006

ⁱⁱ State Gazette No 109/ 23 December 2008

ⁱⁱⁱ State Gazette No 105/ 22 December 2006, in force from 1 January 2007

^{iv} <http://www.compensation.bg>

^v <http://www.csd.bg>

^{vi} <http://www.nsi.bg>

^{vii} State Gazette No 110/17 December 2004

^{viii} This article is a re-elaborated and expanded version of the paper “The Rights of Crime Victims in Bulgaria: between words and action”, presented at the 14th International Symposium of the World Society of Victimology, 20-24 May 2012, The Hague, the Netherlands.

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