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**E-PROTECT II**

WP5: Mapping of policy change in  
partner countries

D5.1 Policy brief overview

WP5 Leader: CRPE



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# POLICY BRIEF

## The Victims' Rights Directive 2012/29/EU

**BEYOND THE STATUS QUO**  
**Case study:**  
**Bulgaria, Italy, Romania, Greece**

## ABOUT THE PROJECT

E-PROTECT II is designed to build upon the results achieved by the E-PROTECT project with the overarching aim to bring more light in terms of how Directive 2012/29/EU has been transposed in 10 EU Member States (MSs), what Individual Needs Assessment Methodologies (IAMs) exist in the examined MSs and how they are applied. On this basis, the E-PROTECT project team developed its own IAM and Policy Guidelines with view of introducing them to practitioners from Austria, Bulgaria, Greece, Italy & Romania. At the same time, E-PROTECT delivered this innovative online platform which serves now not only as a virtual library providing useful resources, but is also capable of hosting online events, and facilitating the consolidation of the E-PROTECT community, as it provides a safe space for communication between professionals in the field of child protection. Following the achievements of its predecessor, E-PROTECT II focuses on ensuring the practical implementation of the IAM to make existing national systems more compliant with child victims' rights and needs. Furthermore, it is aimed at strengthening the capacity building & better cooperation between competent authorities, legal practitioners and social service providers, thus bettering the quality of provided services to child victims. The platform has been enriched with [gamification](#) in order to provide the elaborated Methodology in a more practice-oriented manner to professionals, working with children victims of crime. It aims to enhance experts' knowledge and skills in terms of dealing with children and acknowledging their rights and needs.

## E-PROTECT II PARTNERS

- Law and Internet Foundation (LIF) (Coordinator);
- Romanian Center for European Policies (CRPE);
- Defence for Children International Italia (DCI - Italia);
- Ministry of Justice (DGMC), Italy;
- The South-East European Research Centre (SEERC).

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# BULGARIA



## ABBREVIATIONS

|   |  |
|---|--|
| <b>Child Protection Act</b>   | <b>CPA</b>   |
| <b>Criminal Procedure Code</b>  | <b>PPCCPC</b>  |
| <b>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</b> | <b>Directive 2012/29/EU, Victims' Rights Directive</b> |
| <b>E-PROTECT Individual Needs Assessment Methodology</b>  | <b>IAM</b>   |
| <b>European Union EU</b>  | <b>European Union EU</b>                               |
| <b>Social Services Act</b>  | <b>SSA</b>   |
| <b>State Agency for Child Protection UNCRC</b>  | <b>SACP</b>  |
| <b>United Nations Convention on the Rights of the Child</b>   | <b>UNCRC</b>   |

## EXECUTIVE SUMMARY

This Policy Briefs seeks to present the developments in Bulgarian legislation linked to the transposition of Directive 2012/29/EU and whether there is sufficient legal protection to child victims of crime for the period of 2019-2022. It also comments on other relevant legislative and policy changes in the area of the right of the child. Although no positive progress with regards to the comprehensive transposition of the Directive, such has been seen in the promulgation of the Social Services Act in 2019, and the introduction of important changes in the Child Protection Act. The negative impact of COVID-19, the instability of the political situation in Bulgaria, and the recent war on the Ukraine is also part of the commentary. The Policy Brief summarises practitioners' insights working 'on the field' with child victims and concludes with the formulation of concrete recommendations to legal- and policy-makers.

## INTRODUCTION

The current Policy Brief is to provide an overview of the *status quo* of the transposition process of Directive/2012/29/EU (Victims' Rights Directive) in Bulgaria and to provide an overview of any legislative and policy changes dating from October 2019 (the time of elaboration the first review of the implementation process as part of our E-PROTECT I project) until now (May 2022). The methodology used for the present Brief includes mainly desk research for monitoring and evaluating the legislative and policy initiatives as well as for gathering relevant data. It steps on the research and insights collected during our teams work on the E-PROTECT project, which had the paramount objective to raise the overall awareness on children's rights outlined by Directive 2012/29/EU and to inspire cooperation among the array of professionals dealing with child victims of crime. The Policy Brief also benefits from the discussions taking place during the MeetUps with stakeholders in Bulgaria



held during the project lifetime. In particular, the insights gained through the MeetUp in Sofia held on 17.05.2022 have been reflected considering the representation of governmental and local bodies at the event.

In the scope of preparing the current Policy Brief, it should be noted which are the main legislative acts and strategic documents in Bulgaria which have been subject to analysis, namely:

- Child Protection Act
- Criminal Code
- Criminal Procedure Code
- Domestic Violence Protection Act
- Family Law Code
- Social Services Act
- National Programme for Prevention and Protection against Domestic Violence (annually adopted under the Domestic Violence Protection Act)
- Mechanism for Counteraction to Bullying and Violence in Pre-School and School Structures
- Local councils/local child protection programs

Additionally, a number of disclaimers should be made. Firstly, Directive 2012/29/EU establishing the minimum standards on the rights, support and protection of victims of crime has been transposed within the Bulgarian **Criminal Procedure Code** (CPC), which stipulates the procedural rights of the victims of crime. However, as established prior<sup>1</sup> it does not reflect in any way the specific needs of victims of crime. Secondly, in order to provide a clear and comprehensive Brief, prior to initiating the review process some clarifications and definitions particular to Bulgarian legal framework should be duly considered. For instance, it should be noted that under Bulgarian law, every person below the age of 18 is treated as a child. Furthermore, the Republic of Bulgaria has ratified all major international legal acts providing for in child rights, most notably the United Nations Convention on the **Rights of the Child** (UNCRC). Last but not least, all key findings should be looked through the lens of the continuous efforts of both relevant non-profit activists as well as policy- and law-makers in establishing child-friendly judicial procedures for any processes children are part of.

## STATUS QUO OF THE TRANSPOSITION PROCESS OF DIRECTIVE /2012/29/EU IN BULGARIA

Directive 2012/29/EU was adopted on the 25th of October 2012 and member states were granted with a little more than 3 years to transpose the prescribed legal measures into their national legal framework. Yet, at the end of January 2016, the European Commission opened an infringement procedure against 16 member states, Bulgaria being one of them. The infringement procedure was due to the non-communication on behalf of MS on the measures each of them has taken to transpose the Directive 2012/29/EU. In the case of the Republic of Bulgaria, the infringement procedure was not due to non-communication of transposition measures, the national legislator is indeed lagging behind as the first legal measures that transposed partially the Directive 2012/29/EU provisions were adopted in the summer of 2016. As of the moment of drafting this document, the infringement procedure against Bulgaria is still pending.<sup>2</sup> At the same time, the legislator has not initiated any changes when it comes to the CPC to finalise the transposition of the Victims' Rights Directive.

When it comes to child victims of crime, statistics for the recent years showcase a consistent number of child victims of crime being registered, and no significant decline could be observed:

- In 2019, there are 1280 child victims of crime in total.
- In 2020, there are 941 child victims of crime in total.
- In 2021, there are 1 065 child victims of crime.<sup>3</sup>

<sup>1</sup>Please see E-PROTECT Country report on the transposition of Victims' Directive in Bulgaria, available at: <http://api.childprotect.eu/media/5c13c9ae212ca.pdf>

<sup>2</sup> European Commission infringement proceedings against Bulgaria, available at: [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\\_decisions/index.cfm?lang\\_code=EN&typeOfSearch=true&active\\_only=1&noncom=0&r\\_dossier=&decision\\_date\\_from=&decision\\_date\\_to=&EM=BG&DG=JLS&DG=JUST&title=&submit=Search](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=true&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=BG&DG=JLS&DG=JUST&title=&submit=Search)

<sup>3</sup> According to the National Statistical Institute of Bulgaria, available at: <https://nsi.bg/en/content/3805/minor-and-juvenile-persons-victims-crimes-sex-age-kinds-crimes-and-statistical-zones-statistical-regions-and-districts>

The COVID-19 further exasperated the situation – the **State Agency for Child Protection (SACP)** who is managing the National Helpline for Children 116 111 noted an increase of 19% of calls for 2020, a total number of 61 212. In comparison, for 2019 the number of calls is 49 759. As 2021 complete statistics are still pending, the data for January – June 2021 showcase 19 067 calls in total. At the same time, the **Bulgarian Ombudsman** reports a steady increase of the complaints received in relation to the rights of the child for 2021 – 526, while in 2020 this number is 450. The complaints are predominantly related to the state measures combatting COVID-19 which led to abrupt closing of nurseries, kindergartens, and schools, as well as the reduced access to social services.

*Therefore, taking into account the persistence of crime and violence against children, the legislator is ought to act promptly to comply the requirement for the full translation of the Victims' Rights Directive. A recommendation supported by a number of actors such as the **Bulgarian Ombudsman**<sup>4</sup> and the **National Network for Children**.<sup>5</sup>*

As it was noted by **E-PROTECT– Policy Guidelines for Bulgaria**<sup>6</sup> “there is a need for better societal understanding of child rights in general throughout Bulgaria” – a need that was not tackled in the period of 2019 – 2022. What is more in 2019 there was a mass disinformation campaign demonising the “National Child Strategy 2019-2030” project<sup>7</sup>. On that background, the years 2020 and 2021 also marked a period of political crisis in Bulgaria, where 2021 saw the establishment of three individual parliaments, while a government was at last elected in the autumn of 2021. The latter impeded any changes on policy level when it comes for legally providing child rights in terms of the criminal procedure.

#### FROM THEN TO NOW: EVOLUTION OF THE NATIONAL LEGISLATIVE AND POLICY FRAMEWORK FOR TRANSPOSING THE DIRECTIVE 2012/29/EU;

As it was noted above, there are no significant changes taking place in the area of criminal procedure in Bulgaria, nor there are any publicly announced legislative drafts or programmes which could be construed for the purposes of this Policy Brief.

Hence, the policy recommendations formulated by E-PROTECT Policy Guidelines remain valid in 2022 as well, namely:

- The Bulgarian legislator should take measures to fully transpose Art. 22 of the Victims' Directive, taking into account that a victim might suffer from violent, as well as from non-violent crime. The transposition should consider that one might be either direct or non-direct victim of a crime.
- The Bulgarian legislator should regulate a single point of contact where victims can turn to relevant professionals, and where the provision of social services is organised.
- The coordination between the child protection professionals should be improved, especially in the context of social service provision to child victims of crime.

However, some positive policy developments in the area of the rights of the child must be noted. Important amendments of the **Child Protection Act (CPA)** in force since 1 July 2020 concern the protection of child victims. Particular importance should be given to Article 36d, which stipulates the protection of children victims of violence and exploitation. This provision partially implements an obligation for a multidisciplinary individual needs assessment and prescribes drawing and implementing of an Action Plan – something also prescribed by the E-PROTECT Individual Needs Assessment Methodology (IAM). The provision also explicitly links with the CPC, as it obliges the competent Social Support Directorate to report the case to a competent prosecutor.

<sup>4</sup> Annual Report of the Bulgarian Ombudsman 2021, p.137, available at: [https://www.ombudsman.bg/pictures/REPORT%202021-ANNUAL%20FINAL-BG\(1\).pdf](https://www.ombudsman.bg/pictures/REPORT%202021-ANNUAL%20FINAL-BG(1).pdf)

<sup>5</sup> National Network for Children, Report Card 2021, p.51, available at: [https://nmd.bg/wp-content/uploads/2022/05/Beleznik2022\\_web\\_low\\_res\\_compressed2.pdf](https://nmd.bg/wp-content/uploads/2022/05/Beleznik2022_web_low_res_compressed2.pdf)

<sup>6</sup> Please see E-PROTECT– Policy Guidelines for Bulgaria, available at: <http://api.childprotect.eu/media/5db87de4cab05.pdf>

<sup>7</sup> More information is available here: <http://childprotect.eu/#/en/news/168/the-disinformation-regarding-the-istanbul-convention-and-the-national-child-strategy-in-bulgaria>

Another positive step with respect to the carry out of individual needs assessment is found in the recently adopted **Social Services Act (SSA)** from 2019, The SSA introduced an individual needs assessment, similar to that envisioned in Article 22 of the Victims' Rights Directive. Article 6 SSA requires that the assessment includes professional opinions, conclusions and is analysis-based to encompass the living and psycho-social status of the child so to determine their emotional and social needs. The SSA further incorporates one of the key principles of E-RPOTECT IAM, namely the multidisciplinary care and support to the child victim, duly considering the point of view of the child. However, this assessment aims to ensure the appropriateness of social services provided to the respective child and not to be used in the scope of criminal proceedings. As reported by practitioners, neither the investigation, nor the court is due to consider the conclusions of the individual needs assessment pursuant the SSA. In practice, the courts often are more likely rely on expert witness' statements which may not be best suited to consider the intricacy of the specific assessment performed regarding child victims of crime.

In the beginning of 2021<sup>8</sup>, a draft law amending the **Domestic Violence Protection Act** was presented by the Ministry of Justice. The main introductions envisioned by the draft law concern the following:

- Widening the personal scope of the law in terms of who can seek protection to include pregnant women, current or ex-spouse.
- Increasing the available measure against domestic violence to include a total ban of communication (including online communication of any kind) between the abuser and the victim; a referral of child victims to specialised social services to protect child victims/ child witnesses of violence; obliging the abuser to participate in a programme battling addictions in case such is identified; and a ban of the abuser of any license to purchase, hold, carry or use any weapons, explosives, and pyrotechnics.
- Widening the personal scope of the law in terms of who can request before the court the issue of a protection order to include also the competent prosecutor.
- Establishing a national authority for the coordination, monitoring, and evaluation of the policies and measures against domestic violence and enhancing the cooperation between the different governmental authorities and stakeholders.
- Establishing a coordination mechanism to include clear accountability lines and responsibilities among the competent authorities and organisations guaranteeing reliable, timely, and adequate protection of domestic violence victims.
- Creating a data base and systemic data collection of statistical information regarding domestic violence.
- Regulating programmes dedicated to prevention and protection, and social services ensuring protection for the period between the identification of domestic violence until the victim's complete recovery and social (re-)integration.
- Optimising and improvement of judicial proceedings assigning measures for protection from domestic violence in terms of timeliness, effective application of the law, and procedural guarantees to the interest of the victims.
- Defining the terms "economic violence", "psychologic violence", "factual union as spouses" to encompass all forms of domestic violence.
- Introducing changes to the Criminal Code to criminalise domestic violence.

The draft law sparked quite a public discussion, and more than 40 stakeholders have participated in the public consultation. However, at the moment of drafting the current Policy Brief is still being considered. In early 2022 the Ministry of Justice held a meeting with stakeholders<sup>9</sup>, while in May 2022<sup>10</sup> they confirm the draft legislation

<sup>8</sup> Information available at the Council of Minister's Portal for Public Debate, accessible at: <https://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5774>

<sup>9</sup> As per media reporting, <https://nova.bg/news/view/2022/01/21/353954/%D0%B4%D0%B5%D0%BF%D1%83%D1%82%D0%B0%D1%82%D0%B8-%D0%B8-%D0%B5%D0%BA%D1%81%D0%BF%D0%B5%D1%80%D1%82%D0%B8-%D0%BE%D0%B1%D1%81%D1%8A%D0%B4%D0%B8%D1%85%D0%B0-%D0%BF%D1%80%D0%BE%D0%BC%D0%B5%D0%BD%D0%B8-%D0%B2-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B0-%D0%B7%D0%B0-%D0%B7%D0%B0%D1%89%D0%B8%D1%82%D0%B0-%D0%BE%D1%82-%D0%B4%D0%BE%D0%BC%D0%B0%D1%88%D0%BD%D0%BE-%D0%BD%D0%B0%D1%81%D0%B8%D0%BB%D0%B8%D0%B5/>

<sup>10</sup> As per media reporting, <https://nova.bg/news/view/2022/05/01/367296/%D0%BD%D0%BE%D0%B2->

is in the final stages prior to being presented to the Parliament. From E-PROTECT II point of view, it is of crucial importance this expected widened scope of child victims of crime, essentially widening the application scope of the IAM. At the same time, the proposed changes are in line with the key principles of the IAM since they promote the multidisciplinary approach and enhance procedural guarantees.

On the policy area front, one strategic engagements should be mentioned here. This is namely the **Mechanism for Counteraction to Bullying and Violence in Pre-School and School Structures**. This strategic document consists of two main chapters, appendices, and an algorithm to guide the application of the mechanisms. The first chapter provides for a description which type of behaviour is to be considered as 'violence' and which – as 'bullying', aimed at the employees in the pre-school and school system in Bulgaria. The second chapter provides for the mandatory elements for a holistic policy towards a safe educational environment, namely prevention and intervention. The appendices specify practical guidance how to perform a case assessment, how to act at group/ grade level, how to report to competent authorities, while the algorithm details the particular steps to implement the activities prescribed by the Mechanism. The link to E-PROTECT II context lies in the planned referral mechanism and the requirement that teachers/ educators should be acquainted with the available social services in the community, thus in practice enhancing the multidisciplinary cooperation.

Appreciating all the steps made on legal and policy level, there is still a lot more that should be done. In 2020 a Draft law amending the CPC was presented. The latter sought to introduce new provisions which would implement some neglected safeguards envisioned in Directive 2012/29/EU. However, this law was not adopted. The stagnation of legislative efforts in the area of the Victims' Rights Directive comprehensive transposition is explained by key stakeholders, such as the National Network for Children, as based on the dynamic political and consecutive changes of governments in a short period of time. However, the infringement procedure against Bulgaria dates from 2016, meaning that the legislator consistently neglects the obligation to introduce robust mechanisms and procedural guarantees to child victims of crime so to implement in a comprehensive manner Article 22 of the Victims' Rights Directive.

## FROM THEN TO NOW: EVOLUTION OF THE CHILD-VICTIM PROTECTION SYSTEM FROM THE PERSPECTIVE OF PROFESSIONALS

During the implementation of E-PROTECT II, four MeetUps took place in Bulgaria – two in person in 2020 in the towns of Stara Zagora and Pleven where the E-PROTECT IAM was presented to local actors dealing with child victims of crime, one online in 2020 focusing on child victims of online crime, and one in 2022 welcoming stakeholders at national level. This allowed to map the significant and meaningful changes in the work with child victims of crime during the period of 2020-2022.

Two main events had a lasting impact on the situation of child victims of crime, namely the COVID-19 pandemic and the Russian war against the Ukraine. During the peak of the pandemic the access to social services has been significantly more challenging, which in combination with the increase of domestic violence deteriorated the situation of child victims. In this relation, most of the professionals who joined the discussions commented these issues with great reference to the new Social Services Act of 2019. Great importance was given to the individual assessment provided there. However, a multitude of shortcomings of that assessment were pointed out during the debates. Some of them stemmed from its novel status and the lack of information how to optimise the assessment process. According to some experts, the assessment in some regions is carried out only as a formality due to the lack of knowledge and of awareness of good practices. The lack of expertise in this field and the limited training opportunities are also pointed out as a reason leading to large discrepancies, as not all experts entrusted to perform individual needs assessment are neither experienced nor trained enough to carry it out

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appropriately. Furthermore, the difference in expertise also leads to contradicting assessments by social workers, NGOs and expert witnesses appointed by the court. This fragmented approach is widely present since practitioners share that there are many instances where similar assessments are performed for the purposes of different procedures while there is no coordination and oftentimes different governmental/ non-governmental actors instead of in collaboration, may be in conflict. Furthermore, the results of the individual needs assessments carried out by social workers or NGOs are often ignored by courts, as opposed to expert witness statements which often may not have the specific professional expertise needed to discuss in particular issues related to children and their best interests, as there are few expert witnesses that specialise in these issues. The discussions also highlighted that even though there are available trainings to judges by the National Institute for Justice, along with other opportunities based on EU initiatives, they rarely discuss directly the question of child-friendly judicial procedures. Overall, the practitioners conclude that the level of understanding of importance of the appropriate individual needs assessment among relevant professionals and the general public is low. What is more, practitioners share that there is a lack of appropriate equipment and personnel so to ensure that the child hearings are carried out in a child-friendly manner. While across Bulgaria specialised premises for child hearings are present, further investment of resources is needed to appropriately address the current needs. Another identified issue is that the use of these child-friendly premises is not mandatory and is left entirely on the discretion of the investigation or the court.

The Russian war against the Ukraine present an unprecedented challenge to the competent authorities as a large number of unaccompanied children showed themselves 'at the door' of Bulgaria. Even though, these children are not truly unaccompanied (some travel with extended family, other with adults like neighbours), they do fall under the definition of Art. 2.1 of Directive 2011/95/EU: "a minor who arrives on the territory of an EU Member unaccompanied by the adult responsible for them by law or by the practice of the EU Member State concerned, and for as long as they are not effectively taken into the care of such a person or who is left unaccompanied after they have entered the territory of the EU Member State". This led to a miscoordination between the competent branches of the State Agency for Social Support Agency and the State Agency for Refugees with the Council of Ministers in view of who and how should perform an individual needs assessment of the unaccompanied minors. At the end, this conflict of mandates was resolved outlining that the competent branches of the State Agency for Social Support Agency are responsible to perform the individual needs assessment.

## POLICY RECOMMENDATIONS AND CONCLUSIONS

Based on all outlined above, the following recommendations could be directed:

- To transpose in a comprehensive manner the missing provisions of the Victims' Rights Directive in the national law.
- To include the individual needs assessment procedure as a mandatory step in the investigation every crime where there is a child victim.
- To regulate the conduct of interview with child victim in terms of the interviewer qualification, experience, and gender.
- To introduce measures to avoid unnecessary contact between the child victim and the offender, as well to avoid unnecessary questioning in all stages of the criminal procedure.
- To always conduct the interviews in a child-friendly environment, while benefiting from technical measures so as to refrain of further unnecessary interviews that may lead to second and repeat victimisation and traumatic experiences for the child victim.
- To streamline the approach towards child victims with specific needs so all legal provisions are clear and easy to understand.
- To create frameworks for cooperation with NGOs and civil society as they have important insight on these issues and can offer useful recommendations.

- To launch public discussions and spark interest on these topics in order to facilitate understanding and cooperation between the state and wider society when trying to protect the interests of children.
- To ensure professional have enough information and training opportunities on these topics, including training for justice professionals on child-friendly justice and managerial training for social workers.
- To create a co-ordinational mechanism which would incentivise governmental authorities and the civil society to work together and establish joint assessments or at least exchange expertise.
- To adopt a National Strategy for promoting and implementing the rights of the child.

# ITALY



## ABBREVIATIONS

|  |            |
|--|------------|
| <b>Local Health Services</b>                 | <b>ASL</b> |
| <b>Civil Code</b>                            | <b>CC</b>  |
| <b>Criminal Code</b>                         | <b>ICC</b> |
| <b>Criminal Procedure Code</b>               | <b>CPP</b> |
| <b>Convention on the Rights of the Child</b> | <b>CRC</b> |
| <b>Defence for Children International</b>    | <b>DCI</b> |
| <b>European Commission</b>                   | <b>EU</b>  |

## EXECUTIVE SUMMARY

The present report is part of the project E-PROTECT II which has the general aim to reinforce the application of the Directive 2012/29/EU in the cases of child victims of crime. The goal of the report is to evaluate the national legislation transposing those articles of the Victims' Directive into Italian legislation, which concern the protection of child victims of crime. The report is structured in three main sections. It begins with an introductory paragraph on how the child protection system is applied in Italy followed by a brief picture of the transposition of European legislation regarding crime victims in the Italian legislative framework.

The *status quo* of the transposition process of Directive 2012/29/EU in Italy is then presented by providing an overview of the legislative situation in Italy regarding the protection of child victims. This part focuses first on the evolution of the national legislative framework and then on the evolution of the child-victim protection system from the perspective of professionals. The final chapter contains some policy recommendations and the concluding findings relevant for further improvements in the specific field of protection for child victims of crime.

## INTRODUCTION

The present report aims at analysing the *status quo* of the implementation process of Directive/2012/29/EU in Italy providing an overview of the national legislative framework. The main objective is to assess the level of transposition of the Victims' Rights Directive in Italy, from a child rights-based perspective, and to detect if there have been changes and developments to the legislative and policy frameworks since the inception of the project and the first law and policy review carried out in 2018.

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<sup>11</sup> has been adopted under Article 82 para 2 TFEU, replacing Council Framework Decision 2001/220/JHA. It lays down a set of rights for victims of crime and

<sup>11</sup> European Union: Council of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 14 November 2012, L 315/57, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32012L0029>



corresponding obligations on Member States. The Victims' Rights Directive is the major EU level instrument applicable to all victims of crime. It is the cornerstone of EU victims' rights policy. The E-PROTECT II project aims at strengthening the protection of child victims of crime on the basis of Directive 2012/29/EU and its implementation.

Since the Victims' Rights Directive has not been fully transposed into Italian legislation, this policy brief is of major importance as it may support legislators and advocates in filling the gaps in the existing legislative system. Moreover, one of the core aims of the project is to identify how professionals conduct the individual assessment of child victims according to Art. 22 of the Directive, thus, how they determine which protective measures should be taken in a particular case. Several research activities were conducted in close cooperation with experts and practitioners in the field of child victim protection in order to identify challenges as well as good practices in Italy.

The report has been drafted following a research protocol developed by the WP leader (CRPE), which provided a common structure and methodology for the national policy briefs in the four partner countries, as well as the following qualitative criteria to conduct the assessment:

- a) comprehensiveness of national transposition legislation;
- b) conformity of national transposition with the Victims' Rights Directive;
- c) accuracy and appropriateness of the national transposition measures;
- d) comprehensibility, unambiguousness, clarity of national provisions.

During the first phase of E-PROTECT (2017-2019), a methodology for the individual assessment of child victims of crime was developed and tested in consultations with officials and professionals from different partner countries. From 2020 to 2022, E-PROTECT partners have organised a series of national, bilateral and European events to promote a rights-based approach to the individual assessment of child victims of crime and to strengthen multidisciplinary and interagency cooperation. These info-training and exchange events involved practitioners and professionals working with and for child victims of crime in different areas: in law enforcement and the judiciary, in the areas of social and child protection, health and education services and other relevant areas.

Overall, the E-PROTECT II project has been crucial to keep attention focused on how to improve the protection system for child victims of crime. The significant involvement and collaboration of the Italian Department of Juvenile Justice of the Ministry of Justice, which is in turn responsible for providing support to child victims of sexual abuse, has allowed to continue a nation-wide consultative process with key actors aimed at identifying concrete proposals to improve the system and at sharing good practices, already in place locally in some regions or provinces.

## STATUS QUO OF THE TRANSPOSITION PROCESS OF DIRECTIVE/2012/29/EU IN ITALY

Italian legislation relevant to the rights and protection of child victims of crime is composed of civil and penal provisions scattered in a great number of laws, as mentioned below. It is fragmentary because it has been established at various time periods, by adding subsequent provisions, and due to the fact that the system is decentralised, since, each region is entitled to provide for its own provisions aimed at the protection of children against violence and neglect.

### ***National action plan and coordination***

Although Italy in 2016 has adopted the IV National Plan for the protection of the rights and development of children and adolescents, there is a lack of coordination, as the National Plan and the subsequent attempts are not so effective to address the phenomena in a coordinated and harmonised way.

### ***Data collection, research and monitoring***

Data collection and management are fragmentary too, since Italy does not have a national agency collecting data on child victims of crime who are referred to social services for assistance and protection from situations of risk, danger and threat, or children who need help in situations not immediately recognised as crimes, such as neglect or psychological abuse.

The only available official data derive from the reporting of abuses by law enforcement authorities to judicial authorities, or from those regions where a monitoring system has already been implemented. Consequently, the accessible data is not representative of the current national dimension of the phenomenon and therefore, it cannot properly be used to inform prevention programmes and policies.<sup>12</sup>

### ***Legal framework***

In the Italian civil law system, child victims of physical, emotional or sexual abuse are protected through an integrated system of rules, which establishes serious sanctions for parents, in cases where their conduct is detrimental to their children.

For what concerns child victims of crime in criminal proceedings, the original provisions of the Italian Criminal Code - articles 571, 572 and 593 - sanction violations to family obligations, abuse of corrective measures, ill treatment and the abandonment of children. For these types of crimes, prosecutors have the power to act on their own motion.

Over the years, several regulatory interventions have introduced a specific legislation for the protection of children and adolescents from sexual violence and sexual exploitation (DCI Italy, 2014). With the internal law 172/2012, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>13</sup> has been transposed into the Italian legal system.<sup>14</sup> Finally, the Legislative Decree No. 24/2014 has transposed the Directive 2011/36/UE on preventing and combating trafficking in human beings and protecting its victims. This provision has in particular anticipated some of the main principles of the Victims' Rights Directive, such as the importance of the victims' individual assessment, in particular of the most vulnerable persons such as children, women and/or unaccompanied children and the presumption of minority if it is not possible to establish the exact age of a person who is a victim of these offences, and there are reasons to assume the person is a child.

The Victims' Rights Directive 2012/29/UE has been transposed in Italy by the Legislative Decree 15 December 2015, n. 212 and entered into force on 20 January 2015, one month after the deadline given by the Directive itself. During the transposition process, the draft of the Legislative Decree has been positively evaluated by the Justice Commission of the Italian Parliament and enriched by numerous observations.

The text approved by the Council of Ministers shows that it has largely considered the indications given, in particular those concerning: i) a more precise articulation of the concept of "vulnerability"; ii) the possibility to use audio-visual reports of the hearing of the child victim in the proceeding; iii) the strengthening of the possibilities to conduct protected hearings<sup>15</sup> for particularly vulnerable subjects.

The final legislative Decree is made up of only three articles<sup>16</sup> and has modified and integrated several provisions of the Italian Criminal Procedure Code.

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<sup>12</sup> Examples of data from ISTAT (Italian National Institute of Statistics) <http://dati.istat.it/Index.aspx?QueryId=25128&lang=en#>

<sup>13</sup> Council of Europe, Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse, 12 July 2007, CETS No.: 201, available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=201>.

<sup>14</sup> See: Art. 609-decies c.p.; Art. 351, 362 c.p.p.; Art. 76 TU spese di giustizia (Legal costs Consolidation Act)

<sup>15</sup> This type of hearing must be led by trained professionals, with particular caution and usually in a camera session.

<sup>16</sup> Available at: <https://www.gazzettaufficiale.it/eli/id/2016/01/05/15G00221/sg>

**We can briefly summarise the main changes as follows:**

in case of doubt on the major or minor age of the victim, the Judge shall ask for an expertise, providing at the same time that where doubt persists despite the technical assessment, the victim shall be presumed to be a child in accordance with art. 24 of the Victims' Directive;

the right of the child to receive all the information included in art. 4 of the Victims' Rights Directive. From the first contact with the competent authority, victims are offered different information<sup>17</sup> with the aim to guide the victim not only during the proceeding but even before, during investigation. Art. 90-bis c.p.p. has however the shortcoming of not specifying the authority in charge to provide all the information;<sup>18</sup> with regard to the concept of vulnerability, although the European Directive invited the national legislators to adopt a general protection of victims, whose vulnerability has to be evaluated on a case by case basis, considering the personal characteristics of the individual, as well as the type, nature and the circumstances of the crime (art. 22, par.2), the Italian legislator has, according to art. 90-quater c.p.p., adopted specific criteria (age, infirmity, psychological inferiority, type of crime) indicating the status of vulnerability of a victim. Only in a second step, however, nature and circumstances of the crime are to be considered when assessing the vulnerability of a victim. Within Italian law, the vulnerability of a victim is therefore deducted if the abovementioned conditions occur, while the European Directive clearly requests the need of a case-by-case approach towards victims. The Victims' Rights Directive considers children who are victims of crime generally as vulnerable (art. 22, par.4);

in line with the principle to enable the effective participation of victims of crime in criminal investigations and proceedings, the right to interpretation and translation, prior foreseen only for the offender, has been also introduced for the victims (art. 143-bis c.p.p.).

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**FROM THEN TO NOW: EVOLUTION OF THE NATIONAL LEGISLATIVE AND POLICY FRAMEWORK FOR TRANSPOSING THE DIRECTIVE 2012/29/EU;**

In Italy, the transposition of Directive 2012/29/EU has been based on a generic interpretation of national law in relation to the provisions of the Directive. Prior to its adoption, in Italy the concept of "victim" did not exist at all. The law referred to a person offended or damaged by the crime, but these notions have a meaning only within a criminal proceeding in a repressive perspective and only in relation to a fact punished by criminal law. Therefore, the culture of victim care is missing in the criminal justice system at all. The reform of the penal code introduced the concept of victim of crime by copying the definition given by the Directive 2012/29/EU. This allowed to legally recognise the rights due to the victim during the investigation and in the criminal processes and also to adapt the Italian system to that of other European countries, who had already the concept of victim in their national legislation.

***Individual assessment of child victims of crime***

In Italy, the notion of individual assessment as laid down in Article 22 of the Directive is still not reflected in a national legislation. The practicality of this article therefore remains vague because it is poorly regulated in national law and/or policy. Hence, the project activities in the context of E-PROTECT II have thus far not identified a common national approach in the practice of conducting individual assessments of child victims of crime in Italy. As a consequence, given that the Italian legislation does not explicitly foresee and regulate on the individual assessment procedure, in practice it may be the case that several subjects entering in contact with the child

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<sup>17</sup> We refer to all those foreseen by art. 4 of the Victim's Directive that have been completely transposed in art. 90-bis c.p.p.

<sup>18</sup> Domenico Vispo, La riscoperta del ruolo della persona offesa nel sistema processualpenalistico italiano: prime riflessioni a margine del d. lgs 212/2015, page 5 in [http://www.lalegislazionepenale.eu/wp-content/uploads/2016/02/informazioni\\_Vispo\\_2016.pdf](http://www.lalegislazionepenale.eu/wp-content/uploads/2016/02/informazioni_Vispo_2016.pdf) (21.3.2022).

victim, as soon as becoming aware of the offence, carry out the individual assessment, leading to a number of parallel assessments not compared.<sup>19</sup>

A gap of the Italian system and of the Directive itself is that neither art. 22 of the European Directive, nor art. 90-quarter c.p.p. (in which art. 22 has been transposed) give any indications about the professional figure in charge to carry out the individual assessment and how the assessments should be conducted. As a consequence, practices and procedures significantly differ within the national territory. In Italy, guidelines and protocols on the management of cases dealing with child victims have been adopted, but only at regional level. The Italian legislator has not yet given indications in terms of the subjects responsible to carry out the assessment and the procedure to follow.

### ***Referral mechanism for child victims of crime***

In case of suspicious or detection of a criminal offence towards a child, a report to the Judicial Authority may be made by any person or institution that has become aware of a situation that is harmful or dangerous to the physical or mental health of a child.

In this case it is mandatory if that person (or institution) is found to be exercising a function of Public Official or of Public Official or Person in Charge of a Public Service (e.g. teachers and social and health workers in the public service, such as doctors, psychologists, social workers), and doctors, psychologists, social workers) and must be submitted "without delay" and in writing (Art. 331 of the CPP). Failure to report constitutes a failure to perform official acts (Article 328 of the Criminal Code). The report must be forwarded:

- To the Public Prosecutor's Office at the Court - Criminal Section;
- To the Judicial Police at the Court and, for information, to the Public Prosecutor's Office at the Juvenile Court.

Local health services must guarantee specialised diagnostic procedures and medical and psychological interventions for the child and his/her family (DCI Italy, 2014). In the case of child victims of crime, they are responsible for individual psycho-social and medical assessments. These assessments are conducted at the beginning of the proceeding in a pre-trial phase, as well as during it, whenever the judicial authority requires so. Although some gaps still need to be fulfilled, important steps have been taken to improve the transposition of the Victims' Directive.

In 2020, initiatives promoted by the Ministry of Justice have been taken to pursue the objective of "Restorative Justice and Protection of Victims of Crime" through the establishment of a "Coordination Table" for the development of an integrated network of assistance services for victims of crime at the Ministry of Justice. As part of the work carried out by the Coordination Table, a project is carried out to develop a telematic information portal for the protection of victims of crime, capable of collecting information on the status of the existing assistance networks. This project aims to increase its efficiency on the territory through information, recognition of services in the area, collection of good practices and promotion of the setting up of help desks in judicial offices all over Italy.

More recently, an important reform<sup>20</sup> has been undertaken in order to overcome the problem of coordination at judicial level, that will enter into force on 22 June 2022. The reform of the civil process at the Ministry of Justice will establish a *Tribunale per persone minorenni e famiglie* (Family and Juvenile Court), consisting of local courts and district courts, resulting from the transformation of juvenile courts. The children and the family will then have only one court of reference, both for civil and penal cases. The delegated law provides for the establishment of a unitary proceeding for the matter of the family, implementing the family mediation. The

<sup>19</sup> E-PROTECT (2019), Metodologia per una valutazione individuale e fondata sui diritti e i bisogni dei minorenni vittime di reato, pag. 76.

<sup>20</sup> Legge 26 novembre 2021, n. 206 (G.U. del 9 dicembre 2021, n. 292). <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2021:206>

unitary proceeding will follow a model inspired by criteria of speed and effectiveness, through the shortening of the procedural terms and the provision of an appeal that must be based on criteria of clarity and conciseness. The new regulation aims to speed up the process of issuing measures to protect the child victims of violence. Moreover, it provides the implementation of the role of the special representative (called “*curatore speciale*”), nominated to the child where the holders of parental responsibility do not exist, are precluded from representing the child or are in conflict of interest with him/her. The *curatore speciale* represents the views and interests of the child. The right to be represented independently is particularly important in proceedings in which suspects or accused persons are parents, family members or carers of the child.

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## FROM THEN TO NOW: EVOLUTION OF THE CHILD-VICTIM PROTECTION SYSTEM FROM THE PERSPECTIVE OF PROFESSIONALS

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The analysis has also included the official views and critiques raised by relevant public and private stakeholders and has taken into account the information given by the professionals interviewed<sup>21</sup> in the framework of the Country report on the individual assessment methodologies of child victims of crime in Italy. These components have allowed the research to get an overview of the practical implications of the transposition. The professionals interviewed have emphasised the value of Directive 2012/29/EU for safeguarding the rights of child victims of crime. The implementation of the Directive in Italy has improved through the years. However, they have reported some problems they meet in their everyday work, dealing with the implementation of the legislation, not with the law itself. The main issues concern the training and timing.

### ***Training of officials and professionals***

As suggested by the two professionals interviewed, more cooperation among the actors in the judicial system is fundamental to ensure specialised training in the field of child rights and protection, also from a prevention point of view. Although foreseen for lawyers and public forces, training programmes are still lacking or are not so effective. They advocate an improvement in the approach to the victim, above all at cultural level. There is the urgent need to raise the awareness of institutions and citizens on this matter and promote a rights-based culture towards childhood and adolescence. Given that legal representation and/or legal aid is essential during the proceedings and that the child should be entitled to it during the individual assessment, the need for lawyers working in this field to be properly trained to communicate with children, listen to them and promote their rights – in substantive and procedural matters – is fundamental. The role of the child’s lawyer is to represent the child victims of crime and ensure the views of the child are heard, in accordance with the age and maturity of the child, at all stages of the proceedings, including for the determination of protection measures. The lawyer has also an important role in facilitating the communication with the child, explaining the procedure to the child. A proper training is expected and should be ensured.

### ***Child-friendly information***

Another aspect that could indeed be improved is to facilitate the accessibility to the norms establishing the rights of a child victim of crime. This translates in making laws concerning the rights of child victims of crime and child protection regulations accessible in a child-friendly language. This is important because very often the terminology used in the official documents is complicated and not child-friendly, as it contains technical terms, hence not easily readable and understandable. Concerning the timing, the professionals interviewed have stressed the importance of immediacy of the appointment of the special representative (*curatore speciale*). They indeed noted that these special representatives are not always appointed or effectively representing the child victim in a timely manner. Finally, greater coordination and better cooperation are needed; for this reason, extreme trust is placed in the above-mentioned reform of the civil process, since it promotes synergy among different competencies areas, facilitating and speeding up the process.

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<sup>21</sup> A total of 2 interviews were conducted with lawyers responsible of the criminal law in the National Youth Lawyer Association.

## POLICY RECOMMENDATIONS AND CONCLUSIONS

The Victims' Directive has been fully implemented into the Italian legal system. Directive 2012/29/EU, establishing minimum standards for the rights, assistance and protection of victims of crime, represented a change in Italian criminal law, recognising that criminal proceedings should aim not only at convicting offenders, but also at protecting victims and strengthening their rights. Although the transposition measures constitute a big step towards the identification of the victims' needs, the Italian legislative Decree has missed the occasion to completely reform the Italian criminal system that is still aimed at establishing the facts and to "punish" the offender more than looking after the victim.

Despite some progress being made, there is still plenty of room for improvement. Many of the policy recommendations formulated in 2019 have not yet been implemented.

There are gaps in the national law that need to be fulfilled by protocols among the public and private institutions. These protocols, important soft law instruments, are sought from everyone involved in child protection. They are territorial and should be codified by every local actor working in this field. A "Coordination Table" has been established with this aim and it is expected to produce that outcome.

In Italy, there is no structured state system for supporting victims of crime. In other words, no generic victim support services are available but a range of public and private actors, such as associations and organisations, that share the mandate of protecting and supporting child victims of crime at different latitudes. As a consequence, the support of child victims is left to the private sector and to the local actors involved in child protection.

The Italian legislator should:

- Introduce legal elements to ensure that the rights and the best interests of the child are a primary consideration within criminal investigations and proceedings involving child victims of crime, in substantial and procedural matters. The rights of the child, including procedural rights and safeguards, as well as the protection and wellbeing of the child should be a primary consideration throughout all phases of the proceedings.
- Undertake a legislative reform to specify interagency and multi-disciplinary cooperation mechanisms. Multidisciplinary and inter-agency cooperation is essential, but it must be established within an appropriate framework that defines the competences, functions and ways of cooperation of the different actors. This cooperation must be supervised by a management that is recognised and legitimised by all the other parties involved, and which is accountable for decisions and measures taken.
- Regulate further the implementation of article 22 of the Victims' Rights Directive in the national normative framework. The individual assessment of child victims of crime is currently not established as such by law. The Italian legislator and/or policymakers should specify by whom, when and how the individual assessment should be carried out. In the meantime, policymakers at the central level should develop implementation and operational tools to guide the implementation by the concerned actors at the local level.

Italian policymakers should:

- Design a structural reform on child protection in order to establish a national child-centred, rights-based and child-sensitive system of support and assistance to child victims of crime. This system should be public and cover the national territory, with due consideration to public-private partnerships in the design and delivery of services for children and families. It should act also as a referral system to provide child victims with appropriate services and continuity of care.
- Provide for a qualified system of continuous training under a multidisciplinary and inter-agency approach with the involvement of universities, professional associations and other competent and accredited training providers. This training system should be coordinated by a mandated actor and should be addressed to all those professionals working with and for child victims of crime.
- Create a centralised data collection system that allows to analyse and monitor the phenomenon of violence against children.

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# ROMANIA





## ROMANIA

### ABBREVIATIONS

|   |             |
|---|-------------|
| <b>Criminal Procedure Code</b>                        | <b>CPP</b>  |
| <b>Convention on the Rights of the Child</b>          | <b>CRC</b>  |
| <b>European Commission</b>                            | <b>EU</b>   |
| <b>National Agency Against Trafficking in Persons</b> | <b>NAAT</b> |
| <b>Special Telecommunications Service</b>             | <b>STS</b>  |

### EXECUTIVE SUMMARY

This Policy Briefs looks to present the advancements in Romanian regulation connected to the child protection field, specifically to the Directive 2012/29/EU and whether any improvements in the legislative and regulation framework have been seen at national and regional level. The brief also has the purpose to highlight any important authoritative and strategy changes in the space of the right of the child victim of crime throughout the last couple of years. In doing so, the report will be structured in three main categories, such as an overview introduction on how the child protection system has been applied in Romania in recent years, followed by the status quo of the transposition process of the Directive 2012/29/EU in Romania - from the evolution of the national legislative framework to the evolution of the child protection system from the perspective of professionals - and ending with the final section that contains policy recommendations and findings in the field of child protection.

### INTRODUCTION

The present Policy Brief aims to provide an overview of the status quo of the implementation process of Directive/2012/29/EU in Romania by analysing the changes that occurred at the level of national legislation in recent years in the field of child victims of crime. Having in mind the first phase of the E-PROTECT project - that was implemented between 2017-2019 and the research that has been undertaken at that time, the primary goal of the present Policy Brief is to assess the level of transposition of the Victims' Rights Directive in Romania from 2017 until June 2022 and to identify if any changes and developments to the legislative and policy framework have occurred so far. In order to provide a well-rounded paper, the methodology used by the CRPE team focused on undertaking desk research activities for monitoring, evaluating the legislative and policy process and gathering relevant data, but also on organising in-depth open interviews with professionals during the national MeetUps and round-tables organised by the team in Romania.

Beginning with November 2015, Romania among other member states of the European Union, had the obligation to fully transpose into its national legislation 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. The Directive came as a replacement of the previous Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings and has the purpose of ensuring that victims of crime receive appropriate information, support and protection and are therefore able to participate in

criminal proceedings. One of the most important provisions of the Directive is set out in article 22 regarding the individual assessment of victims to identify specific protection needs. In accordance with the article, member states had the obligation to ensure that victims receive a timely and individual assessment in order to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, taking into consideration their national procedures. In regards specifically to child victims, the Directive presumes that children should receive specific protection needs due to their vulnerability to secondary and repeat victimisation and also to retaliation and intimidations. In order to determine to what extent, they could benefit from certain special measures, child victims should be subject to an individual assessment.

## STATUS QUO OF THE TRANSPOSITION PROCESS OF DIRECTIVE/2012/29/EU IN ROMANIA

When it comes to the specific case of Romania and the level of transposition of the Directive into the national legislation, no particular changes have occurred during the last couple of years. That being said, from the beginning, the general transposition of the Directive within the Romanian national legal system, with an emphasis on child victims, was ranking high. In regards to the specific category of victims, such as child victims of crime, particular provisions were lacking at the time of undertaking the first analysis of the legislation as part of the first phase of the E-PROTECT project - and are currently lacking in order to fully transpose the Directive. While the current Criminal Procedure Code does not contain particular provisions addressing children in specific, certain measures can still be found within other national laws and frameworks that deal with particular crimes such as sexual abuse and domestic violence. This would be the case of the individual assessments that are currently required within the Directive but that are not fully harmonised and general applicable for all types of crimes against children. Further improvement of the legislation is still required, in particular to provisions that tackle directly children as crime victims.

## FROM THEN TO NOW: EVOLUTION OF THE NATIONAL LEGISLATIVE AND POLICY FRAMEWORK FOR TRANSPOSING THE DIRECTIVE 2012/29/EU;

Between 2011 to 2015, over 13.000 cases have occurred in Romania on juvenile and adult defendants who have committed crimes against over 20.000 minors<sup>22</sup>. **Domestic violence still remains one of the common types of aggressions against minors.** In 2018, 10.821 child victims of domestic violence<sup>23</sup> between the ages of 11 and 17 were registered in Romania, of which the majority took place in the family and more than half in the countryside. Most of them are cases of neglect, followed by emotional, physical and sexual abuse. According to data gathered by the Save the Children Romania from the National Agency Against Trafficking in Persons (NAAT)<sup>24</sup>, from a statistical point of view, child trafficking represents a substantial component of human trafficking in Romania. The share of minors, in the total number of victims registered annually, remains worrying. In 2018, the number of minor victims registered by NAAT, amounted to 212, and almost 80% of them were over 14 years old.

Currently in Romania, child rights are subject to Law no. 272/2004 on the protection and promotion of the rights of the child, a law that had the purpose to align national legislation with the Community Acquis and also with the international conventions in the field. In addition to the Convention on the Rights of the Child, the legal system of children's rights in Romania was complemented by the Convention Lanzarote for the Protection of Children against Sexual Exploitation and Sexual Abuse, which was ratified by Romania through Law no. 215/2010.

<sup>22</sup> <http://api.childprotect.eu/media/5cb70a1f3c837.pdf>

<sup>23</sup> <https://anes.gov.ro/wp-content/uploads/2019/04/raport-monitorizare-strategie.pdf>

<sup>24</sup> <https://www.salvaticopiii.ro/ce-facem/protectie/combaterea-traficului-de-copii>

With the objective of ensuring the protection of victims of crime, the Romanian national legislation through Law no. 211/2004 on certain measures to ensure the protection of victims of crime, regulates several measures regarding actions to inform the victims of crimes about their rights, psychological counselling, free legal assistance and financial compensation. In this regard, the Ministry of Justice, through the National Institute of Magistracy and in collaboration with the Ministry of Administration and Interior, has the obligation to provide specialised personnel, in order to establish direct relations with the victims of crimes as well as to identify their needs, especially in the case of child victims of crimes.

**One of the main deficits of the national legislation in regards to child victims of crimes still remains the lack of having certain regulations for all types of crimes against minors.** These additional regulations should provide specific measures and actions to be taken as a result. Law no. 272/2004 on the protection and promotion of the rights of the child regulated particular measures of protection in regard to any form of exploitation such as violence, abuse, ill-treatment or negligence, drug use, abduction or any form of trafficking and also economic exploitation. No further regulations are provided for any other types of crimes against children and no specific measures in dealing with children as victims of crimes in criminal proceedings.

**Whilst there is still the need to update and amend specific laws, there exists an even greater need to create new legislation and measures to ensure that all child victims of crime, not only child victims of domestic violence, are granted special protection measures. The Romanian legislation offers a detailed scheme of intervention for the cases of victims of domestic violence but not for any other types of crimes.**

In Romania there is no generally applicable individual needs assessment procedure at national nor regional level. Usually, the best approach towards cooperation is selected by professionals (having in mind their current resources available), whilst always putting the child's interest in the centre. There is a strong collaboration between social workers and police, counsellor and prosecutor in individual cases, thus, ensuring that the child will remain feeling safe from the beginning of the procedure or trial and will not be put in the position to relive the trauma. This collaboration has been observed and discussed often during the national MeetUps and roundtables.

Also, starting with 2022, the Special Telecommunications Service (STS)<sup>25</sup> has operationalised the unique national number 119 intended for reporting cases of abuse, neglect, exploitation and any other form of violence against children, within the government program "From the care of children". The number 119 is free from any fixed or mobile network and will be operated by advisers of the social assistance and child protection departments. Calls signaling different situations affecting children will be answered 24 hours a day by counselors specialised in social assistance and child protection. In the case of situations announced through 119, but for which the immediate intervention of the Police or medical teams is necessary, the operators of the social assistance and child protection departments will alert the Emergency Service 112. At the same time, according to this program, when there are cases of missing children, the police can use the RO-ALERT Warning System, technically managed by STS.

Although "Blue Rooms" exist in Romania, these rooms are not available for hearings with all children. **Although the number of blue rooms has increased greatly in recent years (mostly with the help of the NGO sector), most children still do not have the option to be heard in a "Blue Room".** Therefore, professionals usually try to assist and help the child as much as they can by allowing the hearing to take place in quite spaces or rooms, so that they avoid the re-traumatisation by having the child in the same room as the perpetrator. Also, in order to avoid asking the same questions, professionals usually exchange opinions and ideas amongst them in order to provide the best solutions and services to the child victim of crime.

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<sup>25</sup> <https://www.sts.ro/ro/comunicate-de-presa/119-numar-unic-de-telefon-la-nivel-national-pentru-cazurile-de-abuz-impotriva-copilor>

## FROM THEN TO NOW: EVOLUTION OF THE CHILD-VICTIM PROTECTION SYSTEM FROM THE PERSPECTIVE OF PROFESSIONALS

During the implementation of E-PROTECT II, four MeetUps took place in Romania with the purpose of discussing the main deliverables generated within the project but also to facilitate the interaction between different professionals from 4 different regions in Romania. The MeetUps also provided the space to gather up to date information on the evolution of the child protection system from the perspective of professionals. Starting with 2020, significant changes and challenges have occurred due to the global pandemic in terms of the access to social services and cooperation between professionals. Although, no significant changes have occurred related to the national legislative framework, the work of the professionals has significantly increased in difficulty, and the overall goal was to identify new ways of still give access to social services under certain restrictions generated by the pandemic.

## POLICY RECOMMENDATIONS AND CONCLUSIONS

During the process of updating information and gathering relevant data regarding the transposing status of the Directive 2012/29/EU into the national legislation, several recommendations have been identified, mostly remaining the same as the one drafted after the first research done under E-PROTECT I:

- The necessity to elaborate specific individual assessment methodology for all types of crimes against children, not only in the case of abuse or domestic violence. At the moment, there is no overall consensus regarding the structure of such individual assessment and therefore no available data of how many individual assessments have been carried out so far. In the absence of such structure and indicators that could provide an overview of how efficient is in fact an assessment as such, no pertinent conclusions can be drawn up that could lead in assessing the actual impact;
- Providing sufficient and extensive training opportunities for the whole multidisciplinary team of professionals, including teachers, family doctors, psychologists;
- Ensuring a safe space for children victims of crime when it comes to the interrogation and judiciary processes - such as providing for all victims of crimes special rooms;
- Improving the cooperation among different institutions and authorities, including non-profit organisations. Although currently the national legislation mentions the importance of involving several key actors in the process of dealing with children as crime victims, in practice the situation is not always transposed as it should. A stronger and transparent communication is required from all parties, thus ensuring that minimum standards on the rights and protection of victims of crimes are successfully met;

# GREECE



## INTRODUCTION

This policy brief constitutes a case study on the status quo of the implementation process of Directive/2012/29/EU<sup>26</sup> in Greece, from 2017 until today. As the final product of the E-PROTECT II project, the present report brings the consortium's activities to a 'full circle', by drawing comparative views of the research findings during the first phase of the first E-PROTECT project and the current situation in the partner Member States on the protection of child victims of crime and their access to a child-friendly justice system. In this light, the report aims to provide an overview of the relevant legislative and policy status, investigate whether the developments in the course of five years have contributed to the advocacy of child victims' rights according to the international and EU norms and to identify key priorities for law and policy reform in the country.

To achieve so, a qualitative, two-tier research methodology was developed. Desk research was conducted to collect data on laws, strategies, municipal decisions and other reports or documents depicting the legislative progress on the area of child victim protection. While this may suffice to yield a basic understanding of the normative framework, exploring whether it is implemented in practice requires views from the field which are not always depicted in paper. To address this gap, the report has incorporated the key points made by professionals in the national MeetUps and other networking activities of the project, in sharing their experience from offering child protection services in Greece. By no means does this report purport to offer an exhaustive analysis of the child protection system in Greece; it does, however, aspire to provide a short list of policy objectives of paramount importance for both the enhancement of the national legislation and the harmonisation of practice with the legal framework in the country.

## STATUS QUO OF THE TRANSPOSITION PROCESS OF DIRECTIVE/2012/29/EU IN GREECE

During the first phase of the E-PROTECT project, the lack of statistical data on child victims of crime emerged as one of the main pathologies in the Greek child protection system. In the absence of a national observatory on violence against children, the only - at least publicly- available statistics were provided by a non-governmental organisation ('The Smile of the Child'), reflecting solely on cases reported through the NGO's national helpline. Four years later, and despite the persistent recommendations of the UN Committee on the Convention for the Rights of the Child on that end, there is still no central database on child rights, including those related to child victims of crime (UNCRC, 2022). Although it is too early to draw any conclusions on its effectiveness, the adoption of **Law 4837/2021**, which signaled the establishment of a national system for the reporting and monitoring of cases of crimes against children, seems to be a promising development in this direction. Besides the sporadic nature of the representation of the phenomenon, there have been significant advancements both at legislative and at implementation level. The following two sections look at the evolution of the normative framework and the new practices contributing to the promotion of child-friendly justice in the country.

## FROM THEN TO NOW: EVOLUTION OF THE NATIONAL LEGISLATIVE AND POLICY FRAMEWORK FOR TRANSPOSING THE DIRECTIVE 2012/29/EU;

In the last 15 years, Greece has made significant progress in the development of a comprehensive normative framework on child protection, and on the protection of child victims of crime in particular. Intensive efforts to advance the rights of victims both within and outside the context of criminal proceedings were crowned by the

<sup>26</sup> Referred to herein as 'Victims Directive'.

promulgation of Law 4478/2017, which transposed the Directive 2012/29/EU (Victims Directive) in the domestic legislation. Despite being long overdue, the new law achieved an almost verbatim transposition of the Victims Directive (EPRS, 2017). Thus, apart from the amendment of article 226A CCP on the forensic interview of the child victim or witness of sexual offences, further legislative action was not immediately taken.

Nevertheless, neither the Victims Directive nor the national law explains how the Children's House are to operate or how the individual assessment of child victims of crime should be carried out. On the first gap, **Law 4640/2019** revisited Law 4478/2017, in establishing the Children's Houses and also foreseeing the systematic collection of statistical data on the respect of the child's rights during judicial proceedings. In addition to this, article 6 of the **M.D. 7320/2019**, which regulates the operation of the 'Children's Houses' spells out the details on when, by whom and how the individual needs assessment is to be conducted. In light of the several cases of secondary victimisation which has occurred due to repeated interviewing of the alleged child victim, the text of the Ministerial Decision was accompanied by a structured protocol for the forensic interview of the child, in tune with international standards.

More recently, **Law 4837/2021** was a welcome addition to the body of related norms, introducing two very important changes: a) The establishment of a national system for the recording and monitoring of reports of criminal offences against children and b) the obligation of all child protection units, regardless of whether they belong in the public and the private sector, to designate a person who will be responsible for reporting all allegations of child abuse. In recognition of the vulnerability of children and the responsibility to serve the child's best interest, the term 'child protection unit' encloses all public and private social welfare providers which offer organised social welfare services for the protection of minors including daycare centers, children's camps and centres offering creative activities to children. In the same direction, the **M.D. 40494/03.05.2022** on the operation of Child Protection and Care Units laid down, for the first time, specific prerequisites for the uniform operation of structures which offer accommodation to children withdrawn or deprived of their family environment. Finally, in the wake of the MeToo movement in Greece, penalties for sexual violence against children have become stricter.

It is evident that, through these consecutive amendments, Greece has significantly harmonised its domestic legislation with the EU standards and enhanced, at a normative level, the protection of child victims of crime. The latest results on the EU Justice Scoreboard revealed the State's remarkable progress on the topic of child-friendly justice (Hellenic Ministry of Justice, 2021). However, the framework continues to remain fragmented, as norms on child victim protection are scattered in several laws, acts of governmental bodies and other provisions embedded in documents which otherwise hold no relevance to the rights of the child. The issue was also raised by the UN Committee on the Convention for the Rights of the Child in its concluding observations issued in June 2022, encouraging the state to create a holistic, comprehensive legal framework (UNCRC, 2022). Following the recent announcement of the Ministry of Labour and Social Affairs on their intention to codify the child protection legislation, the prospects look promising.

At policy level, the **first National Action Plan on the Rights of the Child was adopted in 2021**, followed by the establishment of a National Mechanism for the Monitoring and Evaluation of Action Plans for the Rights of the Child. In relation to child-friendly justice, the plan fostered a set of interconnected actions under the Ministry of Justice, including the completion of the proceedings for the operation of 'Children's Houses' and the regular keeping of statistical data on children involved in criminal proceedings; the organisation of a public debate with children – including migrant children – regarding a new Council of Europe Strategy on the Rights of the Child; the development of a new strategy for the reinforcement of the application of the EU Charter on Fundamental Rights; and the consistent training of professionals involved in the forensic interview of child victims or witness of crime, as well as of juvenile probation officers.

## FROM THEN TO NOW: EVOLUTION OF THE CHILD-VICTIM PROTECTION SYSTEM FROM THE PERSPECTIVE OF PROFESSIONALS

In pursuit of the creation of a coherent network on child protection in the country and the promotion of the child's best interest during the newly introduced individual needs assessment procedure, the E-PROTECT project engaged in a series of activities, at national and supranational level. Drawing on their experience from the field, professionals who participated in the project's events shed light on the current practice of public and private entities, raised concerns over the poor implementation of an otherwise well-developed normative framework, and shared their ideas on moving towards child-friendly justice in the country. This section incorporates these views in demonstrating the key challenges in the support and protection of child victims of crime.

### Common system of child protection and task allocation

Acting as the head public agency for child protection in the country, the **National Centre for Social Solidarity (EKKA)** maintains a website with fundamental information on the national regulatory framework, a description - in an easily comprehensible manner - of the forms and signs of possible child abuse, as well as the available services for reporting child abuse cases (EKKA, 2022).

While EKKA's mandate implies its central role in coordinating child protection efforts, professionals continue to report a lack of distribution of tasks among all public and private entities involved in such cases.<sup>27</sup> An illustrative example of the overlapping authority of several agencies constitutes the existence of various channels for reporting suspected acts of violence against children, summarised as follows:

- Via two helplines reserved specifically for this purpose, namely the NCSS National Child Protection Helpline '1107' operated by EKKA, and the National Helpline for Children SOS '1056' operated by the private organisation "The Smile of the Child". Reports can be filed either anonymously or eponymously.
- At the **Social Services and Minors' Protection Teams of the country's Municipalities**. During the first phase of the project, an interviewee stressed on the challenges of these services, which lack the resources and staff (indicatively, the Minors' Protection Team in Thessaloniki consists in two social workers) to effectively manage the heavy load of child victim cases.
- Directly at the **Public Prosecutors' Offices**. The five largest public prosecution offices in Greece (in Athens, Patra, Thessaloniki, Heraklion and Peiraeus), there is a specialised Minors' Department which is tasked with the management of child abuse cases.
- In the **Greek Police**, reports of crimes against children are handled by the Subdivision for the Protection of Minors. Prior to the adoption of Law 4478/2017, which amended article 226A CCP, this department has been tasked with carrying out the forensic interviews of children. For this purpose, child-friendly spaces have been developed within the premises of the main police station in Athens and Thessaloniki, where the two subdivisions are situated. While the introduction of the new legislation foresaw the handover of this procedure to the newly established 'Children's Houses', the delay in the operation of the latter has prolonged the mandate of the police authorities, which continues to raise concerns regarding the protection of alleged child victims of crime from systemic victimisation. Specifically with regard to cybercrime, there is a specialised Unit of Minors Internet Protection and Digital Investigation within the Greek Police.

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<sup>27</sup> This was included in our key suggestions for national policy changes in 2019. More information can be found in E-PROTECT D3.13, available at the project's website: [www.childprotect.eu](http://www.childprotect.eu) (Accessed: 2 June 2022).



- The **Ombudsman's** mandate extends to the protection of the rights of the child. In this capacity, the independent entity operates a separate, free-of-charge helpline, which offers to minors communication with specialised staff (EKKA, 2022).

### **Operation of the 'Children's Houses'**

The creation of an independent structure for the individual assessment and the forensic interview of alleged child victims has been introduced already by Law 4478/2017 (art 74, 75 και 76). Inspired by the Child Advocacy Centre resonating in the US environment, which bears commonalities with the Barnahus model and the, these structures are especially designed as child-friendly spaces to accommodate judicial procedures without exposing the child to secondary, systemic victimisation. The Children's Houses are mandated with the individual needs assessment of child victims for the evaluation of their special protection needs; with the provision of support to children in accordance with article 62 VD; assistance to law enforcement and judiciary, and assessment of the child's cognitive ability and mental wellbeing. Their task regarding forensic interviews of child-victims of sexual violence was reiterated in the amended article 226A CCP (replaced by article 227 CCP under the New Code of Criminal Procedure).

The introduction of this well-developed model in the Greek normative framework was welcomed by stakeholders in the field of child protection. During the law-making parliamentary discussions, invited discussants from the private sector with long relevant stated their willingness to share their 'know-how' for the swift operation of the new structures (Hellenic Parliament, 2017). Concerns were also voiced with regards to the allocation and steady flow of resources for this purpose (Hellenic Parliament, 2017). To address some of the initial concerns, the Ministerial Decision 7320/2019 has set out in detail the way of operation for the Children's Houses and integrated a structured protocol for the forensic interview of the child – alleged victim of sexual violence.

In the course of the first E-PROTECT project, we closely observed the progress towards the operation of Children's Houses and emphasised on the paramount importance of this institution. However, five years after the law's entry into force, it remains largely in paper. In a glimpse, only the Children's House in Athens has found a suitable space to accommodate its services; in Thessaloniki and Patra, the institution does not yet have independent infrastructure and is temporarily accommodated within the first instance court; the rest of the structures in Piraeus and Heraklion are pending. The long delay in the operation of the Children's Houses has been received with severe criticism by child protection agencies in the country (The Greek Ombudsman, 2022). According to testimonies from the Children's House staff in Thessaloniki, there is an absence of a coherent governmental strategy with regards to the role of the institution, as well as a clear distribution of tasks among the latter and the police authorities. As it appears that we are still a long way from the full operation of the Children's House, its pivotal role in modernising the rather obsolete child protection system in Greece becomes even more prominent.

### **Matters of privacy**

Next to the Presidential Decree 77/2003 and to the new Law 4779/2021 (article 9 para 7), the Victims' Directive protects the rights of victims, including child victims, to privacy. While there is consensus in the need for protection of the confidentiality of any subject, including children, the extent of privacy remains controversial. Focusing on the impact of media involvement in criminal cases concerning children, the Ombudswoman for the Child alarmingly noted the high level of media exposure on recent child victim cases, including the disclosure of personal information, actual facts or audio-visual content related to the case, linking it to the secondary victimisation of children (Ombudswoman for the Child, 2020). While admitting to the need for confidentiality, NGO representatives who have handled child victim cases steered the attention to the need for a system of communication among agencies, where a confidential space for sharing relevant sensitive information will be configured. This is not to imply a deviation from the GDPR; yet, it does suggest that compliance with the General

Data Protection Regulation does not justify the adoption of disproportionate measures on access to such information among the authorised parties. To tackle the issues of repeated forensic interviews, misreporting and eventually the systemic victimisation of the child, technology should be capitalised on for the establishment of a platform for the exchange of information on the particular case.

### **Alternative care for child victims removed from their family environment**

While it does not contain a provision on the operation of child protection units, a glimpse on the regime regarding the institutions which accommodate children withdrawn from their family environment due to some form of neglect or abuse evidently falls within the spirit of the Victims Directive. The first national MeetUp steered attention on this topic, hosting discussants from four of the main organisations offering such services to minors at local, national or even international level. In line with the Ombudsman's relevant report issued in August 2020, alarming concerns were voiced in relation to:

- the inconsistency in the allocation of public resources towards the support of child victims, leaving child protection units understaffed and without appropriate infrastructure;
- the absence of temporary accommodation facilities. Instead, pending further action from the Prosecutor's Office, children are temporarily placed in childrens' hospital wards, being thus exposed to significant risks of secondary victimisation;
- the long delays in permanent placement, backed by a lack of active participation of child protection units in the decision-making process; and
- the promotion of alternative, family-centred systems of foster care to gradually replace institutional care.

### **Lack of specialised services for child victims of crime**

As reported during the national MeetUps, there is still scarcity in specialised support services for child victims of crime during, but also after the completion of, the judicial proceedings. Free access to mental health facilities for child victims is not guaranteed, at least outside the main urban centres or beyond the services offered by specific private organisations.

## **POLICY RECOMMENDATIONS AND CONCLUSIONS**

In whole, the transposition of the Victims Directive in the Greek legal order appears to be a success. At least theoretically, it can be strongly supported that the domestic normative framework has been transformed to reflect the relevant international and EU standards and to serve the child's best interest.

Be that as it may, the road to a child-friendly justice system is long. At legislative level, the regulatory protection of child victims of crime remains highly fragmented, scattered in an endless number of legal documents, each one enforced to introduce amendments or additions to the existing regime. At practical level, there is seemingly some, but not significant, progress compared to the policy priorities identified in 2019. While this report does not attempt an exhaustive enumeration of the existing challenges, the following points have emerged as urgent for the enhancement of the protection of child victims of crime in Greece.

- Operation of all the Children's Houses, provided with a consistent flow of resources for this purpose, to provide a safe space for the forensic interview and individual needs assessment of the child and minimise the risk of secondary, systemic traumatisation;
- Place the individual needs assessment of the child at the heart of the proceedings;
- Activate the new system for monitoring violence against children to produce a statistical representation of the phenomenon and set the grounds for a coordinated response;
- Establishment of effective, centralised mechanisms to guarantee the mandatory reporting of cases of violence against children;

- Provide regular, state-centered training to all professionals in direct contact with children on the prevention, identification and reporting of suspected acts of violence against children (including among others bullying, grooming, violence based on race or other prohibited grounds of discrimination);
- Impose penalties to journalists, as well as media, who are publicly disclosing confidential information about a child victim or witness's identity or details about a case of violence against children;
- Promote alternative forms of care for child victims who are withdrawn from their family environment
- Encourage the active participation of children in matters related to their access to justice;
- Only through the concerted response of state and private entities, with the active participation of children, can the comprehensive normative framework gain true value in the enhancement of child victim protection at local, regional and national level.

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