

How can the EU help victims?

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Need for EU?

- Why regulate at EU level?
 - 30 million criminal offences reported each year (Eurostat data)
 - “cross-border victims” - difficulties even greater, if falling a victim to crime outside the country of residence
 - differing/diverging national level of procedural rights
 - EU wide area of freedom, security and justice (TEU Art.3); “The union shall offer its citizens an AFSJ without internal frontiers, in which the free movement of persons is ensured

Stockholm

2.3.4: Victims of crime, including terrorism

“Those who are most vulnerable or who find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents, are in need of special support and legal protection. Victims of terrorism also need special attention, support and social recognition. An integrated and coordinated approach to victims is needed, in line with the Council conclusions on a strategy to ensure fulfillment of the rights of, and improve support for, persons who fall victims of crime”.

Stockholm

2.3.4 (continued):

“The European Council calls on the Commission and the Member States to:

- examine how to improve legislation and practical support measures... and to improve the implementation of existing instruments,
- offer better support to victims in other ways, possibly through existing European networks that provide practical help, and put forward proposals to that end,
- examine the opportunity of making one comprehensive legal instrument on the protection of victims, ...

Budapest Roadmap June 2011

- Replacing FD 2001/220/JHA
- Recommendations best practices
- Support, access to justice, coordination, training, awareness raising, data collection and research
- Civil EPO
- Compensation to victims 20004/80/EC
- Female genital mutilation
- Accession to CoE Convention on violence against women CAHVIO
- Specific needs of victims

Directives

- General Directive
- THB
- Sexual exploitation
- EPO + Regulation (civil matters)
- Compensation

Direct effect

- Can a Directive have direct effect on a citizen?
- The principle of Lex Mitior
- Indirect effect (Pupino for FD)
- Simmenthal (106/77)

Simmenthal 106/77

- « Every national court must...apply Community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule ».

What is a Directive?

- Binding as to the results to be achieved, but leaves to MS the choice of form and methods
- Costa vs Enel C-6/64
- EC law supreme to national law; Courts give full effect to EC law
- Also Constitutions (Case 11/70) Internationale Handelsgesellschaft

Directive

- The Union replaces and succeeds the Community 1:3 TEU
- Third pillar IS the first pillar
- Transfer of powers from MS
- The executive force of law cannot vary from one state to another
- Community law cannot be overridden without being deprived of its character as Community law

Directive

- Two issues: does this doctrine apply to criminal law adopted through Directives?
- Can individuals rely on provisions in criminal law Directives?
- Failure to implement or not implemented correctly

Direct effect

- Van Gend en Loos Case 26/62
- Sufficiently clear and precise (generous application)
- No room for exercise of discretion
- Vertical direct effect
- Grad (direct effect of a Directive) Case 9/70

Directive

- Criminal liability on an individual?
Berlusconi and others joined cases C-387/02, C-391/02 and C-403/02
- Cannot determine or aggravate criminal liability C-74/95 and C-129/95
- The indirect effect cannot determine or aggravate criminal liability either

Role of Court/COM

- Transitional period
- 1 December 2014
- Framework Decisions maintain their legal (indirect) effect
- Com cannot take infringement procedures (except for Conventions)

Pupino C – 105/03

« ...the Court considers that the principle of interpretation in conformity with Community law is binding in relation to framework decisions adopted in the context of Title VI of the TEU. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues... »

Pupino - judgment

- “The binding character of framework decisions....places on national authorities, and particularly national courts, an obligation to interpret national law in conformity with Community law”
- “it is perfectly comprehensible that the authors of the Treaty should have considered it useful to make a provision....in order to contribute effectively to the pursuit of the Union’s objectives”

ECJ Case law

- Cowan (186/87) freedom of movement
- Dell Orto (C-467/05)
- Katz (C-404/07)
- Bernardi (C-507/10)
- Commission vs Greece C-26/07) on Directive 2004/80/EC

THANK
YOU