

The background of the slide is a photograph of a modern, curved bridge spanning a body of water. The bridge has a prominent arch and is supported by cables. In the distance, a cityscape with several buildings and a church with a tall spire is visible across the water. The sky is filled with white and grey clouds. A large, semi-transparent blue rectangle is overlaid on the upper half of the image, containing the main text. A thin white vertical line runs down the right side of the blue rectangle.

Victim rights:

A critical breakdown of EU justice systems

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Introduction

- Sketching the problem of unsafe justice
- Highlighting four causes:
 - Victim rights v defence rights
 - Legislative and practical 'blind spots'
 - Victim hierarchy v tailormade approach
 - Impediments to practical implementation

Sketching unsafe justice

- Much progress made.
- But... *This assessment shows however that the full potential of the [EU 2012 Victim's Rights] Directive has not been reached yet. The implementation of the Directive is not satisfactory. This is particularly due to incomplete and/or incorrect transposition. This report also raises numerous concerns on the practical implementation of the Directive. Shortcomings in implementation of some key provisions of the Directive, such as access to information, support services and protection in accordance with victims' individual needs, were found in most Member States.*

[EC Report on implementation of 2012 Victim's Rights Directive, COM(2020) 188 final]



Victim rights v rights defendant

- New victim rights meet with automatic opposition or limitations
 - Even those that do not affect any defence rights (e.g. support service only upon complaint)
 - Even those that do not affect *fair trial* rights (e.g., compulsory attendance defendant during trial)
- When victim rights do affect human rights of suspect the latter prevail
 - Even if unequal interests at stake (e.g, prohibition orders)
 - But sometimes also similar interests (e.g., article 6(6) EU Victim Directive):

“Victims shall, upon request, receive the information [on release or escape suspect or convicted person] at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.”

Blind spots

- Various lacunae in national, EU, international victim rights instruments (e.g., Victim Directive), e.g.:
 - Provisions on access to justice
 - Post-trial rights
 - Right to remedy
 - Other legal proceedings (civil, administrative, police)
- More holistic approach
 - But what about national differences in levels of victim rights?
 - Bandwidth approach?

Victim hierarchy v tailormade approach

- More and more groups labelled vulnerable & a priori awarded with extra rights
- Important implications > victim hierarchy?
- Various problems, e.g.,:
 - Classification sometimes incoherent and intransparent
 - Classification sometimes based on assumptions/stereotypes
 - Negative side effects for vulnerable victims themselves
- How to come to a more tailormade approach?
 - Individual assessment? But criticized

Impediments to practical implementation

- Culture within CJS
 - Focus on successful prosecution (not protection) and ‘classic’ fair trial rights
 - Legal and practical education focused on fair trial
 - Sometimes difficult to create support with certain CJS actors > ‘victim fatigue’?
- Lack of cooperation within CJS and with other relevant institutions.
- Lack of money and capacity (in particular the ‘expensive’ victim rights harder to implement)
- Other impediments (digitalization and victim rights; cross-border victimization)

Conclusion:

- a) Problem with balance between victim rights and (fair trial) rights defendant.
- b) Lacunae in our (national, EU, international) laws and policies
- c) Problem with victim vulnerability and developing a tailormade approach to victim needs
- d) Various problems affecting the implementation of victim rights in practice (e.g., CJS culture; lack of money and capacity; lack of cooperation; 'victim fatigue', digitalization, etc.)

Thank you for your attention

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