THE INTERNATIONAL NOTION OF VICTIM IN ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

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The notion of victim had its greatest recognition in the A/RES/40/34 Declaration of 1985, which achieved a fundamental step for humanity, restated also in more recent times\(^1\), because it implied that the victim was considered on the level of human rights.\(^2\)

The Declaration – A/RES/40/34 – explains how the term victim is intended to indicate “people who, either individually or in a collective sense, have suffered some kind of harm, above all an offence to their physical or mental integrity, a moral sufferance, a material loss or a serious violation of their fundamental rights, caused by actions or omissions which violate the existing criminal laws in a European Union state, including those which prohibit, on a penal level, abuses of power”.

At the European level the same notion has been taken up again, and officially documented, by means of for example, the Council Framework Decision\(^3\) on the victim's role in the trial, whereby in art. 1 the following definition is offered: “victim shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.”

In reference to trafficking the notion of victim is explained both in the Protocol to prevent, suppress, and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against

\(^1\) Commission on Human Rights resolution 2003/34-E/CN4/RES/2003/34.
Transnational Organized Crime (Palermo 2000)\textsuperscript{4} which is supplemented by three Protocols: the Protocol against trafficking in persons, which came into force on 25 December 2003, the Protocol against the smuggling of migrants by land, air and sea – which came into force on 28 January 2004, and the Protocol against the illicit manufacture of and trafficking in firearms, which came into force on 3 July 2005, and in the text of The Council of Europe Convention on action against trafficking in human beings\textsuperscript{5}, reserved to trafficked persons. The art. 4 of The Council of Europe Convention said that: “Victim shall mean any natural person who is subject to trafficking in human beings as defined in this article.” In the Article 2 we can read the Convention’s Scope: “This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organized crime. Article 3 - Non-discrimination principle. The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” These people, in reality, have also been categorized as vulnerable victims already by the additional Protocol on Trafficking, when in defining illicit behavior it refers to situations of “abuse of power or of a position of vulnerability”\textsuperscript{6}. So, in the article 3 of Prot. Suppl. Transnational Organized Crime Convention Palermo 2000, the international definition of “trafficking” is “a) Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include as minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

\textsuperscript{5} The Council of Europe Convention on action against trafficking in human beings (Warsaw, 16.05.2005) which came into force on 01.02.2008.
\textsuperscript{6} The Supplementary Protocol of the Palermo Convention 2000.
c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.”

The international definition of “vulnerable victim” could now be considered included in the text of the Recommendation concerning the assistance to the victims of crimes adopted by the European Committee on the criminal problems. So, “every Member State ensures that the particularly vulnerable victims may benefit from a specific treatment which responds most appropriately to their situation” (art. 2 – the Council Framework Decision 2001), the following provisions cover the same theme.

From this context it can be inferred that the victims can be vulnerable due to their personal characteristics: physical or psychic disabilities, tender age as minors or for reasons connected to the type of crime they fell victim to - sexual abuses, organized crimes, domestic violence - and finally, even when indirectly, because they are foreigners who therefore have linguistic difficulties.

In the Project of conclusion of the Presidency relative to the conference on the protection of vulnerable victims and their position in penal procedures, as recognized that the need for special protection of the victims in situations of vulnerability deserves due attention in order to create an effective form of protection and, at the same time, a fair trial for the victims or the accused, a formal invitation was made to the European Union states to promote an effective application of their internal legislation on the subject, with particular attention to the training of those working in the field of justice.

In the context of the European Union it is worth also pointing out the programmed choices included in the Stockholm program.

In the Stockholm program is illustrated the first of the political priorities established, in the title “Promoting the rights of citizens: a Europe for rights” – the second paragraph.

In the first part of this paragraph entitled “Europe built on fundamental rights” it states that: “The European Union is based on common values and respect for fundamental rights. After the entry into force of the Lisbon Treaty, the rapid accession of the European Union to the European Convention on Human Rights is of key importance. This will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights are actively promoted. The case law of the Court of Justice

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7 The Council Framework Decision 2001/220/JHA.
8 The Council of Europe Plenary Session dated on 3/7 April 2006.
10 Document 17024/09, Brussels, 02-12-2009.
of the European Union and the European Court of Human Rights will be able to
develop in step, reinforcing the creation of a uniform European fundamental
and human rights system based on the European Convention and those set out
in the Charter of Fundamental Rights.”

In the third part of the second paragraph of the Stockholm program, in the
so-called “Vulnerable groups” (2.3.3.) “All forms of discrimination remain
unacceptable. The European Union and the Member States must make a
concerted effort to fully integrate vulnerable groups, in particular the Roma
community, into society by promoting their inclusion in the education system
and labour market and by taking action to prevent violence against them. For
this purpose, Member States should ensure that the existing legislation is
properly applied to tackle potential discrimination. The European Union will
offer practical support and promote best practice to help Member States achieve
this. Civil society will have a special role to play.”

Vulnerable groups in particularly exposed situations, such as women –
victims of violence or of genital mutilation or persons who are harmed in a
Member State of which they are not nationals or residents, are in need of greater
protection. Appropriate financial support will be provided, through the
available financing programs.

The need for additional proposals as regards vulnerable adults should be
assessed in the light of the experience acquired from the application of the 2000
Hague Convention on the International Protection of Adults by the Member
States which are parties or which will become parties in the future. The
Member States are encouraged to join the Convention as soon as possible.

In the same Stockholm program, with reference to “Victim of crime,
including terrorism”, it is stated that: (2.3.4) “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.”

The European Union states must examine how to improve legislation and
practical support measures for protection of victims and to improve
implementation of existing instruments, offer better support to victims
otherwise, possibly through existing European networks that provide practical
help and put forward proposals to that end, and examine the opportunity of
making one comprehensive legal instrument on the protection of victims, by
joining together the Directive on compensation to victims and the Framework
Decision on victims, on the basis of an evaluation of the two instruments. Increased use of the financing programs should be made in accordance with their respective legal frameworks.

The notion of victim appears rich in meaning and the subject of particular interest at an International level, where increasing special attention is being paid to the victims, paying greater attention to their vulnerability, and specifically to the various forms of organized crime, in so much as weak individuals who can at the same time be called to testify about the serious events they have been subjected to. Their protection appears especially important when bearing in mind the substantial prejudices they are subjected to in the form of serious delinquency. The rights of the victims have long been neglected and numerous initiatives have been launched, regarding their role in the world justice or to ensure that they receive fair compensation and to allow the depend upon measures of concrete help which may ensure their total recovery.

**BIBLIOGRAPHY**

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9. Document 17024/09, Brussels, 02-12-2009