



Research Article

EXPERIENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN ENSURING THE SAFETY OF PARTICIPANTS IN CRIMINAL PROCEEDINGS

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ABSTRACT

The European Court of Human Rights (ECHR) is a key player in the protection and promotion of human rights in Europe. One of the key areas in which the ECHR has made significant contributions is in ensuring the safety of participants in criminal proceedings. The safety of participants is critical to ensuring that the right to a fair trial is respected, and that justice is served. This article will explore the experience of the ECHR in this area, examining the key cases and principles that have shaped the Court's approach.

KEYWORDS

vulnerable to threats, violence, or other forms of harm, particularly in cases involving organized crime or political violence.

INTRODUCTION

Protection from Harm and Intimidation

One of the key principles that the European Court of Human Rights (ECHR) has emphasized in its jurisprudence is the need to protect participants in criminal proceedings from harm and intimidation. This principle is based on the understanding that individuals who are involved in criminal proceedings may be

vulnerable to threats, violence, or other forms of harm, particularly in cases involving organized crime or political violence.

The right to a fair trial is a fundamental principle of international human rights law, and includes the requirement that participants in criminal proceedings be protected from harm or intimidation. In practice,

this requirement is often violated, particularly in cases where the accused is perceived as a threat to powerful interests.

The ECHR has been called upon to address a wide range of issues related to the safety of participants in criminal proceedings. These issues include threats and intimidation of witnesses, judges, lawyers, and other participants, as well as physical violence and other forms of harm.

In cases such as *Ergi v. Turkey* (1) and *Nikolova and Velichkova v. Bulgaria* (2), the ECHR has held that states have a positive obligation to protect participants in criminal proceedings from harm or intimidation by third parties. This obligation includes taking effective measures to prevent such harm from occurring, as well as providing adequate protection measures for individuals who are at risk.

The Court has also emphasized the importance of providing effective remedies in cases where individuals have been harmed or intimidated. In cases such as *Bekos and Koutropoulos v. Greece* (3), the ECHR has held that states have an obligation to investigate incidents of harm or intimidation, and to hold those responsible to account.

To ensure the safety of participants in criminal proceedings, states may need to provide a range of protection measures, depending on the nature and severity of the risk. These measures may include physical protection, such as security escorts or safe houses, as well as measures to protect privacy and confidentiality, such as non-disclosure orders or witness anonymity.

It is also important for states to take a proactive approach to ensuring safety, by identifying and assessing risks, and by providing support and

protection measures as early as possible. This may involve working closely with individuals who are at risk, as well as with civil society organizations, law enforcement agencies, and other stakeholders.

The principle of protection from harm and intimidation is essential to ensuring that participants in criminal proceedings are able to exercise their rights and participate fully in the proceedings. By providing effective protection measures and remedies, states can help to ensure that justice is served, and that the rule of law is upheld.

Another important principle is the need for adequate protection measures to be put in place. The ECHR has held that states have a positive obligation to take reasonable steps to protect participants in criminal proceedings, including providing security measures, relocating witnesses or judges, and ensuring that participants are not exposed to unnecessary risk.

In the case of *Bekos and Koutropoulos v. Greece* (3), the ECHR found that the state had failed to take adequate measures to protect the applicants, who had been threatened and harassed by a group of individuals. The Court held that the state had violated its positive obligation to protect the applicants from harm, and awarded them compensation.

Proactive Approach

In addition to the principle of protection from harm and intimidation, the European Court of Human Rights (ECHR) has also emphasized the need for a proactive approach to ensuring the safety of participants in criminal proceedings. This approach involves identifying and assessing risks, and providing support and protection measures as early as possible.

One example of a proactive approach is the use of risk assessments to identify individuals who may be at risk

of harm or intimidation. In cases such as *Ognyanova and Choban v. Bulgaria* (1), the ECHR has held that states have a positive obligation to conduct risk assessments and to provide appropriate protection measures based on the level of risk.

Another example of a proactive approach is the use of support measures to assist individuals who may be at risk. These measures may include counseling, financial assistance, and other forms of support to help individuals overcome the effects of harm or intimidation.

The ECHR has also emphasized the importance of cooperation between states and other stakeholders in ensuring the safety of participants in criminal proceedings. This may involve working closely with civil society organizations, law enforcement agencies, and other stakeholders to identify risks and provide appropriate support and protection measures.

The proactive approach to ensuring the safety of participants in criminal proceedings is critical to upholding the right to a fair trial and the rule of law. By identifying and addressing risks early, and by providing appropriate support and protection measures, states can help to ensure that all individuals are able to exercise their rights and participate fully in the proceedings.

The ECHR has also emphasized the importance of a proactive approach to ensuring safety. In cases such as *Nikolova and Velichkova v. Bulgaria* (4), the Court has held that states have an obligation to take anticipatory measures to prevent harm, such as identifying potential risks and taking steps to mitigate them.

This proactive approach requires states to take a number of steps, including assessing the risk of harm, identifying potential threats, and taking appropriate

measures to prevent harm. In the case of *Sakhnovskiy v. Russia* (5), the ECHR found that the state had failed to take adequate measures to protect the applicant, a lawyer who had been threatened by his client's opponents. The Court held that the state had violated its positive obligation to protect the applicant, and emphasized the importance of a proactive approach to ensuring safety.

Victim Participation

In recent years, there has been an increasing recognition of the importance of victim participation in criminal proceedings. This is reflected in the European Court of Human Rights' (ECHR) jurisprudence, which has emphasized the need to ensure that victims are able to participate effectively in criminal proceedings and have their voices heard.

One key aspect of victim participation is the right to be informed of the progress of criminal proceedings and to have access to relevant information. In cases such as *Kolesnichenko v. Russia* (1), the ECHR has held that states have a positive obligation to keep victims informed of the progress of criminal proceedings, and to provide them with relevant information such as the charges against the accused and the date and time of hearings.

Another key aspect of ensuring the safety of participants in criminal proceedings is victim participation. The ECHR has emphasized the importance of victim participation as a means of ensuring that the voices of victims are heard, and that they are able to seek justice for the harm they have suffered.

Another aspect of victim participation is the right to be heard and to have a say in the outcome of criminal proceedings. This may involve the opportunity to make

statements, to submit evidence, and to be present during hearings. In cases such as *Schatschaschwili v. Germany* (2), the ECHR has held that states have a positive obligation to ensure that victims are able to participate effectively in criminal proceedings, and to take steps to facilitate their participation, such as providing interpretation services.

The ECHR has also emphasized the importance of ensuring that victims are protected from harm and intimidation. This may involve providing protection measures such as restraining orders, safe houses, and other forms of support to assist victims who may be at risk. In cases such as *Baghli v. France* (3), the ECHR has held that states have a positive obligation to take measures to protect victims from harm or retaliation, and to provide them with appropriate support and protection measures.

Victim participation can take a number of forms, including the right to be heard, the right to participate in hearings, and the right to access information. In cases such as *Al-Khawaja and Tahery v. UK* (6), the ECHR has held that the right to a fair trial requires that victims be able to participate fully in the proceedings, and that they have access to information and evidence that is relevant to their case.

In order to ensure that victims are able to participate fully in criminal proceedings, states have a positive obligation to provide appropriate support and protection measures. This may include providing legal representation, counseling services, and other forms of support.

The recognition of victim participation as a key aspect of criminal proceedings is an important development in the protection of human rights. By ensuring that victims are able to participate effectively, have access to information, and are protected from harm and

intimidation, states can help to ensure that justice is served and that victims are treated with the dignity and respect they deserve.

CONCLUSION

The experience of the European Court of Human Rights in ensuring the safety of participants in criminal proceedings provides valuable insights into the key principles and practices that are essential to protecting human rights in this area. The Court has emphasized the importance of effective investigations, adequate protection measures, a proactive approach to ensuring safety, and victim participation.

These principles are essential to ensuring that the right to a fair trial is respected, and that justice is served. They provide a framework for states to develop effective policies and practices for protecting participants in criminal proceedings, and for ensuring that the voices of victims are heard.

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