



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

Strasbourg, 10 September 2004  
DH-S-TER(2004)007

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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**GROUP OF SPECIALISTS ON HUMAN RIGHTS AND THE FIGHT  
AGAINST TERRORISM (DH-S-TER)**

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**REPORT**

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**1st meeting, 1-3 September 2004**

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**Item 1:        Opening of the meeting and adoption of the agenda**

1.        The Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER) held its first meeting in Strasbourg from 1 to 3 September 2004 with Mr Philippe BOILLAT (Switzerland) in the chair. The list of participants appears in Appendix I. The agenda, as adopted, is reproduced in Appendix II.

2.        The participants began the meeting by observing one minute's silence as a tribute to all the victims of terrorist acts.

**Item 2:        Elaboration of guidelines on the protection of victims of terrorist acts**Terms of reference

3.        Further to the terms of reference received from [the CDDH](#) (58th meeting, 15 - 18 June 2004), the DH-S-TER embarked on the preparation of "Guidelines on aid for victims of terrorist acts and protection of their fundamental rights" ([CDDH\(2004\)020](#), paragraph 34), to which it would also devote a second meeting (13 - 15 October 2004), with a view to submitting a text to the CDDH for examination and adoption at its 59th meeting (23 - 26 November 2004).

Title

4.        The DH-S-TER considered that it would be preferable to choose a short title for the new Guidelines, so as to avoid any problems connected with the interpretation of the title in relation to the content of the Guidelines, and to have a clear wording for the title. It therefore suggested the title "Guidelines on the protection of victims of terrorist acts".

[Link with the July 2002 Guidelines](#)

5.        The DH-S-TER considered it preferable that the Guidelines on the protection of victims of terrorist acts be independent of those on human rights and the fight against terrorism adopted by the [Committee of Ministers](#) on 11 July 2002. If such was not the case, the Committee of Ministers would have to re-examine Guidelines it had already adopted and, moreover, there would be a risk of diluting the scope of the two sets of Guidelines. It was nevertheless important that both sets of Guidelines be published together in due course in a single volume, so that it was clearly apparent that they complemented each other.

6.        The DH-S-TER noted that there could be no question of amending the provisions in the July 2002 Guidelines and that the protection they offered should on no account be undermined in the course of the current work.

### Imperative mood or conditional tense for the drafting of the Guidelines

7. The DH-S-TER decided to use the imperative mood for drafting the Guidelines when they were directly based on case-law of the [European Court of Human Rights](#) and the conditional tense when this was not the case.

### Content of the Guidelines

8. The examination of the content of the Guidelines gave rise to a very rich discussion that dealt in particular with (i) the opportunity to introduce a guideline on the status to be granted to victims of terrorist acts, including the issue of the definition of the word “victim”, and (ii) the content of a guideline on reparation. With regard to the first guideline, it was decided that, with a view to facilitate future discussions, different options would be presented in order to reflect the views which were expressed.

### Reference texts

9. In accordance with the approach followed for the July 2002 Guidelines, the DH-S-TER decided to group together all the reference texts used to prepare the new Guidelines in an appendix to the latter.

10. At that stage, however, in order to facilitate the Group's work, the reference texts concerning each guideline were to be found under the guideline concerned.

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11. At that stage of its work, and on a provisional basis, the DH-S-TER retained the text that appears in [Appendix III](#) as a basis for its future work.

12. It asked the Secretariat to send it to all CDDH members in order to obtain their drafting proposals and proposals for amendments in due time for the second and last meeting of the DH-S-TER (13 - 15 October 2004). Accordingly, the CDDH members, as well as the DH-S-TER members, were invited to send their proposals to the Secretariat before Friday 1<sup>st</sup> October 2004.

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Appendix I**List of participants / Liste des participants****BELGIUM / BELGIQUE**

Mme Sylviane FRIART, Conseiller, Chef du Service des Droits de l'Homme, Direction générale de la Législation et des Libertés et Droits fondamentaux, Ministère de la Justice, Boulevard de Waterloo 115, B-1000 BRUXELLES

**BULGARIA / BULGARIE**

Mr Konstantin ANDREEV, Director, Human Rights and international Humanitarian Organisations, Ministry of Foreign Affairs, 2 Alexander Zhendov Str., 1113 SOFIA

**CROATIA / CROATIE**

Mrs Dubravka ŠIMONOVIĆ, Head of the Human Rights Department, Ministry of Foreign Affairs, Trg N.Š. Zrinskog 7-8, 10 000 ZAGREB

**FRANCE**

M. Frédéric ROGGE, Conseiller des Affaires étrangères, Agent-adjoint du Gouvernement, Sous-direction des Droits de l'Homme, Direction des affaires juridiques, Ministère des Affaires étrangères, 37 Quai d'Orsay, 75007 PARIS

**GERMANY / ALLEMAGNE**

Mr Heiko BRÜCKNER, Executive Assistant to the Agent for Human Rights, Federal Ministry of Justice, Mohrenstrasse, D-10117 BERLIN

**GREECE / GRECE**

Mr Emmanuel ROUCOUNAS, Professor, Academy of Athens, 28 Panepistimiou Str., ATHENS 10679

**ITALY / ITALIE**

M. Vitaliano ESPOSITO, Agent du Gouvernement, Premier Avocat Général, Cour de Cassation, Palais de justice, Piazza Cavour, I-00193 ROME

**LATVIA / LETTONIE**

Mr Emils PĻAKSINS, Legal Counsel, Ministry of Foreign Affairs, Brivibas blvd 36, RIGA LV 1395

**NETHERLANDS / PAYS-BAS**

Ms Olivia SWAAK-GOLDMAN, Senior Legal Adviser, Ministry of Foreign Affairs, Dept. DJZ/IR, P.O. Box 20061, 2500 EB THE HAGUE

**POLAND / POLOGNE**

Ms Renata KOWALSKA, Legal Adviser, Ministry of Foreign Affairs, Aleja Szucha 23, WARSAW 00950

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

M. Vladislav ERMAKOV, Conseiller du Département de la coopération humanitaire et des droits de l'homme, Ministère des affaires étrangères de la Fédération de Russie, 32/34 Smolenskaya-Sennaya sq., 121200 MOSCOW

**SPAIN / ESPAGNE**

Mme Dolores de COSPEDAL, Spanish Agent, European Court for Human Rights, Ministry of Justice, c/Marqués del Duero, 6, E-28001 MADRID

**SWITZERLAND / SUISSE (Chairman/Président)**

M. Philippe BOILLAT, Agent du Gouvernement, Sous-Directeur de l'Office fédéral de la justice, Chef de la division des affaires internationales, CH-3003 BERNE

**TURKEY / TURQUIE**

Mr Ali Baris ULUSOY, Third Secretary, Deputy Directorate General for Council of Europe and Human Rights, Ministry for Foreign Affairs, Disisleri Bakanligi, Balgat, 06100 ANKARA

**UNITED KINGDOM / ROYAUME-UNI**

Ms Emily WILLMOTT, Assistant Legal Adviser, Foreign and Commonwealth Office, King Charles Street, LONDON SW1 2AH

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**OBSERVERS / OBSERVATEURS**

**EUROPEAN COMMISSION / COMMISSION EUROPEENNE**

Mme Isabelle DELATTRE, Administrator, DG JAI – Unit D1 (coopération policière et lutte contre le terrorisme), LUX 46, Bureau 3/53, 200 rue de la Loi, B-1049 BRUXELLES

**Office of the High Commissioner for Human Rights of the United Nations / Bureau du Haut-Commissaire aux Droits de l'Homme des Nations Unies**

Apologised / Excusé

**Office for Democratic Institutions and Human Rights (ODIHR-OSCE)/Bureau des institutions démocratiques et des droits de l'homme (BIDDH-OSCE)**

Ms Sandra CONWAY, Human Rights Officer, OSCE-ODIHR, Interim Co-ordinator on Anti-terrorism Issues, Al. Ujazdowskie 19, 00-557 WARSAW (Poland)

**Committee of Experts on Terrorism (CODEXTER) / Comité d'experts sur le terrorisme (CODEXTER)**

Mr Martin SORBY, Assistant Director General, Legal Department, Ministry of Foreign Affairs, P.O. Box 8114 Dep, N-0032 OSLO

**Commission for the Efficiency of Justice (CEPEJ) / Commission pour l'efficacité de la justice (CEPEJ)**

M. Stéphane LEYENBERGER, Secretary of the CEPEJ/Secrétaire de la CEPEJ

**Amnesty International**

Ms Jill HEINE, Legal Adviser, Amnesty International, International Secretariat, 1 Easton Street, LONDON WC1X 0DW

**International Commission of Jurists (ICJ) / Commission internationale de Juristes (CIJ)**

Mr Eric METCALFE, Barrister and Director of Human Rights Policy, Justice, 59 Carter Lane, LONDON EC4V 5AQ, DX 323 CHANCERY LANE

**International Federation of Human Rights / Fédération internationale des Ligues des Droits de l'Homme**

Mme Stéphanie BOURGEOIS, juriste-consultant, 17 passage de la Main d'Or, F-75011 PARIS

**European Coordinating Group for National Institutions for the promotion and protection of human rights / Groupe européen de coordination des institutions nationales pour la promotion et la protection des droits de l'homme**

Mme Stéphanie DJIAN, Chargée de Mission, Commission Nationale Consultative des Droits de l'Homme, 35 rue Saint-Dominique, F-75700 PARIS

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**SECRETARIAT**

**Directorate General of Human Rights - DG II / Direction Générale des Droits de l'Homme – DG II, Council of Europe/Conseil de l'Europe, F-67075 Strasbourg Cedex**

M. Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l'homme, Secretary of the Committee / Secrétaire du Comité

M. Mikaël POUTIERS, Administrator / Administrateur, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'homme

Mme Michèle COGNARD, Assistant / Assistante

**Secrétariat de l'Assemblée parlementaire / Secretariat of Parliamentary Assembly, Council of Europe/Conseil de l'Europe, F-67075 Strasbourg Cedex**

Mr David MILNER, Secrétaire Adjoint de la Commission des questions juridiques et des droits de l'homme de l'Assemblée parlementaire / Deputy Secretary of the Committee on legal affairs and human rights of the Parliamentary Assembly

**Interpreters/Interprètes:**

Mme Amanda BEDDOWS

Mr Didier JUNGLING

Mr Philippe QUAINÉ

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Appendix II**Agenda****Item 1:       Opening of the meeting and adoption of the agenda****Item 2:       Elaboration of guidelines on the protection of victims of terrorist acts**

- (i)       General exchange of views
- (ii)      Elaboration of a preliminary draft

Working documents

Guidelines on human rights and the fight against terrorism (11 July 2002) [H \(2002\) 4](#)

Protection of victims of terrorist acts: Elements for the CDDH with a view to expand the Guidelines on human rights and the fight against terrorism – State of play [CDDH\(2004\)016rev](#)

Protection of victims of terrorist acts: Elements with a view to the elaboration of guidelines [DH-S-TER\(2004\)001](#)

Extracts from the report of the 58th meeting of the CDDH (15-18 June 2004) and of the 893rd meeting of the Ministers' Deputies (13 July 2004) [DH-S-TER\(2004\)002](#)

Information documents

Madrid Declaration, adopted at the end of the First International Congress of Victims of Terrorism, Madrid, 27 January 2004 [DH-S-TER\(2004\)003](#)

Recommendations No. R (87) 21, R (85) 11 and R (83) 7 of the Committee of Ministers [DH-S-TER\(2004\)004](#)

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) [DH-S-TER\(2004\)005](#)

Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) [DH-S-TER\(2004\)006](#)

### Appendix III

## **Elements retained as a basis for discussion for the elaboration of the preliminary draft guidelines**

### **of the Committee of Ministers to member States on the Protection of victims of terrorist acts**

(State of progress of the work made by the DH-S-TER on 3 September 2004)

#### **Preamble**

The Committee of Ministers,

[a.] Considering that terrorism seriously jeopardises human rights, threatens democracy, and aims notably to destabilise legitimately constituted governments and to undermine pluralistic civil society<sup>1</sup>;

[b.] Unequivocally condemning all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed<sup>2</sup>;

[c.] Recognizing the suffering endured by the victims of terrorist acts and their [family] [next-of-kin] and considering that these persons must be especially shown national and international solidarity and support;

[d.] Reaffirming [the Guidelines on Human Rights and the Fight against Terrorism](#), adopted on 11 July 2002 at the 804th meeting of the Ministers' Deputies, as a permanent and universal reference;

[e.] Underlining in particular the States' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life;

[f.] Recalling the States' obligation, facing terrorist acts, to ensure the protection of possessions and property of everyone within their jurisdiction<sup>3</sup>;

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<sup>1</sup> Para. [a] of the preamble of the Guidelines adopted in July 2002.

<sup>2</sup> Idem, Para. [b].

<sup>3</sup> See Article I (Protection of property) of Protocol No. 1 to the European Convention on Human Rights.



[g] Recalling also that all measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision<sup>4</sup>;

[h] Recalling [Recommendation 1426\(1999\)](#) of the [Parliamentary Assembly](#) of the Council of Europe on *European democracies facing up to terrorism* of 23 September 1999, which asks that the Committee of Ministers “considers the incorporation of the principle of fuller protection for victims of terrorist acts at both national and international level”;

[i] Recalling Resolution No. 1 on combating international terrorism adopted by the Ministers at the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001) which evokes the issue of “the improvement of the protection, support and compensation of victims of terrorist acts and their families” as well as Resolution No. 1 on combating terrorism adopted by the Ministers at the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003) which invites the Committee of Ministers “where necessary, [to] adopt new rules concerning the improvement of the protection, support and compensation of victims of terrorist acts and their families”;

[j] Considering that the present Guidelines aim at addressing the needs and concerns of the victims of terrorist acts in identifying the means to be implemented to help them and to protect their fundamental rights;

[k] Considering that the present Guidelines should not, under any circumstances, be construed as restricting in any way the Guidelines of 11 July 2002;

adopts the following guidelines and invites member States to implement them and ensure that they are widely disseminated among all authorities responsible for the fight against terrorism<sup>5</sup> and for the protection of the victims of such acts, as well as among representatives of civil society.

***Option 1: [I.] [Acknowledgement of the status of victim of terrorist acts]***

*This option consists in tackling the issue of a status to be acknowledged to victims of terrorist acts. A possible wording could be as follows:*

States should acknowledge the status of victim to both the direct victims of terrorist acts and their [families] [next-of-kin].

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<sup>4</sup> Guideline II (July 2002).

<sup>5</sup> Last paragraph of the Preamble to the Guidelines of July 2002.

[The acknowledgement of the status of victim shall not depend on the identification, apprehension, prosecution or conviction of the perpetrator.]<sup>6</sup>

[States shall treat victims and their families with humanity, compassion and dignity with due respect for their privacy.]<sup>7</sup>

Option 2:<sup>8</sup> [L.] [Definition of “victims of terrorist acts”]

*This option aims at suggesting a definition of “victims of terrorist acts”. A possible wording could be as follows (including several alternatives):*

*Alternative 1:*

“Victims” means [natural] persons who have suffered physical or psychological injury or harm [or a economic loss] as a result of a terrorist act. It also includes, where appropriate, members of the [close] family [or dependants] of the direct victim where they have suffered harm.

*Alternative 2:*

1. “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

<sup>6</sup> Proposal made by Amnesty International. See paragraph 2 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34): “A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted (...)”.

<sup>7</sup> Proposal made by Amnesty International. See paragraph 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34): “Victims should be treated with compassion and respect for their dignity. (...)” and Article 2, paragraph 1, of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA): “Each Member State (...) shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.”.

<sup>8</sup> Options 1 and 2 may be cumulated.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.<sup>9</sup>

*Alternative 3:*

"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.<sup>10</sup>

*Alternative 4:*

"Victims" means persons who have suffered physical or psychological injury or harm as a result of a terrorist act. It also includes, where appropriate, members of the family of the direct victim where they have suffered harm.

**Option 3: Not introducing any specific guideline on the status or the definition of victims**

*This option aims at not having any guideline specifically on the status or the definition of victims. However, several existing definitions could appear, for information, in the "Texts of reference" part that will come with the Guidelines.*

There are two types of victims: persons who have suffered terrorist acts at first hand and [family members] [next-of-kin] of such persons. The Court recognises that the latter can, in certain cases, be direct victims:

- *Cyprus v. Turkey*, 10 May 2001, § 156:

"The Court recalls that the question whether a family member of a "disappeared person" is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the person concerned a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will include the proximity of the family tie – in that context, a certain weight will attach to the parent-child bond –, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member

<sup>9</sup> This alternative takes up the definition contained, in the framework of the United Nations, in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34).

<sup>10</sup> This alternative takes up the definition contained in Article 1 of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA).

in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court further recalls that the essence of such a violation does not so much lie in the fact of the “disappearance” of the family member but rather in the authorities’ reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities’ conduct (see *Çakici v. Turkey* [GC], no. 23657/94, § 98, ECHR 1999-IV).”

[The notion of “next-of-kin” is recognised by the Court in addition to that of “family”, without however having been defined precisely: see the *Finucane v. United Kingdom* judgment of 1st July 2003, para. 71.]

[*Status*]

[It should be pointed out, by way of example of national practice, that section 26 of French Law No. 90-86 of 23 January 1990 containing several provisions relating to social security and health granted the victims of terrorism the status of civilian war victims states that : “Victims of acts of terrorism as specified in section 9-1 of Law No. 86-1020 of 9 September 1986 on the fight against terrorism and attacks on the security of the State shall, as from the entry into force of this present law, benefit from the provisions of the code of military invalidity and war victims’ pensions applicable to civilian war victims. The present provisions apply to victims of acts of terrorism committed since 1 January 1982.”.]

[*Definition*]

Neither the Convention nor the case-law of the Court gives a definition of what a victim of a terrorist act is, nor even of the word “victim”. The Court always preferred to adopt a case by case approach.

In the framework of the United Nations, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) gives a very precise definition:

“A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and

persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.”

In addition, Article 1 of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) states that for the purposes of the Framework Decision:

“(a) "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;”

## **II. Emergency assistance**

1. States should ensure that medical and psychological emergency aid is available to any person having suffered mentally or physically following a terrorist act
2. States should ensure that financial and social emergency aid (adapted according to the severity of each case) is provided for victims of terrorist acts, as well as to [their family] [next-of-kin].
3. States should put in place the necessary infrastructure so that such emergency aid can be provided free of charge.

There does not appear to be any ECHR case-law on this point at present. The subject has nevertheless been recognised as important in relation to victims of terrorist acts (see document [CDDH\(2004\)016rev](#)).

Paragraph 4 of [Recommendation No. R \(87\) 21](#) of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation recommends that the governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) emergency help to meet immediate needs (...)”.

## **III. Continuing help**

States should provide for appropriate continuing help (medical, psychological, social and material) for the victims of terrorist acts as well as to their [families] [next-of-kin].

There does not appear to be any ECHR case-law on this point at present. The subject has nevertheless been recognised as important in relation to victims of terrorist acts (see document CDDH(2004)016rev).

Paragraph 4 of Committee of Ministers Recommendation No. R (87) 21 to member States on assistance to victims and the prevention of victimisation recommends that governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) continuing medical, psychological, social and material help”.

#### **IV. Investigation**

1. Following a terrorist act, States have the obligation to open a official investigation.
2. In this framework, special attention must be paid to the victims of terrorist acts and their families in this investigation.
3. In cases where it is decided to take no further action, the victim should have the right to ask for this decision to be reviewed by the competent authority. The victim should also have a right to institute proceedings against the presumed perpetrator(s) before the competent court.
4. At all stages of the proceedings, victims should be questioned in a manner which gives due consideration to their personal situation, their rights and their dignity.

The Court recognises that there should be an official investigation when individuals have been killed as a result of the use of force and that this obligation is not confined to cases where it has been established that the killing was caused by an agent of the State.

- *Ulku Ekinici v. Turkey*, 16 July 2002, § 144:

“The Court recalls that, according to its case-law, the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. This obligation is not confined to cases where it has been established that the killing was caused by an agent of the State. Nor is it decisive whether members of the deceased's family or others have lodged a formal complaint about the killing with the competent investigation authority. The mere fact that the authorities were informed of the killing of the applicant's husband gave rise ipso facto to an obligation under Article 2 of the

Convention to carry out an effective investigation into the circumstances surrounding the death (cf. *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 101 and 103, ECHR 1999-IV). The nature and degree of scrutiny which satisfies the minimum threshold of an investigation's effectiveness depends on the circumstances of each particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (cf. *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI).”

- *Tepe v. Turkey*, 9 May 2003, § 195:

« Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, pp. 330-31, § 107). »

The Court also recognises that the next-of-kin of a deceased victim must be involved in the investigation to the extent necessary to safeguard his or her legitimate interests, failing which this investigation could not be considered “effective”:

- *Slimani v. France*, 27 July 2004, para. 32 and 47-48:

[The text of this judgment is available in French only]

“32. (...) Dans le même type d'affaires, la Cour a souligné qu'il doit y avoir un élément suffisant de contrôle public de l'enquête ou de ses résultats pour garantir que les responsables aient à rendre des comptes, tant en pratique qu'en théorie. Elle a précisé que, si le degré de contrôle public requis peut varier d'une affaire à l'autre, les proches de la victime doivent, dans tous les cas, être associés à la procédure dans la mesure nécessaire à la sauvegarde de leurs intérêts légitimes (voir, notamment, l'arrêt *Hugh Jordan c. Royaume-Uni* du 4 mai 2001, no 24746/94, § 109 et les arrêts, précités, *McKerr*, § 115 et *Edwards*, § 73) ; elle estime qu'il doit en aller ainsi dès lorsqu'une personne décède entre les mains d'autorités.”

“47. Il n'en reste pas moins que, comme la Cour l'a précédemment souligné, dans tous les cas où un détenu décède dans des conditions suspectes, l'article 2 met à la charge des autorités l'obligation de conduire d'office, dès que l'affaire est portée à leur attention, une « enquête officielle et effective » de nature à permettre d'établir les causes de la mort et d'identifier les éventuels responsables de celle-ci et d'aboutir à leur punition : les autorités ne sauraient laisser aux proches du défunt l'initiative de déposer une plainte formelle ou d'assumer la responsabilité d'une procédure d'enquête. Or à cela il faut ajouter qu'une telle enquête ne saurait être qualifiée d'« effective » que si, notamment, les proches de la victime sont impliqués dans la procédure de manière propre à permettre la sauvegarde de leurs intérêts légitimes (paragraphe 29-32 ci-dessus).

Selon la Cour, exiger que les proches du défunt déposent une plainte avec constitution de partie civile pour pouvoir être impliqués dans la procédure d'enquête contredirait ces

principes. Elle estime que, dès lors qu'elles ont connaissance d'un décès intervenu dans des conditions suspectes, les autorités doivent, d'office, mener une enquête, à laquelle les proches du défunt doivent, d'office également, être associés.

48. La Cour en déduit que le respect de l'article 2 de la Convention exigeait que la requérante puisse participer à l'information pour recherche des causes de la mort de M. Sliti, sans avoir, à cette fin, à déposer préalablement une plainte pénale, ce qui n'a pas été le cas en l'espèce. Elle relève d'ailleurs que le droit français a été récemment modifié dans ce sens : les proches de la personne décédée ont désormais la possibilité de se constituer partie civile à titre incident dans le cadre d'une telle information (paragraphe 20 ci-dessus), ce qui leur donne un réel accès à l' « enquête », sans pour autant les obliger à porter eux-mêmes plainte avec constitution de partie civile.”

- *Hugh Jordan v. the United Kingdom*, 4 May 2001, para. 109:

“For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, cited above, p. 1733, § 82, where the father of the victim was not informed of the decisions not to prosecute; *Öğür v. Turkey*, cited above, § 92, where the family of the victim had no access to the investigation and court documents; *Gül v. Turkey* judgment, cited above, § 93).”

Paragraph 8 of [Recommendation No. R \(85\) 11](#) of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure specifies that “At all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity”.

Paragraph 7 of Recommendation No. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure specifies that “The victim should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to institute private proceedings”.

## **V. Effective access to the law and to justice**

1. States must make every effort to guarantee effective access to the law and to justice for victims of terrorist acts and their [families] [next-of-kin]. In particular, an aid should be provided to ensure effective access to the law and to justice, notably to cover the costs that starting such procedures can entail[, including legal assistance].

2. States must make sure that victims of terrorist acts and their [families] [next-of-kin] have:



- (i) the right to bring a civil action before the competent courts in support of their rights, in particular their right to redress.
- (ii) an adequately recognised place in criminal proceedings.

The Court recognises in particular that victims should be taken into consideration in criminal proceedings, in addition to their right to bring civil proceedings to secure at least symbolic reparation or to protect a civil right:

- *Perez v. France*, 12 February 2004 (Grand Chamber), §§ 70-72:

“70. The Court (...) notes that the Convention does not confer any right, as demanded by the applicant, to “private revenge” or to an *actio popularis*. Thus, the right to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a “good reputation” (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p.13, § 27; *Helmers*, cited above, p. 14, § 27; and *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, p. 78, § 58).

[...]

72. (In addition, the Court notes) the need to safeguard victims' rights and their proper place in criminal proceedings. Simply because the requirements inherent in the concept of a “fair trial” are not necessarily the same in disputes about civil rights and obligations as they are in cases involving criminal trials, as evidenced by the fact that for civil disputes there are no detailed provisions similar to those in Article 6 §§ 2 and 3 (see *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 32) does not mean that the Court can ignore the plight of victims and downgrade their rights. [...] Lastly, the Court draws attention for information to the text of [Recommendations R \(83\) 7](#), [R \(85\) 11](#) and [R \(87\) 21](#) of the Committee of Ministers (see paragraphs 26-28 above), which clearly specify the rights which victims may assert in the context of criminal law and procedure.”

- *Finucane v. United Kingdom*, of 1<sup>st</sup> July 2003, para. 71:

“71. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, cited above, p. 1733, § 82; *Oğur v. Turkey*, cited above, § 92; *Gül v. Turkey*, cited above, § 93; and recent Northern Irish cases, for example, *McKerr v. the United Kingdom*, cited above, § 148).”

The expression “effective access to the law and to justice” has been taken from [Recommendation No. R \(93\) 1](#) of the Committee of Ministers to member States on effective access to the law and to justice for the very poor.

As indicated above by the Court, Recommendations Nos. R (83) 7, R (85) 11 and R (87) 21 of the Committee of Ministers recognise a number of rights that victims may claim under criminal law and in criminal proceedings. In particular, paragraph 29 of Recommendation No. R (83) 7 of the Committee of Ministers to member States on participation of the public in crime policy advocates that the governments of member States should assist victims by “establishing an efficient system of legal aid for victims so that they may have access to justice in all circumstances”. Furthermore, paragraph 4 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation advocates that the governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) assistance during the criminal process, with due respect to the defence”.

Recommendation No. R (81) 7 of the Committee of Ministers on measures facilitating access to justice contains also a number of principles applicable to victims of terrorist acts and their [families] [next-of-kin] that should be implemented by all member States.

Article 6 (Specific assistance to the victim) of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) specifies: “Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings.”.

Paragraph 6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) mentions that:

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

## VI. Administration of justice

[In the presence] [On request] of victims of terrorist acts or their [families] [next-of-kin], States should, in accordance with their national legislation, [strive to] bring individuals suspected of such acts to justice and judge them within a reasonable time.

The Court recognises that the right to an effective remedy (Article 13 of the Convention) requires also, especially in the framework of the protection of the right to life, that a thorough and effective investigation capable of leading to the identification and punishment of those responsible be made.

- *Tepe v. Turkey*, 9 May 2003, § 195:

“Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure (see *Kaya*, cited above, pp. 330-31, § 107).”

The Court also recognises that suspects must be judged within a reasonable time. See in particular:

- *Mutimara v. France*, 8 June 2004, §§ 69-74:

In this case, the Court found a breach of the Convention in respect of the length of proceedings concerning the examination of a complaint against a person who allegedly was involved in the genocide that took place in Rwanda.

[The text of this judgment is available in French only]

“69. La Cour rappelle que le caractère raisonnable de la durée d’une procédure s’apprécie eu égard aux critères consacrés par sa jurisprudence, en particulier la complexité de l’affaire, le comportement du requérant et celui des autorités compétentes (voir, parmi beaucoup d’autres, *Doustaly c. France* arrêt du 22 avril 1998, Recueil des arrêts et décisions 1998 II, p. 857, § 39 ; *Slimane-Kaïd c. France* (no 3), no 45130/98, § 38, 6 avril 2004) et suivant les circonstances de la cause, lesquelles commandent en l’occurrence

une évaluation globale (Versini c. France, arrêt du 10 juillet 2001, no 40096/98, § 26 ; Slimane-Kaïd, précité).

70. En l'espèce, la Cour constate que la procédure, qui a débuté le 1er août 1995 (plainte avec constitution de partie civile de la requérante) est actuellement toujours pendante devant le juge d'instruction, soit une durée de huit ans et plus de huit mois à ce jour.

71. La Cour estime que l'affaire présentait une certaine complexité, ce dont atteste notamment la délivrance de nombreuses commissions rogatoires internationales. Cependant, cela ne saurait suffire, en soi, à justifier la durée de la procédure.

[...]

74. Compte tenu des circonstances de l'espèce et en dépit de leur particularité, la Cour estime que l'on ne saurait considérer comme « raisonnable » une durée globale de presque neuf ans pour une information pénale au demeurant toujours en cours.”

## VII. [Reparation] [Compensation]

1. [Victims of terrorist acts and their [families] [next-of-kin] should receive a fair and appropriate [reparation] [compensation] for the damages that they suffered. When [reparation] [compensation] is not fully available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts committed [on their territory] [under their jurisdiction], States should introduce a mechanism on compensation to allow for fair and appropriate compensation of victims and [their family] [their next-of-kin]<sup>11</sup>. [In cases where this [reparation] [compensation] is not ensured by this State, the national State of the victim should make sure to provide it].

2. This mechanism on compensation should be easily accessible, involve a simple procedure and allow for compensation to be provided for rapidly.

3. Member States should also facilitate [administrative] co-operation with the competent authorities of the member State on the territory of which a terrorist act was committed to facilitate access to compensation of their nationals.

[4. Member States whose nationals were victims of a terrorist act on the territory of a non-member State should contact the competent authorities of this State with a view to cooperating in order to facilitate access to compensation of these persons.]

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<sup>11</sup> The idea of moral reparation (or the official recognition of moral faults even with no consequences on an economic benefit) should also be added.

Guideline No. XVII (July 2002) (Compensation for victims of terrorist acts) recalls to member States that: “When compensation is not fully available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the State must contribute to the compensation of the victims of attacks that took place on its territory, as far as their person or their health is concerned.”

Paragraph 11 of Council Directive 2004/80/CE of 29 April 2004 relating to compensation to crime victims states that: “A system of cooperation between authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim’s residence”.

UN Commission on Human Rights Resolution 2002/35 entitled Human rights and terrorism “welcomes the report of the Secretary-General (A/56/190), and invites him to continue to seek the views of Member States on the implications of terrorism in all its forms and manifestations for the full enjoyment of all human rights and fundamental freedoms and on how the needs and concerns of victims of terrorism might be addressed, including through the possible establishment of a voluntary fund for the victims of terrorism, as well as on ways and means to rehabilitate the victims of terrorism and to reintegrate them into society, with a view to incorporating his findings in his reports to the Commission and the General Assembly”.

#### **VIII. Victims’ protection of their [dignity,] privacy[,] [and] family life [and security]**

1. States should take appropriate steps to avoid undermining respect for the privacy and family life of victims of terrorist acts in any way [and safeguard their dignity in all circumstances], in particular when carrying out investigations or providing assistance after the terrorist act.
2. [In addition, appropriate steps should be taken in connection with the provision of information by the media in order to avoid undermining respect for victims' privacy and family life.]<sup>12</sup>
3. Victims of terrorist acts and their families should have an effective remedy in cases where they consider that their right to respect for their privacy and family life has been violated.
4. Where the victims intervene as witnesses, States must ensure their protection , as well as that of [their families] [next-of-kin].

At present, there does not appear to be any ECHR case-law on this issue, specifically dealing with the situation of victims. The subject has nevertheless been recognised as important in relation to victims of terrorist acts (see document [CDDH\(2004\)016rev](#)).

<sup>12</sup> Wording to be reviewed.

Paragraph 9 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation advocates that the governments of member States “take steps to prevent victim assistance services from disclosing personal information regarding victims, without their consent, to third parties”.

[Recommendation No. \(97\) 19](#) of the Committee of Ministers to member States on the portrayal of violence in the electronic media and [Recommendation No. \(99\) 5](#) on the protection of privacy on the Internet are also worth mentioning in this connection.

### **IX. Information of the victims**

1. States [must] [should] give information, according to appropriate measures, to victims of terrorist acts and [their families] [next-of-kin] about the act of which they suffered, except in the case where they indicate that they do not wish to receive such information. For this purpose, States [must] [should]:
  - (i) set up appropriate information mechanisms for the victims and [their families] [next-of-kin], concerning in particular their rights, the existence of victim support bodies, and the possibility of obtaining assistance, practical and legal advice and redress or compensation;
  - (ii) ensure the provision to the victims and [their families] [next-of-kin], if they wish so, of sufficient information about the investigations, the final decision concerning in particular prosecution, the date and place of the hearings, the conditions under which they may acquaint themselves with the decisions handed down and the release of the persons prosecuted for the acts in question.
2. States [must] [should] ensure, according to appropriate measures, victims of terrorist acts and [their families] [next-of-kin] that they will be able to provide information about the act of which they suffered.

The Court acknowledge that, in some circumstances, a family member of a “disappeared person” may suffer inhuman treatment, within the meaning of Article 3 of the Convention, if the State authorities keep silent despite the attempts to obtain information about the disappeared person.

- *Cyprus v. Turkey*, 10 May 2001, §§ 156-157:

“156. [...] The Court recalls that the question whether a family member of a “disappeared person” is a victim of treatment contrary to Article 3 will depend on the existence of special factors which give the suffering of the person concerned a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation. Relevant elements will

include [...] the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. [...]

157. [...] For the Court, the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3.”

The Court, moreover, recognises the need for public scrutiny of investigation or their results. It considers, in addition, that the next-of-kin of a victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests:

- *Finucane v. United Kingdom*, of 1<sup>st</sup> July 2003, para. 70-71

“70. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, Reports 1998-IV, pp. 2439-2440, §§ 102-104; *Cakıcı v. Turkey* [GC], no. 23657/94, ECHR 1999-IV, §§ 80, 87 and 106; *Tanrikulu v. Turkey*, cited above, § 109; *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III, §§ 106-107). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, for example, *Hugh Jordan v. the United Kingdom*, cited above, §§ 108, 136 140).

71. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç v. Turkey*, cited above, p. 1733, § 82; *Oğur v. Turkey*, cited above, § 92; *Gül v. Turkey*, cited above, § 93; and recent Northern Irish cases, for example, *McKerr v. the United Kingdom*, cited above, § 148).”

Paragraph 2 of Recommendation No. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure states that “the police should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and State compensation”.

Paragraph 4 of Recommendation No. R (87) 21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation advocates that the governments of member States “ensure that victims and their families, especially those who are most vulnerable, receive in particular (...) information on the victim's rights”.

Paragraph 3 of Committee of Ministers Recommendation No. R (85) 11 to member States on the position of the victim in the framework of criminal law and procedure states that

“the victim should be able to obtain information on the outcome of the police investigation”.

Paragraph 6 of this same Recommendation adds that “The victim should be informed of the final decision concerning prosecution, unless he indicates that he does not want this information”.

Finally, paragraph 9 of Recommendation No. R (85) 11 to member States on the position of the victim in the framework of criminal law and procedure states that “the victim should be informed of : the date and place of a hearing concerning an offence which caused him suffering; his opportunities of obtaining restitution and compensation within the criminal justice process, legal assistance and advice; how he can find out the outcome of the case”.

Article 4 of the Council of the European Union Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) on the “Right to receive information” specifies in particular that “Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary”.

[Recommendation No. R \(2000\) 7](#) of the Committee of Ministers to the Member States on the right of journalists not to disclose their sources of information can be used to protect the victims of terrorist acts and their next-of-kin to give information to journalists while being protected against any risk of being identified as the source of information.

#### **X. Specific training for persons who assist victims**

[...]

[...]