

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

INFORMATION DOCUMENT ON VICTIMS

Document prepared by the CDPC Secretariat
Directorate General I – Human Rights and Rule of Law

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I) Introduction

At its 70th Plenary Meeting (27-30 June 2016), the European Committee on Crime Problems (CDPC) took note of the opening address by Mr Jan Kleijssen, Director of the Information Society and Action against Crime Directorate, in which he mentioned “the role of victims within the criminal justice system” and invited “the CDPC to consider [this] topic as being [an] important issue to be developed in its future work”. Following this Plenary, an information document has been drafted by the Secretariat and presented to the CDPC Bureau, at its meeting on 10-11 October 2016. This document contained some information on the general issue of victims’ rights, but also on the review of the European Convention on the Compensation of Victims of Violent Crimes (STE No.: 116). The Bureau decided “to consider the role of victims within the criminal justice system as an important issue to be developed in CDPC future work provided that it is dealt with using a holistic approach” and also decided that the two subjects should be dealt separately, namely the issue of updating the Convention, and the more general question of the role of victims in the criminal justice system, including restorative justice. It also considered that “the drafting of a new legal instrument (recommendation) on victims’ rights could be a positive approach” and invited “the CDPC Plenary to give its opinion”.

The present document is aimed at summarising recent developments on victims’ rights in international law. It should be read in the light of documents CDPC (2010) 16 drafted by an expert, Mr. Brano Bohacik. It should also identify room for improvement in the existing CoE standards, in order to give more efficiency to the existing rights.

II) Victims’ rights in international law

The Council of Europe (CoE) has a long tradition of working on victims’ rights. Indeed, the European Convention on the Compensation of Victims of Violent Crimes, opened for signature on 24 November 1983, was the first international legally binding instrument to set up common rules for the compensation of victims of violent crimes. This Convention followed CM Res (77) 27 on the compensation of victims of crime adopted on 28 September 1977, Recommendation R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure, and Recommendation R (87) 21 on Assistance to Victims and Prevention of Victimisation are also of great value in this structure. Given that several recommendations have been adopted by the Committee of Ministers since Recommendation R (87) 21¹, a new Recommendation was adopted on 14 June 2006, on assistance to crime victims. This latter Recommendation mentions the 2002 Guidelines on Human Rights and the Fight against Terrorism and the 2005 Guidelines on the Protection of Victims of Terrorist Acts.

The CoE has kept this topic on its agenda and the most recent CoE criminal law instruments each contain provisions on victims’ rights which have become a standard for CoE criminal law conventions. The CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) is the most relevant example, but also the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (CETS No.211), and the Council of Europe Convention against Trafficking in Human Organs (CETS No. 216). The

¹ A list of Recommendations has been established in the preliminary phase of drafting Recommendation Rec(2006)8 on assistance to crime victims:
<http://www.coe.int/t/dghl/standardsetting/victims/6041-6-ID3996-Victims%20-%20Support%20and%20assistance.pdf>

Model Provisions adopted by the CDPC (document (2014) 17) also provide for particular provisions on victims. The Model Provisions will be adopted/modified taking account any future developments in the CoE texts in this field.

The case law of the European Court of Human Rights has further strengthened victims' rights, by recognising, for example:

- The right to a fair hearing²;
- The right to respect for private and family life³.

There are also United Nations (UN) texts dealing with the issue of victims, in particular the 1985 Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power. The UN also deals with the question of victims in several legal instruments, such as the Convention against Transnational Organised Crime (the "Palermo Convention"). Some steps are also taken in direction to victims: for example, the UN decided to make the 30 August, "International Day of the Victims of Enforced Disappearance" and 26 June "International Day in Support of Victims of Torture". In 2010, the UN decided to establish an UN Voluntary Trust Fund for Victims of Human Trafficking⁴. On 11 February 2016, the UN organised the first Conference on Human Rights of Victims of Terrorism⁵, which shows its willingness to strongly support the victims of terrorism.

In relation to the European Union (EU), on 8 June 2011, the Council of the EU adopted a "Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings".

Several texts have been adopted by the EU since this Roadmap:

- Directive 2011/99/UE adopted on 13 December 2011 on the European protection order which allows victims to claim for one Member State protection measures in another Member State;
- Directive 2012/29/UE adopted on 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, which establishes minimum standards on victims' rights, support and protection. The rights enshrined in this text are equivalent to those enshrined by the European Court on Human Rights and by the CoE texts. They also are in line with the UN principles on victims and set up in the different UN texts. The deadline for transposing this Directive into national laws was end of November 2015. All but four Member States have met this deadline.

It seems that the EU has made the choice to move towards an overall system of victims' protection, which is not limited to compensation but enshrines wider and more effective rights, while also considering transnational cases.

² See for example, *Perez v. France*, 12 February 2004 ; *Ernst and Others v. Belgium*, 15 July 2002; *Sottani v. Italy*, 24 February 2005

³ See in particular *Sandra Jankovic v. Croatia*, 14 September 2009

⁴ Resolution A/RES/64/293 Article 38 of the General Assembly on 12 August 2010 - United Nations Global Plan of Action to Combat Trafficking in Persons

⁵ For the program and the concept note, please see:

<http://www.un.org/victimsofterrorism/en/node/2214>

A comprehensive assessment of all the existing provisions on victims reveals that several rights are attached to the status of victims. These include general rights such as:

- Non-discrimination;
- The right to protection from intimidation, victimisation and retribution;
- The right to respectful and proper treatment from the Police and judicial authorities.

These general rights are accompanied by procedural rights for victims of criminal offences:

- Access to information throughout the proceedings, in a language known by the victim;
- To be heard and to provide evidence;
- To be notified about important decisions or case developments;
- To participate in criminal proceedings;
- Legal aid (where appropriate);
- Mediation (where appropriate);
- Right to “child friendly justice” for children.

These also include rights to assistance and support, such as right to protection, to medical, psychological and financial assistance, or right to specific assistance, for vulnerable victims, or specific crimes.

There are also material rights linked to the type of victim, such as the right to have legal costs refunded, the right to request and receive compensation, or the right to have seized property returned wherever possible.

It is also worth considering the issue of restorative justice as it is also increasingly being taken into account and/or encouraged by international organisations. For instance, in 2006, the UN published a handbook on Restorative Justice Programmes⁶. This system aims at emphasising a form of mediation between the victim and his/her offender (or an offender who has committed the same offence), supported by a third party (mediator). This system of restorative justice is regarded as being beneficial to victims as well as to offenders' reintegration, and can be found at various stages of the criminal justice process as a complementary procedure, or in the absence of judicial proceedings. It is often referred to under “mediation” and this has been the term chosen by the CoE when drafting the Recommendation R (99) 19 concerning Mediation in Criminal Matters.

Even if there are many texts dealing with the issue of victims, either at a global or an European level, and even if provisions are made for rights for victims, it appears that victims are segmented by offence, and there is no internationally agreed definition of the concept of “victim”. This suggests that victims are not addressed as a *sui generis* category, but rather considered on a case by case basis in light of the offence committed. It also appears that the question of the tourists who become victims is a very difficult issue, to which the CDPC decided to pay attention when discussing a possible review of the Convention on the Compensation of Victims of Violent Crimes. Finally, there are many practical issues in implementing victims' rights and in setting up restorative justice processes.

⁶ https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf

III) Points for consideration

An expert has been appointed to work on the European Convention on the Compensation of Victims of Violent Crimes in order to identify possible gaps to be filled. The wider issue of the rights and the role of the victims in criminal proceedings should not be included in the possible review of the Convention, which should remain a separate issue and should only focus on the right to compensation.

The CDPC could develop different kinds of instrument to address these issues. Three types of legal instruments could be contemplated:

- Firstly, the CDPC could consider drafting a recommendation on victims' rights and role in criminal proceedings. This recommendation could comprehensively cover all relevant CoE texts on the subject. Such a recommendation could include issues of restorative justice in order to promote this process in the member States.
- The CDPC could also consider drafting guidelines on victims' rights and role in criminal proceedings. Drafting such Guidelines could allow the CoE to play an active, facilitative role in addressing certain practical issues identified by member States, while taking into account the complexities and differences of each member States' capacity to incorporate victims' rights into their respective legal systems. In the long run, such an approach may help to concretise victims' rights in their domestic law and practice.
- Finally, the CDPC could consider examining whether it would be feasible to draft a new convention focusing on the general issue of victims' rights and role in criminal proceedings. Such a convention would likely have a greater scope than the Convention on the Compensation of Victims of Violent Crimes and would thus have to cover a wide range of victims' rights issues. Though such an instrument would have the advantage of establishing legally binding standards to be met by member States, it would also likely be a very difficult and complex process that may end up being restrictive with respect to the variety of rights which need to be covered.

The CDPC should discuss and decide the type and content of the next instrument on victims. It should decide which subjects should be covered in this text, whether every single right should be covered, whether restorative justice should be included in this work and whether the question of tourists who become victims should be regarded as a specific point in the CDPC work on victims.