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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Group of Specialists on the Assistance to Victims
(PC-S-AV)

SUMMARY REPORT
of the 2nd meeting

Strasbourg, 18-20 May 2005

Adopted at the third meeting (23-25 November 2005)

Secretariat memorandum
prepared by
the Directorate General of Legal Affairs

Executive summary:

The Group discussed matters related to the compensation and the assistance to victims of terrorism acts. It adopted the main elements to be incorporated in the report on victims of terrorism to be presented to the CODEXTER and the CDPC by the end of June 2005.

The Group continued its discussions on wider aspects of assistance to victims in general and on elements to be incorporated in a future recommendation on assistance to victims, updating Recommendation n° R (87) 21.

The Group will hold its 3rd meeting on 23-25 November 2005. It will discuss a preliminary draft new recommendation prepared by the Secretariat.

INTRODUCTION

1. The Group held its second meeting in Strasbourg on 18-20 May 2005.
2. The meeting was chaired by Dame Helen REEVES, Chair of the Committee.

I OPENING OF THE MEETING AND ADOPTION OF THE AGENDA

Opening by Bridget O’Loughlin, Head of the Criminal Justice Division

3. Ms O’Loughlin welcomed the participants and in particular the new participants to the Group’s work:
 - the representative of the CODEXTER, Ms Lonheim
 - the representative of the ICC, Ms Bauer
 - the representative of the UNODC, Ms Baroni
 - the scientific expert, Dr Kilchling.
4. She underlined the importance of the report to be prepared on the victims of terrorism by the end of June and referred in particular to the Declaration and the Action Plan adopted in Warsaw at the 3rd Summit of Council of Europe Heads of States, which deals notably with victims of terrorism.
5. She confirmed the interest of the CDPC in the Group’s work and suggested that the draft recommendation to be prepared by the Group could be submitted to the CDPC for adoption at its next plenary session (Spring 2006).
6. She also encouraged the Group to be creative and innovative in its work to prepare a new recommendation.
7. The Group **adopted the Agenda** (which appears in Appendix I to this report).
8. The **list of participants** appears in Appendix II to this report.
9. The Group **adopted the report of the 1st meeting** (document PC-S-AV(2005)03).
10. The Group also heard **presentations** made by the representatives of the CODEXTER, the ICC and the UNODC in the field of victims.
11. **The CODEXTER representative** informed the Committee about the novelties brought by the convention on the prevention of terrorism, opened to signature at the 3rd Summit of Heads of State in Warsaw, 16-17 May 2005. She also provided information on the next meeting, which will take place in October 2005 and on the country profiles collected by the CODEXTER which contain interesting elements for the PC-S-AV.
12. **The ICC** has, in the Registrar’s Office, a “Victim – Witness Support Unit” as well as a “protection and participation of Victims Unit”. The representative of the Victim Witness Support Unit informed the Committee about their programmes of protection

and assistance to victims. This Unit also gives advice to the judges and to the parties (prosecutor and defence) and organises training sessions.

13. **The UNODC** has developed a series of norms in the field of victims, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the UN General Assembly in November 1985. Draft guidelines on criminal justice, dealing with child victims and with witnesses of crimes are under preparation.
14. Other UN instruments contain specific provisions on victims, such as in the UN Convention on transnational organised crime and its three Protocols as well as the UN Convention on corruption.
15. The UNODC also implements assistance programmes (notably for victims of trafficking and of domestic violence) and conducts research in the field of victims. It also contributes to the work of the Working Group, set up to follow the UNSC Resolution 1566 (8 October 2004), promoting the setting up of an International Fund to compensate victims of terrorism.

II DRAFTING OF A NEW RECOMMENDATION UPDATING RECOMMENDATION n° R (87) 21 ON ASSISTANCE TO VICTIMS

2.1 THE SITUATION AND PRACTICE REGARDING THE PROTECTION AND COMPENSATION OF VICTIMS OF TERRORISM IN MEMBER STATES WITH A VIEW TO MAKING APPROPRIATE PROPOSALS TO THE COMMITTEE OF MINISTERS

Presentation of the expert report

16. Dr M. Kilchling, from the Max Planck Institute of Comparative Criminal Law, presented the report prepared for the Group on "Victims of Terrorism – Policies and legislation in Europe" (PC-S-AV(2005)04).
17. He addressed in particular the question of compensation of victims of terrorism, by comparing the applicable regimes in the Council of Europe member States. He suggested discussing the matter on the basis of eight points developed in the conclusion of its report, p. 53-54.

Discussion on the report

18. The Group firstly discussed the basis of compensation schemes for victims of terrorism. The Group felt that States have a responsibility towards these victims and have to ensure some compensation, as an expression of social solidarity.
19. The Group could, at its next meeting, continue its discussion on the basis of calculation of such compensation. Should compensation address individual victims' needs or rather be equal for all the victims of terrorism?

20. The principle of subsidiarity of the State's intervention was also mentioned: States' compensation would be granted in cases where compensation cannot be covered by the offender or by other forms of insurance.
21. The French experience was mentioned, where it is prohibited for insurance companies to exclude terrorism from insurance policies.

Discussion on compensation and assistance to victims of terrorism

22. The Group discussed
- the types of loss and damages for which victims of terrorism should be compensated
 - the types of compensation to be granted to victims of terrorism
 - the types of services and assistance to be provided to these victims
 1. according to various national and international models and experiences
 2. in the immediate aftermath of an attack and in the medium and longer term
 - the protection of minority communities which might be associated with terrorist groups in the immediate aftermath of a terrorist act.
23. The Group endorsed, as a conclusion, document PC-S-AV(2005)05, summarising the elements on victims of terrorism, to be contained and further elaborated in the report that is to be prepared and presented to the CODEXTER and to the CDPC by the end of June 2005. This document appears in Appendix III to this report.

2.2 DISCUSSION ON THE UPDATING OF THE PROVISIONS OF RECOMMENDATION N° R (87) 21

24. The Group resumed its discussion on the provisions of Recommendation n° R (87) 21 which were not discussed at its first meeting.

Art.8 Right to information

25. This provision should be clarified and updated.
26. Three aspects could be covered in a new recommendation:
- 1 Police should inform victims about victim services
 - 2 The type of information to be given could be inspired by the EU Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Art. 4. (the text of Art 4 forms Appendix IV to this report).
 - 3 The facilitation by States of access of victims to support services, while respecting personal data confidentiality requirements.
27. The French example was mentioned. The French criminal procedure code was amended in 2000. A last para. was added to its Art 41, by which the Prosecutor can request selected victim support services to assist victims, even if the victim has not expressed their consent to it.

Art.9 Disclosure of personal information – confidentiality

28. Reference was made to codes of conducts for victim support services. The Group will resume its discussion on the matter at its next meeting, on examples of such codes of conduct (including the standards of practices adopted by the European Forum of Victim Services) which it will collect by then.
29. It was felt that States should be encouraged to refrain from supporting associations which do not respect standards of conduct.

Art 10. Co-ordination

30. The Group shared the recommendation by Dame Helen Reeves that “a further guideline should be included requiring all agencies involved in social provision, healthcare and criminal justice, in the statutory, private and voluntary sectors to work together to ensure a co-ordinated and comprehensive range of services for victims of crime. Government departments responsible for those services should provide leadership through the development of co-ordinated strategies across the whole of government to promote the interests of victims of crime.”
31. It should be the Government’s initiative to liaise with existing services and ensure that
 1. a wide range of services is available to victims, and
 2. these services can offer co-ordinated action to assist victims.
32. The Group agreed that Governments should be able to ensure the control over the use of public funds by these Services as well as over the referral procedures. Governments should, however, respect the freedom of associations, especially of non governmental organisations, in their ways of acting.

Art 11. National organisations

33. Item already discussed at the first meeting, under Art 3.

Art 12. 13. 14. 15. Crime prevention

34. The Group referred to its mandate which excludes crime prevention from the topics to be covered by this Committee, with the exception of the problem of repeat victimisation.
35. The decision by the Committee of Ministers, to exclude crime prevention, follows Dame Helen Reeves’ recommendation in her analysis of Recommendation n° R (87) 21 (p.12): “Crime reduction is an issue which affects the whole community, not only those people who have become victims of crime. In view of the large volume of work which has already been carried out on this subject and the work which is still in progress, it was recommended that this topic should be made the subject of a separate document which should incorporate the various recommendations which have been published in recent years by the Council of Europe.”

36. **The Group supported the idea of having a separate instrument prepared by the Council of Europe on crime prevention.** It would complement the work already under way in the priority field of the social mission of the criminal justice system, which was one of the main topics discussed at the European Conference of Ministers of Justice held in Helsinki on 7-8 April 2005.
37. The discussion focused on issues of prevention of repeat victimisation.
38. Victim support services should pay particular attention to the risk of repeat victimisation when dealing with crimes such as domestic violence, property offences (burglary), hate crimes, trafficking. In these cases, victim support services should make the victim aware of the risk of repeat victimisation and should propose concrete ways to prevent repeat victimisation.
39. The Group agreed that
- note should be taken of existing literature, research and national or international instruments in the field of repeat victimisation,
 - efforts should be made to prevent victimisation, taking note of national and international experiences,
 - in particular, people/victims should be made aware of the phenomenon and the risk of being a “repeated victim”,
 - people/victims should be made aware of the measures to be taken to avoid this situation and the availability of support services.

Art 16. Insurance

40. Starting with the observation that not everyone is covered by insurance (be they public or private bodies), the Group considered that States should take this issue seriously and should find ways to assist all persons so that they can be protected against risks.
41. The question arose as to whether some forms of insurance could be compulsory.
42. The Group considered that member States could be encouraged to cover persons who rent public properties or private properties funded primarily by public sources. This is aimed at protecting the persons living in public housing. These persons belong, in general, to the poorest categories of society, which are also the more vulnerable to crime.
43. Ways should be identified to ensure that the physical integrity of the persons is covered, but also, to a certain extent, their belongings and personal effects.
44. Public housing landlords should be asked to take out adequate insurance to cover the buildings and their contents (persons and belongings). They could negotiate special agreements with insurance companies on the basis of “group insurance” in order to lower the premium. They could spread the risk among high and lower risk areas.
45. Governments should also take steps to insure equal access to private insurance for everybody. At the very least, insurers should be prohibited from refusing to ensure

contents of a person's home solely on the grounds that he or she is renting the property and does not own it.

Art 17. Mediation

46. The Group will further discuss this issue at its next meeting, on the basis of the policy adopted by the European Forum of Victim Services, which will be communicated to the Group by then.
47. A preliminary discussion dealt with the following issues:
- the fact that for certain types of crime (mostly repeated crimes) mediation was not deemed the most appropriate procedure,
 - the moment, in the judicial phase, when mediation should take place (and the question of the use of evidence collected during mediation),
 - ways to ensure a genuine freedom, a real choice, a free consent when deciding to use a mediation procedure.

FINAL REMARKS

Experts to the Committee

48. The Committee suggested inviting Dr Kilchling to its next meeting, in order to have his advice while discussing the specific provisions on victims of terrorism.
49. The Committee agreed to invite Mr Groenhuisen as a second expert, in order to benefit from his research on the position of victims in the criminal justice system and from his experience as a well known expert in the field of victimology in and beyond Europe.
50. The Secretariat could also reflect on a possible expert from police forces, having a particular expertise in dealing with victim issues.

Points for discussion for the 3rd meeting of the Group (23-25 November 2005)

51. The Group will discuss the following matters
1. a preliminary draft recommendation to be prepared by the Secretariat, reflecting the outcome of the first two meetings of the Committee. The Group should receive the draft well in advance in order to pay particular attention to possible omissions in the draft.
 2. policies adopted by the European Forum for Victim Services in the field of mediation and quality of service, with particular reference to referrals of victims disclosure of personal information.
 3. the Parliamentary Assembly recommendations on domestic violence and on counterfeiting, in order to adopt a position on these issues.
 4. the follow-up to the 2nd Resolution of the Conference of European Ministers of Justice held in Helsinki (7-8 April 2005) raising the particular situation of victims of violations of international humanitarian law.

The Secretariat will prepare the elements to be considered by the group on matters 3 and 4.

APPENDIX I

LIST OF PARTICIPANTS / LISTE DE PARTICIPANTS

SPECIALISTS / *SPECIALISTES*

Ms Christa PELIKAN, Researcher, Austria

Mme Michèle BERNARD REQUIN, Magistrate, Conseillère à la Cour d'Appel de Paris, France

Mr Lászlo SÖMJÉNI, Section Leader, Department of Legal Administration, Ministry of Justice, Hungary

Dame Helen REEVES, Director, Victims Support National Office, United Kingdom, **Chair of the PC-S-AV**

Ms Cristina SOEIRO, Assistant Professor, Institute of Judicial Police of Criminal Sciences, Bureau of International Relations, Ministry of Justice, Portugal

Mr Daniil ZUYKOV, Prosecutor, International Law Department, Office of the Prosecutor General, Russian Federation

Ms Anna WERGENS, Lawyer, Project Leader, Sweden – APOLOGISED / EXCUSEE

EXPERT CONSULTANT

Dr. Michael KILCHLING, Senior Researcher, Manager of public relations and administrative affairs, Max Planck Institute for Foreign and International Criminal Law, Department of Criminology, Germany

REPRESENTATIVES OF OTHER COMMITTEES / *REPRESENTANTS D'AUTRES COMITES*

Representatives of the Steering Committee for Human Rights (CDDH) / Représentant du Comité directeur pour les Droits de l'Homme (CDDH)

Mme Deniz AKÇAY, Conseillère juridique, Adjointe au Représentant Permanent de la Turquie auprès du Conseil de l'Europe

Mr Martin EATON, Legal Consultant, United Kingdom

Representatives of the Committee of Experts on Terrorism (CODEXTER) / Représentant du Comité d'Experts sur le terrorisme (CODEXTER)

Ms Charlotte LÖNNHEIM, Ministry of Justice, Sweden

Mr Ignacio PERENA PINEDO, Avocat de l'Etat, Ministry of Justice, Spain - APOLOGISED / EXCUSE

INTERNATIONAL ORGANISATIONS / ORGANISATIONS INTERNATIONALES

European Commission / Commission européenne

No nomination

Council of the European Union / Conseil de l'Union européenne

No nomination

International Criminal Court (ICC) / Cour Pénale Internationale (CPI)

Ms Michaela BAUER, Support Officer, Victims and Witnesses Unit, International Criminal Court (ICC), The Netherlands

United Nations Interregional Crime and Justice Research Institute (UNICRI)

No nomination

United Nations Office on Drugs and Crime / Office contre la drogue et le crime (UNODC)

Ms Claudia BARONI, Crime Prevention and Criminal Justice Officer, Legal Advisory Services/DTA, United Nations Office on Drugs and Crime (UNODC), Austria

Office of the United Nations High Commissioner for Human Rights (OHCHR-UNOG) / Haut Commissariat des Nations Unies aux Droits de l'Homme (HCUUDH)

No nomination

COUNCIL OF EUROPE SECRETARIAT / SECRETARIAT DU CONSEIL DE L'EUROPE

Ms Bridget O'LOUGHLIN, Head of the Criminal Justice Division, Department of Crime Problems, DG I - Legal Affairs /*Chef de la Division de la Justice Pénale, Service des problèmes Criminels, DGI – Affaires Juridiques*

Mr Humbert de BIOLLEY, Programme Adviser, **Secretary to the PC-S-AV**, Department of Crime Problems, DG I - Legal Affairs / *Conseiller de Programme, **Secrétaire du PC-S-AV**, Service des problèmes Criminels, DGI – Affaires Juridiques*

Ms Dominique WULFRAN, Assistant, Department of Crime Problems, DG I - Legal Affairs
/ Assistante, *Service des problèmes Criminels, DGI – Affaires Juridiques*

INTERPRETERS / INTERPRETES

Mme Christine FARCOT

Mme Christine TRAPP

Mme Cynera JAFFREY

APPENDIX II

AGENDA / *ORDRE DU JOUR*

AGENDA / *ORDRE DU JOUR*

1. **Opening of the meeting / *Ouverture de la reunion***
2. **Adoption of the agenda / *Adoption de l'ordre du jour***
3. **Adoption of the draft report of the 1st meeting of the Group / *Adoption du projet de rapport de la 1ère réunion du Groupe.***
4. **Presentation of the new members and observers of the Group / *Présentation des nouveaux membres et observateurs du Groupe***
 - Brief presentation of the works of UNODC and ICC in the field of victims / *Présentation des travaux de UNODC et du TPI.*
5. **Victimes of terrorism/ *Victimes du terrorisme***
 - The situation and practice regarding the protection and compensation of victims of terrorism in member States with a view to making appropriate proposals to the Committee of Ministers / *la situation et la pratique concernant la protection et la compensation des victimes du terrorisme dans les Etats membres en vue de faire des propositions appropriées au Comité des Ministres :*
 - a. Presentation of the report elaborated by Dr Kilchling, Max Planck Institute, « Victims of Terrorism – policies and legislation in Europe » / *Présentation du rapport préparé par le Dr Kilchling, Max Planck Institute, « Victimes du Terrorisme – politiques et législation en Europe »*
 - b. Which place for victims of terrorism in the drafting of a new recommendation on the assistance to victims, updating Recommendation (87) 21 ? / *Quelle place accorder aux victimes du terrorisme dans l'élaboration d'une nouvelle recommandation, actualisant la Recommendation (87) 21 ?*
 - c. Preparation of a report on victims of terrorism to be submitted to CODEXTER and the CDPC by the end of June 2005 / *Préparation du rapport sur les victimes du terrorisme en vue de sa présentation au CODEXTER et au CDPC d'ici à la fin juin 2005*
6. **Drafting of a new Recommendation (updating Recommendation (87) 21) on Assistance to Victims / *Elaboration d'une nouvelle Recommandation (mise à jour de la Recommendation (87)21) sur l'Assistance aux Victimes***

Subjects to be considered / *Sujets à examiner:*

- ⇒ the information and assistance given to victims, including their own determination of what they need / *l'information et l'aide apportée aux victimes, dont leur propre évaluation de leurs besoins ;*
- ⇒ the protection of victims' privacy / *la protection de la vie privée des victimes ;*
- ⇒ the question of private insurance, including collective insurance arrangements available in some member States / *la question de l'assurance privée, y compris des dispositions relatives à l'assurance collective existant dans certains Etats membres ;*
- ⇒ the problem of repeat victimisation, especially in connection with domestic violence, trafficking and property offences / *le problème de la victimisation répétée, notamment en rapport avec la violence domestique, la traite et les atteintes à la propriété.*

7. Closing of the meeting / *Clôture de la réunion*

APPENDIX III

Victims of terrorism

**Elements discussed and adopted by the PC-S-AV at its 2nd meeting, 18-20 May 2005
Document prepared by the Secretariat**

Strasbourg, 20 May 2005

The expert report on “Victims of terrorism - policies and legislation in Europe” has been presented to the Group by its author, Dr M. Kilchling, from the Max Planck Institute.

The Group discussed the following points. They will be incorporated into the report to be submitted to the CODEXTER and to the CDPC by the end of June 2005

I. COMPENSATION FOR ACTS OF TERRORISM

1.1 Types of loss and damages for which victims of terrorism can be compensated

1.1.1 Physical and bodily injuries

Medical care should be free of charge – at a level consistent with the standard of medical care in the State and continued as long as required by the injury. It should be accompanied by social rehabilitation (where necessary physiotherapy, plastic surgery).

1.1.2 Psychological damage

Psychological and social care to be provided + counselling.

1.1.3 Loss of earnings

State to ensure a standard consistent with the national average wage, in the immediate aftermath of the terrorist act. In case of permanent disability, the victim should receive a pension for the long term.

1.1.4 Loss of property

Insurances covering terrorist acts should be available.
Possible compensation for loss of housing.

1.1.5 Pain and suffering

Compensation to the victim and/or to the Community (e.g. for a building or a monument), as a symbolic State gesture in recognition of emotional non material harm.

1.1.6 Other actual costs (domestic help, child care, equipment...)

Should be covered if resulting directly from the terrorist act. For the longer term, the level of care should be consistent with the standard available in the country.

1.2 Types of compensation for victims of terrorism

1.2.1 In money

Various sources of funding, e.g.: public funds, confiscation of assets, fines, fixed amount taxed on property insurances contracts.

1.2.2 In kind:

E.g.: tax exemptions, job opportunities.

1.3 Level of evidence to be presented by the victim for compensation

A victim of terrorism should not be required to show evidence of an intentional act.

II. SERVICES AND ASSISTANCE TO BE PROVIDED FOR VICTIMS OF TERRORISM

2.1 Associations to provide assistance for victims of terrorism

2.1.1 State to facilitate a well prepared and co-ordinated response to terrorist acts:

- by statutory and law enforcement agencies
- by victim support Services

2.1.2 Notes should be taken from lessons learned from special services and experiences such as

- Specialised associations (e.g. French association “SOS Attentat”)
- National and international responses to terrorism and disasters

2.2 Assistance to be provided for victims of terrorism

General remarks:

- the various types of assistance are to offered to an individual/single victim or to a group of victims of a terrorist act
- States should be encouraged to co-operate, especially in the long term, both in the judicial phase and in the provision of assistance to victims
- At all stages (short, medium and long term), States should ensure the Victim’s safety and protection of its privacy (+ guidelines for media).

2.2.1 In the immediate aftermath of a terrorist attack

- Assistance to injured persons, death, survivors, possibly the family
- Immediate assistance: medical, protection + basic information
- Ensure good preparation/planning and training, in particular for police and medical staff =>look for “best practices” (also on taking victims’ statements)
- Avoid secondary victimisation

2.2.2 In the medium term

- need a contact person / agent de liaison for the contacts with the Services in the community (e.g. legal, medical, social) and with the investigation teams. The contact person should be trained to be able to understand and respond to the victim’s emotional needs.

2.2.3 In the longer term

Availability of assistance for possible

- needs during the judicial phase
- referrals to specialised groups of victims / services

- relocation
- rehabilitation

III. OTHER CONSIDERATIONS

- 3.1 Protection of minority communities who might be associated to terrorists in the aftermath of a terrorist act.

APPENDIX IV

2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings *Official Journal L 082 , 22/03/2001 P. 0001 – 0004*

(Extracts)

Article 4: Right to receive information

1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests. Such information shall be at least as follows:

- (a) the type of services or organisations to which they can turn for support;
- (b) the type of support which they can obtain;
- (c) where and how they can report an offence;
- (d) procedures following such a report and their role in connection with such procedures;
- (e) how and under what conditions they can obtain protection;
- (f) to what extent and on what terms they have access to:
 - (i) legal advice or
 - (ii) legal aid, or
 - (iii) any other sort of advice,

if, in the cases envisaged in point (i) and (ii), they are entitled to receive it;

- (g) requirements for them to be entitled to compensation;
- (h) if they are resident in another State, any special arrangements available to them in order to protect their interests.

2. Each Member State shall ensure that victims who have expressed a wish to this effect are kept informed of:

- (a) the outcome of their complaint;
- (b) relevant factors enabling them, in the event of prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected;
- (c) the court's sentence.

3. 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.

4. In so far as a Member State forwards on its own initiative the information referred to in paragraphs 2 and 3, it must ensure that victims have the right not to receive it, unless communication thereof is compulsory under the terms of the relevant criminal proceedings.