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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

OUTCOME OF THE QUESTIONNAIRE ON THE IMPLEMENTATION OF THE EUROPEAN CONVENTION ON THE COMPENSATION OF VICTIMS OF VIOLENT CRIMES AND PROPOSALS FOR FOLLOW UP

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I. INTRODUCTION: AIMS OF THE QUESTIONNAIRE

At the 71st plenary meeting of the CDPC (29 November – 1 December 2016), it was decided to hold a discussion on the issue of compensation to victims and to draft a questionnaire on the implementation of the European Convention on the Compensation of Victims of Violent Crimes (hereafter “the Convention”) directed to CDPC delegations. The replies to the questionnaire gathered from member States would constitute the basis for an analysis by the CDPC, to be sent to the Committee of Ministers of the Council of Europe.

The aim of this questionnaire was threefold. The first objective was to gather information on the implementation of the Convention and the practical difficulties related to its application. With regard to the need to ensure access to justice for victims, a particular dimension of this objective is to find out which assistance is given to applicants and potential applicants of compensation.

The second aim was to identify the specific problems related to victims of cross-border victimisation.

The questionnaire was finally intended to gather views from the member States about how the implementation of the Convention could be improved.

II. OUTCOME OF THE QUESTIONNAIRE

Out of the 26 Parties to the Convention, 22 Parties sent a reply. In addition, 10 replies were received to the questions addressed to non-Parties to the Convention. Reference is made to the compilation of replies (Doc CDPC(2017)16rev) as well as to the overview of replies (Doc CDPC(2017)20rev).

A. Implementation of the Convention by the Parties

Article 2 of the Convention requires Parties to provide for a system of State Compensation “when compensation is not fully available from other sources” in order to compensate “a. those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence and b. the dependants of persons who have died as a result of such crime”

Replies indicate that Parties generally comply with these requirements, and provide for a State compensation system which is based on subsidiarity in the overwhelming majority (17 out of 20). It is to be noted that national laws very often go beyond the scope of Article 2. Most (12 out of 20) responding Parties do not limit compensation to victims of intentional violent crimes. Their legislation allows for a wider scope, either because the intentional character of the crime is not mandatory or because the violent nature of the crime is not the main criterion for compensation but the seriousness of the harm. Similarly, the condition of “serious bodily injury or impairment of health” as stated in the Convention is reflected in the legislation of seven Parties only, all others have adopted a larger application.

Bosnia and Herzegovina is an exception. Their reply indicates that “In accordance with the Law on Criminal Procedure Code of Bosnia and Herzegovina, a property claim or a request for compensation of material or non-material damage resulting from a criminal act is to be covered by the accused and subsequently convicted party for that particular act, though the Law does not define a system of such compensations provided by the state in a manner provided for by The European Convention on the Compensation of Victims of Violent Crime.”

Article 3 of the Convention provides that “Compensation shall be paid by the State on whose territory the crime was committed to a. nationals of the States party to the Convention and b. to nationals of all member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed”.

Here too, replies to questions 11 and 12 to the questionnaire indicate that the national legislation of the Parties generally goes beyond the scope foreseen by the Convention: all but four Parties who replied will grant compensation to victims that are tourists, while compensation for victims residents of countries that are not members of the Council of Europe will be granted according to the replies of all but five Parties.

Article 4 mentions among the mandatory items to be covered by the compensation scheme: loss of earnings, medical and hospitalisation expenses and funeral expenses and, as regards dependants, loss of maintenance.

It appears from the replies to question 4 of the questionnaire that the legislation of all responding Parties covers these mandatory items. Eight Parties have legislation that allows for compensation for immaterial damages and the costs of psychological counseling.

Most of the responding Parties have a separate organ for the calculation of the amount of compensation. Some have a special law regulating the amount of compensation. (Question 5a of the questionnaire)

Replies to question 5b seems to indicate that the vast majority of Parties have legislation that takes the conduct of the victim into account when calculating the compensation and the latter may be reduced or even refused if the victim is partly to blame for the damage or is in any other way responsible as provided by **Article 8** of the Convention.

Most responding Parties have legislation that allows for the provision of advance payment of the compensation if it is proven that the victim needs it urgently. Seven Parties do not have a possibility to provide compensation before the final decision is taken. (Question 5c)

As regards the time period within which the an application must be made, a large majority of Parties made use of the possibility foreseen in **Article 6** of the Convention by enacting time periods in their legislation varying from one to three years. One Party foresees a period of 10 years and another one has no time limit. (Question 5d)

With the exception of five Parties, national legislation of responding Parties foresees no special status for victims of terrorism. (Question 6)

Access to justice

The implementation of **Article 11** of the Convention, which requires Parties to ensure that information about the scheme is available to potential applicants, is not easy to assess.

Replies received to question 7 of the questionnaire vary as regards the detail of information provided. All Parties have government websites providing the information, sometimes in several languages while some States also have brochures or telephone platforms/helplines. In some Parties the police are responsible for providing the information; in others there are public or private victim support bodies. As regards the provision of information to cross-border victims, Parties usually refer to national websites or even EU websites. It is unclear if such information is adapted to the needs of foreign victims.

The same applies to the replies received to question 8a regarding measures taken to assist victims in making an application. This assistance is rendered either via a website, a customer service, victim support centers or via specialists.

The reply to question 8b regarding the competent body to receive applications also offers a wide variety of solutions, although the body is mostly of an administrative nature, and applications for compensation can usually be made free of cost. All but three responding Parties indicated that a decision by the administrative authority can be taken to Court for appeal or, in a minority of cases, to a higher administrative body. (Question 9)

In very few Parties, the applicant/victim has to make a claim in the context of the criminal proceedings against the perpetrator and has to advance the legal costs or obtain legal aid. Only in these Parties does the perpetrator have a status in the compensation proceedings. (Question 8d)

In reply to question 10, regarding studies undertaken on the implementation of the domestic scheme for State compensation, France, the Netherlands, Norway, Sweden and Switzerland have undertaken such studies and have used the outcome to improve the scheme.

International co-operation and cross-border dimension

As mentioned before, a large majority of responding Parties provide compensation to tourist victims and to residents of non-European countries, beyond the scope of Article 3 of the Convention. (questions 11 and 12). Information to cross-border victims is provided by websites and brochures, sometimes in several languages. (question 13).

Article 12 of the Convention requires the competent authorities of the Parties to give each other, if requested, the maximum possible assistance in connection with the matters covered by the Convention, subject to the application of bilateral or multilateral agreements on mutual assistance concluded between contracting States. The replies received to question 14 regarding the legal basis used to ensure international co-operation seem to indicate that besides EU norms, no such agreements apply: five Parties refer to the Convention as the legal basis, others refer to their national legislation or to EU regulations¹.

Replies received to question 15 of the questionnaire concerning problems in the management of cross-border applications of State compensation reveal that around half of the Parties did

¹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; Directive 2017/541 of 15 March 2017 on the fight against terrorism; Article 26 of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

not have any problems, usually linked to a lack of experience with such cases, in particular beyond the EU.

Six Parties mentioned problems related to a lack of knowledge about national and foreign systems, a lack of recent and correct information about the competent authorities and possibilities to successfully file an application, difficulties to communicate with foreign authorities and to know about and deal with translation and documentation requirements, short deadlines, non-recognition of medical reports and the difficulty to advise potential applicants in relation to a cross-border application.

Article 13 of the Convention which provides that the CDPC shall be kept informed about the application of the Convention also foresees that “to this end, each Party shall transmit to the SG of the CoE any relevant information about its legislative or regulatory provisions concerning the matters covered by the Convention”.

B. Non parties to the convention

Among the 10 States² that replied to the questionnaire without being a Party to the Convention, Serbia, Slovenia and “The former Yugoslav Republic of Macedonia” indicated their intention to ratify the Convention (question 16). Eight of the ten States (Andorra, Greece, Ireland, Latvia, Lithuania, the Republic of Moldova, Poland and Slovenia) have legislation in place and provide compensation to victims, usually under the condition of being an EU resident (questions 17 and 18). “The former Yugoslav Republic of Macedonia” is drafting a Law on the Compensation of Victims to address this issue. Seven of the responding States are amending, or have recently amended their legislation in order to improve the status of victims of violent crimes (question 19).

C. Views from all member States

Question 20 concerning the need to update the Convention by means of an additional or an amending protocol, received a positive response from Belgium, France, Germany, Lithuania and Norway.

The proposal in question 21 to draft a recommendation with guidelines complementing the Convention was supported by Austria, Croatia, Portugal and Slovenia.

This outcome justified the decision taken by the CDPC during its 73rd plenary session not to take any steps at this point to update the Convention on the Compensation of Victims of Violent Crimes and to instruct the Secretariat to promote the Convention and prepare a working document containing possible activities to be envisaged to improve the functioning of the convention.

² Andorra, Greece, Ireland, Latvia, Lithuania, Moldova, Poland, Serbia, Slovenia and “The former Yugoslav Republic of Macedonia”.

III PROPOSALS TO IMPROVE THE FUNCTIONING OF THE CONVENTION

Referring to the above summary on the state of play in the functioning of the Convention, the CDPC is invited to consider the following proposals:

1. Bosnia and Herzegovina could be encouraged to develop legislation in line with the requirements of the Convention. Possibilities to provide bilateral assistance to this effect could be considered, possibly extended to Serbia, Slovenia and “The former Yugoslav Republic of Macedonia” who have indicated their intention to ratify the Convention;
2. In order to promote the visibility of the Convention, to facilitate its application, and, referring to Articles 12 and 13 of the Convention, to facilitate international co-operation in cross-border cases, the CDPC could create a dedicated web page on the Convention which could contain:
 - country information sheets (on national legislation, names and addresses of competent authorities, compensation schemes, conditions and channels for application etc.);
 - links to national websites providing information to applicants;
 - links to other CoE norms related to victims, as well as to EU norms.

Competent Authorities of the Parties to the Convention could be invited to introduce a link to this website into their national websites.

At a second stage, the website could also contain:

- links to studies undertaken on the effectiveness of national compensation schemes and/or good practices in this regard;
 - a restricted website with a forum where competent authorities can ask questions or post examples of good practice or other relevant articles or observations;
3. In order to facilitate the application of Article 11, gather examples of good practice on the provision of information and assistance to applicants;
 4. In order to facilitate the application of Article 12, gather examples of good practice on international co-operation and assistance to cross-border victims;
 5. Resume discussion on a possible update of the Convention or the drafting of guidelines in two years' time.