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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

PROPOSAL FOR AN UPDATE OF CM RECOMMENDATION REC(2006)8 TO MEMBER STATES ON ASSISTANCE TO CRIME VICTIMS

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1. Introduction

During the 77th meeting of the CDPC the representatives decided to invite a consultant – prof. dr. Suzan van der Aa (Maastricht University, the Netherlands) to propose a revised version of Recommendation Rec(2006)8. Prof. van der Aa enlisted accepted this assignment with prof. dr. Antony Pemberton (KU Leuven, Belgium; Netherlands Institute for the Study of Crime and Law Enforcement (NSCR), Amsterdam, the Netherlands) as a co-consultant. –

The invitation from the CDPC to the consultants read as follows:

“Underlining the importance of further examining the issue of victim’s rights and protection, to invite the consultant to make concrete proposals for an update of Recommendation Rec (2006)8 of the Committee of Ministers on assistance to crime victims or additional guidelines thereto, taking into account standards contained in other Council of Europe instruments, EU legislation as well as the different proposals contained in the replies to the questionnaire”

Since this invitation left much to the discretion of the consultants, important choices needed to be made, for instance, regarding the question of whether to develop an updated version of Recommendation Rec (2006)8 or to supplement the existing Recommendation with additional guidelines. Another choice related to the level of ambition that would transpire from the new instrument and the level of detail with which to provide guidance to the states. In this document, the most important choices made in creating the proposal for a new Recommendation are explained.

Expert group

In making these and other choices we were advised by an international group of experts who provided invaluable input throughout the project. All members of this group have ample academic and/or practical knowledge and experience with victims, victims’ rights and victimology. The group consisted of the following experts:

- Levent Altan – Victim Support Europe (Belgium)
- Dr. Michael Kilchling - Max Planck Institute for the Study of Crime, Security and Law (Germany)
- Prof. Johanna Niemi – University of Turku (Finland)
- Dr. Ian Marder – Maynooth University (Ireland)
- Frederico Marques – APAV (Portugal)
- Dr. Nina Persak – University of Ljubljana (Slovenia)
- Prof. Matthew Hall – University of Lincoln (UK)

During three online sessions in the period 16 July – 11 September, the project and draft proposals were discussed with the expert group, while additional suggestions were provided via e-mail. A disclaimer needs to be made: Although the proposal was drafted with the help of their input, the final version of the proposed Recommendation does not necessarily reflect the opinion of the experts.

Strategic choices

Eventually we decided to develop an updated Recommendation in combination with an explanatory report for further guidance and inspiration. In developing the proposed Recommendation, we selected the provisions from the EU Victim Directive as a minimum point of departure, and supplemented these with provisions and guidelines based on other relevant EU, UN and CoE instruments, and state-of-the-art victimological literature in order to attain a higher (sometimes aspirational) ambition level.

In this document, the strategic choices will be explained, followed by a proposed recommendation (appendix 1) and explanatory notes on the separate provisions of the proposed Recommendation (appendix 2).

2. Strategic choices

Choice 1: Create an updated and more detailed Recommendation plus Explanatory Report

The current Recommendation was issued by the Committee of Ministers in 2006 and although it proved a helpful tool in furthering the issue of victims' rights in various CoE states at that moment,¹ it is no longer in line with recent developments in victimological research and more sophisticated international victims' rights instruments, such as the Council of Europe's own Istanbul Convention and the EU Victim directive (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).

The 2018 CDPC survey furthermore demonstrated that a large majority of states attribute no or only limited influence to Recommendation Rec(2006)8, especially in comparison to the influence other international victim rights instruments are accredited with. Some respondents attributed this to its non-binding nature, but also to its comparative lack of detail and specificity. This latter finding was taken into account while developing the proposed Recommendation: a more detailed and specific instrument, in combination with an Explanatory Report, hopefully provides clearer guidance as to what is recommended to the member states.

In our opinion, the large number of recent developments and the call for more detailed recommendations could not be sufficiently accommodated for by merely making (minor) changes to the current Recommendation. Instead we opted for drafting a new, updated instrument with a new title that is accompanied by an Explanatory Report. Some of the provisions of the current Recommendation were, however, maintained.

Choice 2: Current international and regional legal instruments as point of departure

In line with some of the replies to the 2018 CDPC survey, and in consultation with the experts, the decision was made to take state-of-the-art international and regional legal instruments as a point of departure in updating the Recommendation. Despite some of these instruments (e.g., the EU Victim Directive) containing "only" minimum standards, the scope, level of detail, and precision of their provisions often exceed those of the rights currently stipulated by Recommendation Rec(2006)8. In this regard it is worth noting that international instruments in the area of victim's rights are still evolving, reflecting similar developments in victimological research. Later efforts build upon and incorporate the experiences with earlier instruments.

This is particularly evident in the most recent general victim's rights instrument within the European region, the EU Victims Directive from 2012. The Directive itself drew heavily on the wisdom contained in and experiences with previous international instruments in the area of victim's rights, including the EU Framework Decision from 2001, the UN Declaration of Basic Principles of Justice for Victims of crime and Abuse of Power, and the Council of Europe Recommendations no R. (85) 11 on the Position of the

¹ See the 2018 CDPC survey in which 17 out of the 26 responding states attributed (some) influence to Recommendation Rec(2006)8 in the development of national victim rights.

Victim in the Framework of Criminal Law and Procedure and Rec(2006)8 on Assistance to crime victims. It has subsequently been extensively debated, scrutinized and evaluated.

The current proposal therefore will often refer to the EU victims directive, in addition to the Council of Europe Rec(2006)8 on Assistance to crime victims as a source for wording of particular provisions and to argue for provisions that go beyond the state of the art within international victims rights instruments. This has the added value of maintaining coherence between the provisions of the proposed recommendation with the obligations that certain member states of the Council of Europe have due to their simultaneous membership of the European Union,. Some CoE Member States had expressed their concerns about the risk of conflicting instruments in the 2018 CDPC survey.

Choice 3: Going beyond current international and regional instruments

The 2018 CDPC survey also demonstrated that the level of victim's rights – in law and in practice – varies significantly between the CoE states, and one of the challenges was to accommodate for these national differences and design an instrument that is supported by both countries with a relatively high level of sophistication in terms of victim rights, and countries that are still lagging somewhat behind in this respect. While the latter legal systems could be served with minimum standards, some of the former legal systems already have these minimum standards in place. These systems could perhaps benefit from more ambitious recommendations, examples or 'best practices'.

In order to also cater the more sophisticated systems, the proposed Recommendation contains certain provisions that exceed minimum standards. As a result, the proposed Recommendation provides a 'bandwidth' or a margin between minimum standards and more ambitious standards that member states can strategically relate themselves to, taking into account their current level of victim rights. Although the minimum standards ought to be guaranteed in all CoE states, higher levels of protection may be attainable for certain rights or for certain states only. By combining minimum standards with more ambitious standards we aimed to develop a future-proof instrument, able to challenge *all* CoE states to raise the bar when it comes to victim rights. The standards set forth in the proposed Recommendation should contribute to developing and defining new aspirations in the field of victim rights.

The proposed Recommendation furthermore exceeds the state-of-the-art in international and regional legal instruments in that it includes provisions on access to justice and post-trial rights, whereas, for instance, the EU Victim Directive almost exclusively focuses on the rights of victims *within* criminal proceedings. The proposed Recommendation also pays more attention to victims in other relevant legal proceedings and victim support trajectories.

Because of these extensions, and taking into account the chronology of a victim's pathway to and through justice, we have chosen for an "hourglass" structure that consists of three chapters:

- 1) Access to justice, individual assessment, information and support. Access to justice, individual assessment, victim support, and generic information rights are relevant themes in and outside the context of (criminal) legal proceedings and these themes form the first "hurdles" that victims need to overcome. This chapter contains provisions on barriers to access to justice and support, and information rights.
- 2) Legal proceedings (a. criminal proceedings or b. criminal and other proceedings). The second chapter has a narrower focus than the first chapter in that it contains provisions of particular importance to the position of victims in criminal and other legal proceedings. The rights included in that chapter at least ought to be guaranteed in criminal proceedings and/or other legal proceedings. In the sub-chapter on 'criminal or other proceedings', Member States are,

for instance, encouraged to – where relevant and possible – consider expanding the rights recommended in the sub-chapter on criminal proceedings to other legal proceedings as well.

- 3) Other provisions. The scope broadens again in the third chapter, when recommendations are made that are relevant in and outside the narrow legal/justice context.

Choice 4: Information in the Explanatory Report

A final strategic choice involved the information provided in the Explanatory Report. The Explanatory Report provides insight into the background of newly proposed provisions. These provisions may, for instance, derive from the EU Directive, other EU, UN or CoE instruments, from (best) national practices, or they may be based on the latest victimological insights.

Whenever rights are proposed that create recommendations above and beyond the minimum standards, these are explained in the Explanatory Report. Due to time and space restraints, the report particularly focuses on explaining these “innovative” extensions, and to a lesser extent on the minimum standards that are already elaborated upon elsewhere (e.g., in the EU Victim Directive, the CoE Istanbul Convention, and their accompanying explanatory reports or guidance documents).

Appendix 1. Proposed Recommendation

**RECOMMENDATION (...) OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON RIGHTS,
SERVICES AND SUPPORT FOR VICTIMS OF CRIME**

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Preamble

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Aware of the fact that criminal victimisation is a daily phenomenon affecting the lives of citizens
throughout Europe;

Having regard to Recommendation 2006(8) on the assistance to victims and the prevention of
Victimisation) and Recommendation No. R (85) 11 on the position of the victim in the framework of
criminal law and procedure

Noting that, since the adoption of Recommendation Rec(2006)8 of the Committee of Ministers to
member states on assistance to crime victims, several recommendations have been adopted by the
Committee of Ministers and significant developments have occurred in the field of victim rights,
including developments in national and international legislation and practice, a better understanding
of victims' needs and new research;

Bearing in mind the European Convention on the Protection of Human Rights and Fundamental
Freedoms (ETS No. 5, 1950), the European Convention on the Compensation of Victims of Violent
crimes (see above), the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196,
2005), the Council of Europe Convention on Action against trafficking in Human Beings (CETS No.
197, 2005); and the Council of Europe Convention on preventing and combating violence against
women and domestic violence (CETS, np.210, 2011).

Bearing in mind the standards developed by the European Union and by the United Nations with
regard to victims;

Noting with appreciation the achievements of non-governmental organisations in assisting victims;

Aware of the need for co-operation between states particularly to assist victims of terrorism and
other forms of transnational crimes;

Understanding victims' need to receive appropriate information, support and protection and being
sensitive of their need to participate in criminal and other relevant legal proceedings.

Aware of the need to ensure that victims are recognised and treated in a respectful, sensitive,
tailored, professional and non-discriminatory manner, in all contacts with victim support or
restorative justice services or a competent authority, operating within the context of criminal and
other relevant legal proceedings.

Supporting a more holistic approach to victim rights in seeking to (further) develop and expand
victim rights and services beyond the context of the criminal procedure by not only promoting victim
rights in the context of criminal proceedings, but also before, after or irrespective of such
proceedings.

Understanding victims' needs and aiming to achieve a (cultural) change so that justice and support processes should be designed and delivered in such a way that is sensitive to victims' needs, autonomy and agency;

Noting the need for updated and more detailed guidance on the development and (practical) implementation of victim rights;

Recommends that the governments of member states disseminate and be guided in their internal legislation and practice by the principles set out in the appendix to this recommendation which replaces Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims

Appendix to proposed Recommendation

1. Definitions

For the purpose of this recommendation,

1(1)(a) 'Victim' means:

- a natural person who has suffered harm, including physical, mental, emotional or economic harm, directly caused by a criminal offence.
- family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

1(1)(b) 'Family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim. States are encouraged to use an inclusive definition of 'family members' that includes (same-sex) spouses, civil partners, and unmarried partners in a durable relationship.

1(2) 'Repeat victimisation' means a situation when the same person suffers from more than one criminal incident over a specific period of time, and includes in particular situations where the victim suffers from criminal incidents by the hands of the same offender or his surroundings and situations where the victim suffers from criminal incidents of a similar nature by the hands of different offenders.

1(3) 'Secondary victimisation' is victimisation that occurs not as a direct result of the criminal offence but as a result of the response of public or private institutions, including the media and other individuals, to the victim.

1(4) 'Child' means any person below 18 years of age. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim should, for the purposes of this Recommendation, be presumed to be a child.

1(5) 'Restorative justice' refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party.

1(6) 'Criminal proceedings' refers to the legal proceedings that enable the adjudication of substantive criminal law. They include the moment when a complaint is made and situations where authorities initiate criminal proceedings *ex officio*. They end once a final decision on a suspect's criminal liability has been rendered.

Article 2. Principles

2(1) Crime is a wrong against society as well as a violation of the individual human rights of victims. States should therefore ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the liberty, security, property, dignity, private and family life of victims and recognise the negative effects of crime on victims.

2(2) States should ensure that the measures set forth in this recommendation are made available to victims without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant,

resident or refugee status. The measures should also apply – when appropriate – to victims with a criminal record, and victims who are suspected of or who have been convicted for having committed a crime themselves.

2(3) States should ensure that victims who are particularly vulnerable, either through their personal characteristics or through the circumstances of the crime, can benefit from special measures best suited to their situation.

2(4) States should ensure that in the application of this Recommendation, where the victim is a child, the child's best interests should be a primary consideration and should be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, should prevail.

2(5) The granting of the services and measures set forth in this Recommendation should not depend on the identification, apprehension, prosecution or conviction of the perpetrator of the criminal offence. Where possible, the granting of these services and measures should neither be made contingent to the filing of a complaint by the victim, the familial relationship between victim and offender, or the formal role of the victim within the criminal justice procedure.

2(6) States should ensure that the services and measures set forth in this Recommendation are respectful of victims' needs, agency and autonomy.

CHAPTER I. ACCESS TO JUSTICE, INDIVIDUAL ASSESSMENT, INFORMATION AND SUPPORT

Article 3. Barriers to access to justice and support

3(1) In order to improve access to justice and encourage victims to contact competent civil, criminal and other relevant judicial authorities and support organisations, states should investigate barriers that prevent victims from contacting those authorities or reporting a crime and reduce any such barriers to the largest extent possible.

3(2) States should ensure that they take full advantage of the possibilities offered by information and communication technology to ensure sufficient access to justice and support. This applies to all provisions of this recommendation, but as a priority to

- (a) The right to notify authorities (article 7)
- (b) The right to information (article 6) and information about the case (article 8)
- (c) The right to be heard (article 10)
- (c) The right to protection (article 15)
- (d) The rights of cross-border victims (article 20)

3(3) States are also encouraged to investigate and address possible barriers that prevent witnesses from reporting a crime to the police.

Article 4. Individual assessment of victim needs and vulnerabilities

4(1) Member States should ensure that victims are individually assessed, from the first moment they come into contact with justice authorities, restorative justice and support services, in accordance with national procedures, to identify specific needs and particular vulnerabilities and to determine whether and to what extent victims can make effective use of or need the generic rights and special measures set forth in this Recommendation, at least in the course of criminal proceedings, but preferably also in other legal proceedings, in support and restorative justice trajectories.

- a) The individual assessment should, in particular, take into account: a) the personal characteristics of the victim; b) the type or nature of the crime; and c) the circumstances of the crime. While particular attention can be paid to victims belonging to certain (vulnerable) groups of victims, the individual assessment remains decisive in establishing the need for special measures.
- b) Individual assessments should be carried out with the close involvement of the victims and should take into account their wishes including where they do not wish to benefit from special measures or if they do not wish to participate in the individual assessment.
- c) If the elements that form the basis of the individual assessment have changed significantly, Member States should ensure that it is updated throughout the criminal or other judicial proceedings and support trajectories.
- d) When a victim is involved who is not or to a lesser extent able to understand and to effectively participate in criminal or other proceedings due to age, mental or physical condition or disabilities, due account should be taken of this person's vulnerability, and special measures need to be put in place in order to strengthen this person's access to and effective use of procedural rights.

Article 5. Right to communication safeguards

5(1) Member States should take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, other legal proceedings, support and restorative justice services, including where information is provided by that authority.

5(2) Member States should ensure that communications with victims are given in simple and accessible language, as far as possible both in writing and orally, but at least taking into account the victim's preferences in this respect. Such communications should take into account the personal characteristics of the victim including the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental, physical or other disability which may affect the ability to understand or to be understood. Limitations related to a victim's inability to communicate information should equally be taken into account.

5(3) Unless contrary to the interests of the victim or unless the course of criminal or other legal proceedings would be prejudiced, Member States should allow victims to be accompanied by a person of their choice in the first contact with a competent authority where the victim requires assistance to understand or to be understood.

Article 6. Right to receive information

6(1) Member States should ensure that victims are offered ex officio the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Recommendation:

- a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation; They should also be informed of the possibility that victim support services will approach them.
- b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- c) how and under what conditions they can obtain protection against violations of privacy, against secondary and repeat victimisation and intimidation, including (criminal, civil, administrative or other) protection measures;
- d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
- e) how and under what conditions they can access compensation, including information on how to access compensation via the criminal procedure, civil remedies and state compensation;
- f) how and under what conditions they are entitled to interpretation and translation;
- g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
- h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
- i) the contact details for communications about their case;
- j) the available restorative justice services;
- k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

6(2) The information referred to in paragraph 1 should, as far as possible, be given orally as well as in writing and in a manner which can be understood by the victim.

6(3) The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details

6(4) Member states are encouraged to extend the obligation to provide the information referred to in paragraph 1 to other relevant agencies and organisations as well, such as victim support, social or health care services.

CHAPTER II. LEGAL PROCEEDINGS

A. CRIMINAL PROCEEDINGS

Article 7. Rights of victims in notifying authorities

7(1). States should ensure that victims have the right to file a complaint. Such a right does not affect any applicable discretionary powers of the authorities to pursue the case and/ or dismiss cases at later stages.

7(2). States should ensure that victims receive written acknowledgement of their formal complaint to the competent authority, stating the basic elements of the criminal offence concerned. States should ensure sufficient safeguards to overcome the difficulties faced by victims who do not understand or speak the language of the competent authority.

7(3). Where applicable, states should ensure that victims have the right to notify authorities without making a complaint, and should ensure that victims are informed of the distinction between notifying authorities and making a complaint.

Article 8. Rights of victims to information concerning their case

8(1). States should ensure that victims are notified without unnecessary delay of their right to receive the following information about the proceedings instituted as a result of the criminal offence suffered by them, and that, upon request, they receive such information without unnecessary delay:

- . (a) information enabling the victim to know about the state of the criminal proceedings, including, where applicable, inspection of the case file, unless the proper handling of the case may be adversely affected by such notification
- . (b) any decision not to proceed with or to end an investigation, not to prosecute the offender, including the reasons for this decision,
- . (c) any decision to refrain from referral to restorative justice processes, in those cases where the victim has requested such referral.
- . (d) the time and place of the trial, and the nature of the charges against the offender.
- . (e) any final judgment in a trial, including any settlement out-of-court, including the reasons for this decision
- . (f) any decision concerning compensation awards to the victim (article 13) and protection of the victim (article 15), including the reasons for this decision.

8(3). States should ensure that victims are notified without unnecessary delay of available possibilities to initiate information requests concerning the state of the proceedings instituted as a result of the criminal offence suffered by them, in accordance with their role in the relevant criminal justice system.

8(4). The wish of victims as to whether or not to receive information should bind the competent authority, unless that information must be provided due to the entitlement or obligation of the victim

to active participation in the criminal proceedings. States should allow victims to modify their wish at any moment, and should take such modification into account.

8(5). States should ensure that victims are notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from detention. Furthermore, states should ensure that victims are informed of any relevant measures available to be heard in proceedings relating to release decisions and of any relevant measures issued for their protection in case of release of the offender. In the decision to provide this information member states may weigh any identified risk to the offender that may result from this notification.

8(6). States should ensure that victims are notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them escapes from detention. Furthermore, states should ensure that victims are informed of any relevant measures issued for their protection in case of escape of the offender.

Article 9. Right to interpretation and translation

9(1). States should ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation, free of charge, in accordance with their role in the relevant criminal justice system in criminal proceedings.

9(2). States should ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. This applies to the information in article 6, article 7(2) and article 8.

9(3). States should ensure that victims who are entitled to information about the time and place of the trial and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.

9(4). Victims should be allowed to submit a reasoned request to consider a document or parts of a document as essential for their active participation in criminal proceedings.

9(5). Notwithstanding paragraphs 2, 3 and 4, an oral translation or oral summary of essential documents should be allowed to be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings. Communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

9(6). Member States should ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 2, 3 and 4. Victims should be allowed to challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge should be determined by national law.

9(7). Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article should not unreasonably prolong the criminal proceedings.

Article 10. Right to be heard

10(1). States should ensure that victims may be heard during criminal proceedings and in the post-trial phase and may provide evidence.

10(2). States should ensure that the provision of evidence can occur on the initiative of the victim and should not be restricted to the obligation to witness during the investigation or the trial.

10(3). States should ensure that in the initial planning and postponement of court and post-trial sessions, attention is paid to the victim's availability.

10(4). States should ensure that this right to be heard concerns any decision in which the victim can be assumed to have a considerable interest. This should concern at a minimum:

- a) any decision concerning the provision of information to and by the victim, including inter alia the right to interpretation and translation
- b) any decision to refrain from referral to restorative justice processes, in those cases where the victim has requested such referral
- c) any decision not to prosecute an offender
- d) any decision to resort to forms of out-of-court-settlement
- e) any decision concerning compensation awards to the victim during the course of criminal proceedings
- f) any decision to receive state compensation
- g) any decision concerning the protection of the victim

10(5). The procedural rules under which victims may be heard and may provide evidence and the extent to which the victims right to be heard should be taken into account by authorities is determined by national law.

Article 11. Right to reimbursement of expenses and return of property

11(1). States should afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings. This reimbursement will occur in accordance with their role in the relevant criminal justice system, and at a minimum should concern expenses concerning actions to which the victim is obliged, inter alia providing witness testimony.

11(2). States should ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims should be determined by national law.

Article 12. Right to legal aid

12(1). States should ensure that victims have access to legal aid, at least where they have the status of parties to criminal proceedings. They are encouraged to ensure access to (free) legal aid for victims concerning all decisions to which the victim can be assumed to have a considerable interest.

12(2). States should ensure that victims have access to legal aid to ensure access to an effective remedy before a competent authority in cases where their rights as laid down in this Recommendation have been violated.

12(3). The conditions or procedural rules under which victims have access to legal aid should be determined by national law.

B. CRIMINAL AND OTHER LEGAL PROCEEDINGS

Article 13. Right to compensation from the offender

13(1). States should ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time. When claiming offender compensation in the course of criminal proceedings is irreconcilable with the national legal system, states should provide for alternative ways to structurally safeguard the victims' right to obtain such a decision.

13(2). States should ensure that advice and support, and where appropriate, legal aid is available to victims in securing and enforcing such a decision.

13(3). States are encouraged to stimulate offenders to provide compensation to victims. Doing so should include as a priority:

- (a) the consideration of payment of compensation in prosecution and sentencing decisions,
- (b) the prioritization of payment of compensation over financial penalties
- (c) where appropriate, the consideration of other, non-monetary forms of reparation.

13(4). States should promote measures to ensure enforcement of any decision, in the course of criminal proceedings, on compensation by the offender.

13(5). If they prefer civil proceedings over claiming compensation in the course of criminal proceedings, victims should have the choice to obtain a decision on compensation from the offender in civil proceedings.

Article 14. Right to state compensation

14(1). States should adopt a state compensation scheme for victims, that is independent from criminal proceedings. The potential beneficiaries of such a scheme should be determined by national law, but include as a minimum:

- . (a) victims of serious, intentional, violent crimes, including sexual violence;
- . (b) the immediate family and dependants of victims who have died as a result of such crime.

14(2). States should ensure that applications for compensation can be made free of cost, and that compensation is granted without undue delay, at a fair and appropriate level. The level of the compensation award should be determined by national law and take into account, at a minimum:

- . (a) the extent to which the damage is covered by other sources, inter alia the offender, insurance and/ or health and social provisions. The scheme should operate under a principle of subsidiarity by awarding compensation for damages not covered by other sources.
- . (b) costs relating to treatment and rehabilitation for physical and psychological injuries.
- . (c) loss of income, funeral expenses and loss of maintenance for dependants.

14(3) States are encouraged to allow for advance payment, before a final decision on state compensation or compensation through other sources is made, in particular in cases where the victim urgently requires state compensation.

14(4). States should ensure that the victims' nationality or residence status does not restrict their eligibility for compensation. In the case of cross-border victims, states are encouraged to co-operate to enable victims to claim compensation from the state in which the crime occurred by applying to a competent agency in their own country.

14(5). States should ensure that negative decisions are subject to review. The body responsible for judging any request for a review should be determined by national law.

Article 15. Right to protection

15(1). Member States should ensure that measures are available to protect victims (with specific protection needs) and their family members from secondary and repeat victimisation, from intimidation and retaliation and from violations of their privacy and dignity. These measures mainly need to be imposed by criminal justice authorities, but may also be relevant outside the context of criminal proceedings or in the post-trial phase.

15(2). Protection measures available to victims should include, but need not be limited to:

- a) Measures to avoid secondary victimisation of the victim as a result of his participation in the context of criminal, restorative justice or other judicial proceedings. In particular the right to be accompanied by a legal representative and/or a person of their choice, the right to be interviewed by an interviewer whose professional and personal characteristics matches the victims' needs, and measures to make trial hearings more victim-friendly need to be duly considered.
- b) Appropriate measures to protect the privacy, including personal characteristics, data, images or the public dissemination of other information that could lead to the identification of (vulnerable) victims and their family members, in particular in criminal proceedings, but also outside this context. Member States should at least encourage the media to take self-regulatory measures to this effect.
- c) Measures to avoid, where possible, contact between the victim and his family and the offender, including separate waiting areas in court premises, unless such contact is required in the context of criminal, restorative justice or other judicial proceedings.
- d) Procedures established under national law for the physical protection of victims and their family members. When relevant, victims should be advised on the risks of repeat victimisation, intimidation and retaliation and of the means of reducing these risks. Victims should also receive assistance in implementing the measures proposed.

15(3). Restraining, protection or emergency barring orders

- a) States are encouraged to take the necessary legislative or other measures to ensure that appropriate restraining, protection or emergency barring orders are available to victims who are in danger of repeat victimization, intimidation or retaliation by the hands of the same offender. Ideally, such orders are available in different fields of law (criminal, civil, administrative, police law or other) and at all stages of the applicable procedures.
- b) These orders should be: – available for immediate protection and without undue financial or administrative burdens placed on the victim; – issued for a specified period or until modified or discharged; – where necessary, issued on an *ex officio* basis which has immediate effect; – available irrespective of, or in addition to, other legal proceedings; – allowed to be introduced in subsequent legal proceedings.
- c) States should take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 16(8)(a) should be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

15(4). States should ensure that advice and support, and where appropriate, legal aid is available to victims in securing and enforcing the measures set forth in paragraphs 2 and 3.

Article 16. Right to remedy

16(1). Victims may need to seek civil remedies to protect their rights following a crime. States should ensure that victims have effective access to relevant civil remedies, and within a reasonable time, through:

- the right of access to competent courts; and
- legal aid in appropriate cases.

The conditions and procedural rules under which access to civil remedies is ensured should be determined by national law

16(2). States should ensure that victims whose rights as laid down in this Recommendation have been violated have access to an effective remedy before a competent authority. The conditions and procedural rules under which victims have access to such a remedy should be determined by national law.

CHAPTER IV. OTHER PROVISIONS

Article 17. Right to insurance

17(1) States should promote access to private and public insurance for all residents, to the extent possible.

17(2) States should encourage the principle that insurance be made available to as many people as possible. Insurance should be available to cover the person's belongings, as well as their physical and psychological integrity.

17(3) States are encouraged to promote the principle that insurance policies do not exclude damages caused by acts of terrorism nor other forms of intentional crimes, unless other applicable provisions exist. States are also encouraged to promote that insurance companies or services, if appropriate, try to recover the insured payment from the offender.

Article 18. Restorative justice

18(1). "Restorative justice" refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (a "facilitator").

18(2). States should ensure that restorative justice is a generally available service. Restorative justice services should have sufficient capacity to provide safe and effective services to all victims who may benefit, irrespective of the type and seriousness of the offence, whether or not that offence was prosecuted, and the victim's age and geographical location.

18(3). States shall ensure that restorative justice providers conform with Committee of Ministers' Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters.

This in particular concerns:

- the consideration of victims' needs and interests, the need for protections and safeguards, adequate training and means to mitigate potential risks.
- ensuring that victims are given the information and support necessary to enable them to make a free and informed choice to participate in restorative justice and, where appropriate, to initiate restorative justice processes.
- considering the extent to which restorative justice principles, can inform the ways in which victims are engaged, and the design and delivery of victim services.

Article 19. Right to victim support

19(1). States should ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims.

19(2). States should ensure national coverage of such services, and should ensure that such services at a minimum

- are free of charge
- provide victims with free emotional, social and practical support,
- are fully competent to deal with the problems faced by the victims they serve;
- provide victims with information on their rights and on the services available;
- refer victims to other services when necessary;
- respect confidentiality when providing services.

19(3) States should ensure that such services are accessible irrespective of whether the victim made a formal complaint and are available before, during and for an appropriate time after the investigation and any judicial proceedings

19(4). States should ensure that the police and other criminal justice agencies identify the needs of victims and ensure referral to such services, in accordance with their needs. Where appropriate, this

should also apply to agencies in the community, inter alia health services, social security, housing, education and employment agencies, as well as embassies and consulates.

19(5). States are encouraged to support the setting up or the maintenance of specialised centres for victims of crimes such as sexual and domestic violence and to facilitate access to these centres.

19(6). States may also consider it necessary to encourage the establishment or maintenance of specialised centres for victims of crimes of mass victimisation, including terrorism.

19(7). States are encouraged to set up or to support free national telephone help lines, websites for victims.

19(8). States should take steps to ensure that the work of services offering assistance to victims is co-ordinated on the level that is most appropriate to guarantee that:

- a comprehensive range of services is available and accessible;
- standards of good practice for services offering help to victims are prepared and maintained;
- appropriate training is provided and co-ordinated;
- services are accessible to government for consultation on proposed policies and legislation.

Article 20. Cross-border victims and international cooperation

20(1). States should ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a state other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. To do so the authorities in the state where the criminal offences was committed should be in the position

- a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;
- b) to have, at a minimum, recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad

20(2) States are encouraged to extend similar possibilities as under article 20(1) b, to other rights laid down under Chapter 2 of this recommendation.

20(3). States are encouraged to ensure that victims of a criminal offence committed in another state than where they reside may make a complaint to the competent authorities in the state of residence, if they are unable to do so in the state where the criminal offence was committed or, in the event of a serious offence, if they do not wish to do so. In these cases states should ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the state where the criminal offence was committed.

20(4). States should ensure that country of residence does not restrict victims eligibility for state or offender compensation (article 14 and 13), protection (article 15) and victim support (article 19).

20(5) States are encouraged to participate in international networks aiming to facilitate cross-border cooperation in meeting victims' needs. This should as a priority include meeting the needs of victims of international and transnational crimes.

Article 21. Cooperation and coordination

21(1) The implementation of the provisions contained in this recommendation require adequate human and financial resources to be effectively provided. States should ensure the development and maintenance of national structures that support and coordinate policies and developments in a coherent and sustainable way.

21(2). To this end states should ensure, both nationally and locally, that:

- . all agencies involved in criminal justice, social provision and health care, in the statutory, private and voluntary sectors, work together to ensure a co-ordinated response to victims;
- . all agencies involved in criminal justice, social provision and health care, in the statutory, private and voluntary sectors should engage in regular consultation to evaluate the state of implementation of the provisions of this recommendation;
- . additional procedures are elaborated to deal with large scale victimisation situations, together with comprehensive implementation plans including the identification of lead agencies.

Article 22. Confidentiality

22(1). States should require all agencies, whether statutory or non-governmental, in contact with victims, to adopt clear data protection standards by which they may collect, store and disclose to a third party information received from or relating to a victim under the condition that:

- the victim has explicitly consented to such disclosure;
- there is a legal requirement or authorisation to do so.

22(2) In these two cases of exception, clear rules should govern the disclosure procedures.

22(3) Complaints procedures should be in place and published for dealing with alleged breaches to the rules.

Article 23. Selection and training of staff

23(1). States should assist and support victim support services to:

- develop appropriate standards for the selection of all paid and voluntary staff providing direct assistance to victims;
- organise training and support for all paid and voluntary staff to ensure that such assistance is delivered according to professional standards.

23(2). Training should as a minimum include:

- awareness of the negative effects of crime on victims;
- skills and knowledge required to assist victims;
- awareness of the risk of causing secondary victimisation and the skills to prevent this.

23(3). Specialised training should be provided to all staff working with child victims and victims of special categories of crime, for example, domestic or sexual violence, terrorism, crimes motivated by racial, religious or other prejudice, as well as to families of murder victims.

23(4). Member states should ensure that appropriate training is provided for:

- the police and staff involved in the administration of justice, including prosecutors and judges,
- the emergency services and others attending the scene of a major incident;
- relevant staff in health, housing, social security, education and employment services.

23(5). Such staff should be trained to a level which is appropriate to their contact with victims.

Training should include, as a minimum:

- general awareness of the effects of crime on a victim's attitudes and behaviour, including verbal behaviour;
- the risk of causing secondary victimisation and the skills required to minimise this risk;
- awareness of how to conduct the individual assessment referred to in article 5 and on how to select appropriate measures to address particular vulnerabilities.
- the availability of services providing information and support specific to the needs of victims and the means of accessing these services.

Article 24. Raising public awareness of crime victimization

24(1) States should contribute to raising public awareness of the needs of victims, encouraging understanding and recognition of the effects of crime in order to prevent secondary victimisation and to facilitate the rehabilitation of victims.

24(2) This could be achieved through government funding, publicity campaigns, using all available (modern) media and through education.

24(3) The role of the non-governmental sector in focusing public attention on the situation of victims should be recognised, promoted and supported.

Article 25. Research and data collection

25(1) States should promote, support, and, to the extent possible, fund or facilitate fund-raising for victimological research, including comparative research by researchers from within or outside their own territory.

25(2) Research should include:

- criminal victimisation and its impact on victims;
- prevalence and risks of criminal victimisation including factors affecting risk;
- the effectiveness of legislative and other measures for the support, compensation and protection of victims of crime – both in criminal justice and in the community;
- the effectiveness of intervention by criminal justice agencies and victim services.

25(3) States should take into consideration the latest state of victimological research available in developing consistent and evidence-based policies towards victims.

25(4) States should encourage all governmental and non-governmental agencies dealing with victims of crime to share their expertise with other agencies and institutions nationally and internationally.

Article 26. Monitoring and implementation of Recommendation in practice

26. This Recommendation, the principles annexed to it and their implementation should be assessed regularly in the light of any significant developments in victim's rights and victimological research in member States and, if necessary, should be revised accordingly.

Appendix 2. Explanatory notes per article

Title

The title of the current Recommendation ('Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims') was deemed to narrow. Since the proposed Recommendation takes a more holistic approach – dealing with more than victim assistance – a more generic and more inclusive title was opted for: Recommendation of the Committee of Ministers to Member States on rights, services and support for victims of crime.

Article 1. Definitions

In order to provide states more guidance regarding the scope of the proposed Recommendation it was deemed useful to add new definitions or revise existing ones.

Article 1(1)(a). 'Victim'

The new definition of victim was inspired by the EU Victim Directive, because this instrument provides more clarity and specificity than the definition included in Recommendation (2006)8. This resulted in three changes regarding the definition of the direct victim:

1. Instead of subdividing the negative consequences of criminal offences into harm, suffering and loss, we have now adopted harm as the central notion to define victimhood, whereby four types of harm are distinguished: physical, mental, emotional and economic harm.
2. The emphasis on the *direct* causal connection between the harm experienced and the criminal offence seeks to limit the applicability of this Recommendation to direct crime victims and not extend it to indirect, tertiary or other derivative forms of crime victimization that have the potential to expand its scope indefinitely. In other words, we have not opted for an unlimited 'circles of harm' approach. States are, of course, free to introduce a broader and more inclusive definition in their legal systems.
3. The 'acts or omissions that are in violation of the criminal law of a member state' are replaced by the term 'criminal offence', because this is a shorter synonym. Although most rights contained in this Recommendation will typically be limited to victims of behaviour that is criminalized in a member state, states could nonetheless consider expanding this notion further, e.g., by also providing certain (support) rights to victims of natural disasters, of traffic accidents, of behaviours that are subject to criminalization in the foreseeable future, or behaviours that should have been criminalized already (e.g., as a result of international obligations that have not yet been implemented in the national legal order).

Although the concept of victim does not include legal persons who have suffered direct harm by criminal offences, Member States may choose to apply certain standards set out in the Recommendation to legal persons as well.

Instead of the stipulation that 'the term victim also includes, where appropriate, the immediate family or dependants of the direct victim' the proposed Recommendation reads that 'family members or relatives of victims whose death was directly caused by a criminal offence are also considered to be direct victims'. This demarcation is also used in the EU Victim Directive and is – again – clearer than the reference to family members and relatives under the current Recommendation, providing the states fewer discretionary powers in deciding whether or not to vest family members of deceased

persons with rights. States may consider expanding this notion even further, for instance, by also including family members or relatives of very young, comatose or seriously injured victims whose serious injury was directly caused by a criminal offence and who have suffered harm as a result of that person's serious injury.²

Article 1(1)(b) 'Family members'. The definition of 'family members' comes from the EU Victim Directive and was included for clarity purposes. States are free to establish procedures to limit, expand or prioritize family members who can benefit from certain rights set out in the Recommendation.³ States are encouraged to use an inclusive definition of 'family members' that includes (same-sex) spouses, civil partners, and unmarried partners in a durable relationship.⁴

Article 1(2) 'Repeat victimisation'. The existing definition lacked specificity and potentially left the door ajar for *all* situations in which victims suffer from more than one criminal offence, while criminal justice authorities and support services can do little to help *protect against* such repeat victimisation. To illustrate the case in point: a victim who suffers from a sexual offence in year A, could be burgled in year B, without institutions being able to help the victim prevent the burglary after handling and (risk) assessing the victim's prior sexual victimization. Protection measures are, however, only conceivable in the two situations described as examples in the definition: multiple incidents by the same offender or multiple incidents of a similar nature. Both types of victimization furthermore require a different risk assessment and the implementation of different protection measures.

However, when it comes to the *impact* of crime victimization on the individual victim, having suffered from multiple incidents instead of one incident, can cause cumulative harm, irrespective of whether the incidents were caused by the same offender or whether the incidents were similar in nature. Institutions and authorities confronted with a repeat victim should be sensitive to the risk of this cumulative impact.

Article 1(3) 'Secondary victimisation'. The existing definition was replaced by the definition used in the DESVICT report,⁵ because this provides further guidance, for instance, stipulating that secondary victimization can be caused by both *public and private* institutions, and that the media can play a role in this respect as well. "Secondary victimisation involves a lack of understanding of the suffering of victims which can leave them feeling both isolated and insecure, loosing faith in the help available from their communities and the professional agencies. The experience of secondary victimisation intensifies the immediate consequences of crime by prolonging or aggravating the victim's trauma; attitudes, behaviour, acts or omissions can leave victims feeling alienated from society as a whole."⁶

Article 1(4) 'Child'. The notion of a 'child' is not defined under the current Recommendation. The statutory age limit of 18 years was based on the EU Victim Directive (and many other international criminal law instruments). The stipulation that '[w]here the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Recommendation, be presumed to be a child' is borrowed from article 24(2) EU Victim Directive.

² In the Netherlands, for instance, family members of seriously injured victims can also claim 'affectionate damage' if these family members themselves suffered emotional harm as a consequence of the victimization of their next of kin or partner ('best practice').

³ Compare EU Directive article 1(2).

⁴ Compare EU Guidance Document EU Victim Directive.

⁵ DESVICT report.

⁶ Extract from the statement of the European Forum for Victim Services on the Social Rights of Victims of Crime (1998).

Article 1(5) 'Restorative justice'. This definition of restorative justice is based on the definition used by the CoE RJ Recommendation, guaranteeing its alignment with another CoE instrument.

Article 1(6) 'Criminal proceedings'. This definition is, in part, based on recital 22 of the EU Victim Directive. A decision ending criminal proceedings includes situations where a prosecutor decides to withdraw charges or discontinue proceedings.⁷ This Recommendation promotes rights in the context of criminal proceedings, but also before (e.g., access to justice), after (e.g., release trials) or irrespective of such proceedings (e.g., relevant civil and administrative proceedings).

Article 2. Principles

Article 2(1). New is that the first principle now emphasizes that crime is not just a wrong against society, but also a violation of an individual's human rights (comp. EU Victim Directive). This statement provides the "linking pin" between the provisions set forth in the Recommendation and the effective recognition of the relevant human rights summed up in the second sentence. The right to liberty and property were added, since these can also be relevant to victims, for instance, when it comes to an obligation to testify in court or the return of seized goods.

Article 2(2). The non-discrimination clause present in the current Recommendation was expanded by mentioning the specific discriminatory grounds for clarification purposes (comp. Istanbul Convention). The equality or non-discrimination principle is furthermore expanded to victims with a criminal record or victims who are suspected of or have been convicted of having committed a crime themselves. These "victim-offenders" are often underserved when it comes to their access to justice and victim rights (e.g., persons who are victimized in prison).

Articles 2(3) and 2(4). In line with more recent victim rights instruments (most notably the EU Victim Directive) dedicated attention is being paid to vulnerable (child) victims.

Article 2(5). The first sentence is similar to the principle of the current Recommendation. The second sentence was added in order to clarify that, whenever possible, rights and measures set forth in the Recommendation should be provided *irrespective* of the formal role of victims in criminal proceedings. At the moment, many Member States have made important victim rights, such as basic information rights, contingent on their formal role as legal party to criminal proceedings, their role as witnesses, or other legal entitlements under national law to actively participate in criminal proceedings.⁸ This forms a significant barrier in victims' access to these rights. In determining the scope of the rights under the proposed Recommendation Member States are encouraged to apply (most) rights independent of such a formal role. A person should be considered to be a victim, regardless of whether (s)he filed a complaint, but from the moment (s)he suffered a criminal offence.

Article 2(6). The final principle encourages Member States to adopt an alternative perception of victims and victimization, namely one that respects their needs, agency and autonomy and that sees them as actors rather than mere (passive) recipients of rights. The aim of this principle is to contribute to the emancipatory ambition of the proposed Recommendation.

⁷ See preamble EU Victim Directive, recital 44.

⁸ See, for instance, the CDPC 2018 survey where were respondents indicated that certain generic victim rights were only awarded to victims-claimants, victim-witnesses, etcetera.

CHAPTER I. ACCESS TO JUSTICE, INDIVIDUAL ASSESSMENT, INFORMATION AND SUPPORT

Article 3. Barriers to access to justice and support

Article 3(1). Article 3 is innovative in that it is neither covered by the current Recommendation, nor other (many) other international victim instruments. Most instruments “start” from the moment a victim has entered the criminal procedure or has come to the attention of support services, but they do not address the prevalent problem of victims experiencing difficulties in accessing justice or support in the first place. A vast body of victimological research has brought to light various reasons of why victims desist from contacting criminal justice authorities. Victims, inter alia, assume criminal justice intervention will not help, they do not consider the incident serious enough, they fear the police will not take them seriously, or they distrust the police. Although low reporting rates are prevalent throughout the victim population, research has shown that some groups of victims experience even more problems accessing justice and support services than others. Below average reporting rates are, for example, found in cases involving hate crime, intimate partner violence or sexual violence.⁹

Article 3 seeks to encourage states to investigate which exact barriers prevent victims from contacting the police and/or support services and to address those barriers to the largest extent possible. This could result in a wide variety of measures, using differentiated strategies targeting different groups of victims and taking into account varying “vulnerabilities” in that respect. Measures could range from the setting up of large-scale campaigns or programs in order to raise awareness of the criminal and serious nature of certain behaviours; the active establishment of liaisons between official authorities and vulnerable communities; training and education of professionals coming into contact with victims; research into reporting barriers; the employment of specialized (liaison) police officers and prosecutors; measures to facilitate the filing of a report (e.g., investigate options to allow online reporting, to facilitate third-party reporting or reporting in other places than the police station), et cetera.

Article 3(2) stresses the added value information and communication technologies could have in this regard.

Article 3(3). Measures to encourage witnesses to report certain (serious) crimes to the competent authorities and measures to ensure certain professionals are not hindered by legal confidentiality rules to report serious crimes to the competent authorities in case further serious acts of violence are to be expected could also form part of national strategies to improve access to justice and support.¹⁰

Article 4. Individual assessment

The concept of an individual assessment is mentioned in other victims rights instruments, including the EU victims directive, in the context of criminal proceedings in relation to victims’ protection needs. We propose to maintain or implement this instrument *at least* in criminal proceedings – this is the

⁹ See, for instance, the references to various hate crime victimization studies in S. van der Aa, R. Hofmann & J. Claessen, ‘Speciale behoeften van slachtoffers van hate crime ten aanzien van het strafproces en slachtofferhulp’ (*Special needs of hate crime victims regarding the criminal procedure and victim support*), WODC 2020.

¹⁰ Compare articles 27 and 28 of the Istanbul Convention.

minimum standard – but preferably expand its use to other relevant judicial procedures and support trajectories as well.¹¹ The ideal of paying attention to and addressing victims’ particular vulnerabilities in order to ‘level the playing field’ is central in the proposed Recommendation and ought to be the starting point of victim encounters with *all* relevant authorities, restorative justice and support services, hence the central position of this concept at the beginning of the Recommendation.

Ideally, the individual assessment also extends beyond victims’ need for protection based on the victim’s particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.¹² In the Recommendation we propose to also have the individual assessment cover other vulnerabilities, for instance, because of victims’ unfamiliarity with a particular national justice system or difficulties to understand or be understood. Anytime a particular vulnerability could hinder victims’ effective use of the rights and measures set forth in this Recommendation, this vulnerability ought to be identified – with the help of an individual assessment – and addressed.

Examples of such special measures are: the involvement of a representative of a child’s interest to be heard in his or her stead, the use of ‘registered intermediaries’ when providing evidence, or facility/therapeutic dogs that accompany vulnerable victims during interviews in court, etc, etc. The procedural rules under which such measures can be provided can be determined by national law.

Ideally an individual assessment is made from the first moment a victim comes into contact with criminal justice and support authorities, irrespective of whether the victim has filed an official complaint. When making the assessment, certain groups of victims can be ‘duly considered’,¹³ since victimological research has demonstrated that these groups report above average difficulties regarding procedural justice, but the individual assessment remains pivotal in deciding which particular measures are indicated in a particular case. Special measures for certain (groups of) victims should not amount to unjustified inequality or discrimination between victims: the goal is to ‘level the playing field’.

Article 5. Right to understand and be understood

Article 5(1). Article 5 of the proposed Recommendation is an amalgam of article 3 of the EU Victim Directive and article 6 of the current Recommendation. It provides a more detailed account of the right to understand and be understood than the few suggestions regarding this right in article 6 of the current Recommendation. It refers to the right to understand in a broad sense, covering both linguistic difficulties and victims’ ability to ‘follow the proceedings’.¹⁴ Authorities are advised to develop procedures that allow authorities to individually assess each victim’s needs and constraints, and proactively assist victims in this respect. We furthermore feel that the right to understand and be

¹¹ Realising that this is potentially an expensive measure, the individual assessment should at least be realised in the context of criminal proceedings.

¹² This is, for instance, the minimum standard proposed by the EU Victim Directive.

¹³ In a similar vein, article 22 of the EU Victim Directive highlights groups that are at higher risk of secondary and repeat victimisation, intimidation and retaliation (‘victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered’).

¹⁴ Compare EU Victim Directive Guidance document, p. 12.

understood ought to apply not only in criminal legal proceedings, but to other legal proceedings, restorative justice and support services as well.

Article 5(2). The proposed Article also expresses a preference for communications *both* in writing *and* orally, whereas other instruments typically offer these options as alternatives. From a victims' perspective the combination of oral and written communications has the advantage that important information is received in two manners, allowing the victim both an opportunity to immediately react to the information received orally and time to digest the written information at his or her own pace. Having an operational network of easily accessible translators and interpreters, and having certain basic pieces of information available on leaflets, booklets, websites, etc, in a range of languages, including Easy Read versions could contribute to the effectuation of this paragraph.¹⁵

In Article 5(3) the right to be accompanied by a person of their own choice is not restricted to victims who *due to the impact of the crime* cannot make themselves understood, but to all victims who require assistance in that respect. While the EU Victim Directive restricts the right to be accompanied by a trusted person to victims who cannot make themselves understood *as a result of the crime* (e.g., due to trauma) and certain groups of vulnerable victims, the proposed Recommendation seeks to extend this right to all victims with a need for this type of practical and moral support.

Article 6. Right to receive information

The right to information can be regarded as a gatekeeper right and we cannot stress its importance enough. Without *de facto* access to information the access to other victim rights is seriously hampered and research consistently shows that victims are often insufficiently or inconsistently provided with information. The victim should be informed as soon as he comes into contact with a competent official – this includes contact via helplines and internet consultation – and is not dependent on the question of whether the victim has filed an official report.

Article 6(1). The proposed article follows the lead of article 4 of the EU Victim Directive and its Guidance Document,¹⁶ but has included the *ex officio* requirement in the text of the Recommendation itself in order to emphasize this aspect of the right to receive information. The onus is on the authorities to pro-actively provide information, not on the victim. The notion that victims 'should also be informed of the possibility that victim support services will approach them' is copied from the current Recommendation and is linked to the pro-active take on victim support that is recommended in the proposed instrument as well.

When it comes to the sort of information that competent authorities ought to provide, Article 6 explains that victims should also receive information on available and relevant administrative or civil remedies or state compensation procedures (Article 6(1)(c)(e)) and restorative justice services (article 6(1)(j)). Again a preference is expressed for a combination of both oral and written information (article 6(2)).

While the first three paragraphs refer to 'competent authorities' – which not only includes the police, but also public prosecutors, judges, custom or other agencies, depending on the definition of law enforcement authority under national law – paragraph 6(4) would like to see the obligation to inform victims expanded to even more agencies, depending on which agency the victim resorts to first. So if a victim reports the crime to the police first, the police should inform the victim of available victim

¹⁵ See also EU Victim Directive Guidance document, p. 12.

¹⁶ See EU Victim Directive Guidance document, p. 13.

support services, whereas if the victim contacts victim support services before reporting the crime, the support workers ought to inform the victim on how to report the offence to the police.

- Member States should guarantee that the individual wishes of the victim regarding his need for information are taken into account. In addition they could consider to develop (mandatory and repeat) training in information rights for relevant practitioners;
- to include the individual victim's need for information in the individual assessment (see article 4);
- to specify which official is responsible for providing what type of information during which phase of the procedure and to make sure that the information flow to victims is guaranteed throughout all the stages of the criminal proceedings. This requires attention to internal cooperation.
- to instruct officials to carefully keep track of the information effectively provided to the victim (e.g., in police file records, with the help of a mandatory IT tool);
- to consider the setting up of a one-stop-shop victim agency (i.e., one agency serving as the main contact for victims which is responsible for keeping the victim informed, liaising between the victim and all authorities and agencies involved).¹⁷

These and other instruments could stimulate the effective implementation of article 6 in practice and the transparency of the proceedings.

CHAPTER II. LEGAL PROCEEDINGS

C. CRIMINAL PROCEEDINGS

Article 7. Rights of victims in notifying authorities

The basic gateway to most victims' rights lies in the notification of authorities, most often the police, but in cases also other law enforcement and criminal justice actors, and the ability to file a complaint. It is important that barriers here will deny victims most of the rights, protection and support afforded by the articles of his recommendation. This of course applies to the rights that are contingent on filing a report, for instance those that solely apply in the case of the apprehension and/ or prosecution of a suspect. However, it may also, for instance, diminish the victim's ability to find and receive adequate support, as referral by authorities is a driving factor in doing so.

This was absent in the current recommendation, but is provided for in article 5 of the EU Victims Directive. The text of this new article 8 therefore incorporates the text of the EU Victims Directive including the emphasis on the victims understanding of the content and consequences of the complaint.

Importantly it also addresses the situation where victims might want to notify authorities, for instance with an eye to receiving support, but subsequently desire to refrain from pressing charges against a suspect. This is an important distinction, in particular for cases where the victim and the suspect may be well-known to each other.

¹⁷ Compare EU Victim Directive Guidance document, p. 15-16.

In the context of this article, Member States are also encouraged to pay heed to new technological developments, e.g., explore the option of online reporting.

Article 8. Rights of victims to information concerning their case

Where article 6 concerns the victim's rights to general information about rights, protection and support, with the aim of assisting them in understanding the potential possibilities open to them, so they can make an informed choice about how to proceed, article 8 deals with the specific information concerning their case as it progresses through legal proceedings. The general underlying notion is that the victim should, in principle, be provided with information to be able to make informed decisions and take appropriate action to protect his or her legitimate interests. Such information is vital to taking these further steps, but also important in and of itself. It is a consistent finding of victimological research that receiving relevant and timely information is a predictor of satisfaction with the process, while the experience of a lack of information is a risk factor for secondary victimisation.

The article's first paragraph is phrased in line with the EU Victims Directive, but includes further provisions, relating to referral to restorative justice and decisions relating to compensation and protection. In line with the recognition of the importance of participating in processes of restorative justice on the one hand, and decisions concerning compensation and participation on the other, the article specifically emphasizes the importance of informing victims about these matters.

In addition paragraph 8(3) recognizes the importance of offering the victim the possibility to take initiative to receive information, which in particular in cases with a longer duration, can largely relieve the burden that a lack of information and the accompanying uncertainty might place on victims of crime. It also shares the spirit of article 11 (right to be heard) in offering victims the possibility to take action of their own accord to protect their interests and make use of their rights.

However, certain victims, for a variety of reasons, might also feel burdened by the reception of information, and prefer not to be informed of the ongoing case. For this reason paragraph 8(4) contains an opt out clause.

Paragraphs 8(5) and 8(6) relate to the release and the escape of the offender respectively. This is also drawn from the EU Victim Directive, and recognizes the potential impact of these facts for the victims interests and well-being. The main difference with the Directive is the explicit distinction between release and escape. There can be different reasons concerning the interests of the offender, and in particular the risk to the offender, that states can weigh in the question of and the extent to which the victim can be informed about the release of the offender. That might mean that this information is withheld completely, although reasons for doing so should then be transparently communicated.

Article 9. Right to interpretation and translation

The provisions covered in this article, including but not limited to the rights to information and participation, can only be used effectively if the victim is capable of understanding the meaning of these provisions. At a minimum this means providing victims with the possibility of interpretation and translation. As the EU Victim Directive notes in recital 34 *"Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be*

made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system.” Article 9 of the proposed Recommendation therefore addresses the right to interpretation and translation, and does so in a manner consistent with article 7 of the EU Victim Directive.

Article 10. Right to be heard

The right to be heard is absent in the current Recommendation, but is provided for in article 10 and recitals 41 and 42 of the EU Victim Directive. It is important to note that the right to be heard should not be equated with the obligation to bear witness.¹⁸ The latter is not necessarily conducive to the well-being of victims, but can instead cause secondary victimization, whereas the right to be heard implies that victims are provided with an opportunity to:

- 1) Voluntary express how they would like to participate in the criminal procedure, where there is a legal entitlement under national law to participate actively in criminal proceedings (e.g., as a party or to join proceedings with their civil claim for compensation). Victims should be able to indicate their view on the manner in which they would like to participate and authorities should try to fulfil this request to the greatest extent possible.
- 2) Provide information, views or evidence at various stages of the criminal procedure regarding every decision that has the potential to (substantially) affect their interests. This opportunity is preferably provided in advance of the decision, but may sometimes also be provided afterwards (e.g., through appeal or review proceedings).

Interpreted in this fashion, the right to be heard has an important expressive value for victims (‘voice’) and deserves to be included in the proposed Recommendation. The right to be heard can range from the right to supply evidence to a competent authority, the right to give evidence in court, the right to have evidence recorded, the right to add materials to the case files, the right to express wishes regarding the delineation of protection measures (e.g., no contact order, barring order), the right to make a Victim Impact Statement, the right to make a Victim Statement of Opinion, the right to express wishes regarding restorative justice processes or compensation measures.

The extent to which justice authorities take the victims’ views into account, e.g., whether the victim’s views only have to be heard, whether authorities have to give a reasoned decision when they deviate from the victim’s views or whether the victim has the right to instigate a proper review procedure, depends on national law, and could be made dependent on the authorities’ judicial discretion and free assessment of evidence.

States are furthermore encouraged to expand the right to be heard to the post-trial or release stage as well, for instance with an eye on post-trial restorative justice processes or conditional release proceedings. In this latter case, the Member States are free to restrict the victims’ right to be heard to issues regarding their safety and protection only – e.g., which protection measures could be put in place in the case of conditional release – not covering the question of whether or not the offender ought to be released.

¹⁸ In the 2018 CDPC survey, some states indicated that the right to be heard was implemented in their national legal systems, because victims could be called upon as witnesses. This is not the interpretation of the right to be heard adopted by the proposed Recommendation.

Regarding the right to be heard, advantage of the possibilities offered by information and communication technology can be considered (e.g., virtual courtrooms for cross-border victims).

Article 11. Right to reimbursement of expenses and return of property

As is also clear from the EU Victim Directive, in particular article 14, that victims are often required to make out of pocket expenses to comply with requests or requirements of law enforcement agencies and criminal justice agencies, while effective use of the provisions laid out in this Recommendation can also necessitate such expenditure. The basic idea underlying the provisions in this article is that victims should not be burdened with expenses, necessitated by activities of law enforcement and criminal justice actors, meaning that any costs arising from obligations imposed on victims should be reimbursed. This applies for instance to victims who are called upon to witness in a criminal case.

Moreover, out of pocket expenses relating to victims use of the rights and provisions in this document, should, as a rule, not inhibit victims from doing so. This applies in particular to those costs associated with participation in legal proceedings. The criteria, which may include constraints relating to reasonable outlays and the inclusion of means testing, under which such costs are reimbursed and the process to receive reimbursement should be communicated in a transparent manner.

In addition the activities in the ongoing investigation and/or prosecution might necessitate confiscation of property owned by the victim, see also the EU Victim Directive, article 15. States are called upon to ensure that the burden of such confiscation of property is kept to the minimum necessary.

Article 12. Right to legal aid

Article 12(1). The wording of article 12(1) is – to a large extent – similar to that of article 13 of the EU Victim Directive, albeit that the latter instrument restricts the right to legal aid to victims who have the status of parties to criminal proceedings. By adding the second sentence the Recommendation opens the door to a more expansive interpretation of the right to legal aid. States could, for instance, consider to also provide legal advice or representation to victims who are not formally parties to criminal proceedings, but who hold participatory rights nonetheless. An example could be a victim who wishes to have his Victim Statement of Opinion read aloud in court by a legal representative. *Idem* for victims who join the criminal proceedings with their civil claim for compensation without being awarded a formal party status. (Free) legal aid could also be extended to victims who seek protection or compensation via alternative ways, most notably civil proceedings.

Article 12(2). The second paragraph relates to the access to legal aid in the context of the various remedies available to victims, when rights set forth in the Recommendation are violated. Without legal aid, many of these remedies (e.g., art. 16) become inaccessible or ineffective.

Article 12(3). Member States should specify in national criminal law legislation under what conditions and circumstances victims are able to access legal aid, but it should at least cover legal advice and legal representation. Legal counselling and representation are ideally provided free of charge, without a means test, to all victims with participatory rights, but states could opt to limit free legal aid to victims of serious crimes and/or victims without sufficient financial resources.

D. CRIMINAL AND OTHER LEGAL PROCEEDINGS

Article 13. Right to compensation from the offender

In comparison to state compensation, the current Recommendation provides relatively little guidance on compensation from the offender. Under the heading ‘Right to effective access to other remedies’ article 7 of the current Recommendation first refers to victims’ rights to timely access civil remedies, in combination with the help of the right to access competent courts and legal aid. Article 7(2) further stipulates that “[s]tates should institute procedures for victims to claim compensation from the offender in the context of criminal proceedings. Advice and support should also be provided to victims in making these claims and in enforcing any payments awarded.”

From the victim’s perspective, claiming compensation within the context of criminal proceedings often has significant advantages over instigating a civil procedure (e.g., lack of court fees; possibility to pursue multiple interests in only one legal procedure; lower evidentiary standard; state enforcement). For this reason, the recommendation to allow victims to claim for offender compensation in the context of criminal proceedings is maintained and it is strengthened by adding that the decision on offender compensation needs to be made ‘within reasonable time’.¹⁹ Preferably, the decision regarding compensation should cover all damages suffered by the victim, but Member States can work with maximum amounts or they can allow the criminal court to declare complex parts of the claim inadmissible, in case substantive decision-making would pose an undue burden of the criminal proceedings.

Despite the current Recommendation’s adamantness that victims ought to be able to claim offender compensation in the context of criminal proceedings, some national (common law) systems do not support adhesion procedures. In order to cater for these national differences, states could opt for alternative ways to provide for full compensation in criminal proceedings (e.g., compensation orders), albeit that these alternatives then ought to be considered on a structural basis.

Article 13(3) closely corresponds to Article 16(2) of the EU Victim Directive. A significant problem in the context of offender compensation lies in the actual enforcement of claims awarded. When it comes to the execution of such claims, victims experience difficulties in receiving due payments, because of the offender’s inability or unwillingness to cooperate.²⁰ Many Member States have developed promising practices to encourage offenders to pay compensation, for example by placing the execution of compensation orders in the hands of public services rather than leaving this up to the individual victim. Research has demonstrated that state enforcement increases payment rates significantly. Taking into account the payment of compensation in the assessment of supervision measures and/ or pre-trial and early release also serves as an incentive for payment of compensation. Confiscation measures can also serve this purpose. Moreover, a best practice in this regard is the situation where the state pays the compensation to the victim in advance, and subsequently recovers the advance payment from the offender (e.g., NL).

Article 13(3)(c). The Milquet report sees reparation wider than financial compensation and diversion is also seen as in the victims’ interests, on the condition that they consent. Many countries have

¹⁹ Compare Article 16 of the EU Victim Directive.

²⁰ E.g., Milquet report, p. 24(J. Milquet, *Strengthening victims’ rights: From compensation to reparation. For a new EU Victims’ rights strategy 2020-2025*, Luxembourg: Publications Office of the European Union, 2019).

specific procedures in place that allow cases to be dropped before prosecution/conviction on the basis of offender compensation being paid or reparations being made.

Article 13(5) Although offender compensation through criminal proceedings is often much more advantageous for victims than civil proceedings (see above), effective access to civil remedies remains important, for instance, in cases where the victim does not want to report to the police, where criminal prosecution is dismissed, or where the suspect is acquitted.

Article 14. Right to state compensation

Article 14(1). State compensation not only features in the current Recommendation, but is also covered by a dedicated CoE Convention. The 1983 European Convention on the Compensation of Victims of Violent Crimes (ETS 116) was ratified by 26 and signed by 8 Member States and its implementation in law and practice was recently assessed by the CDPC.²¹ Various good practices can be derived from this assessment, such as the fact that many of the Parties to the Convention (who replied to the questionnaire) do not limit state compensation to victims of intentional violent crimes, but allow for compensation in other cases involving serious harm or without making the intentional character of the crime mandatory.²² Another recommended extension relates to the fact that yet other states expand state compensation beyond ‘serious bodily injury or impairment of health’. States are encouraged to adopt a state compensation scheme that is as inclusive as possible. Article 14(1) was adopted from the current Recommendation, but now emphasizes that ‘each state should adopt a compensation scheme for victims that is independent from criminal proceedings’. This emphasis was deemed necessary, because not even all Parties to the Convention have implemented such a scheme or some have made it contingent on criminal proceedings.²³ The institution of a Victim Fund could also be helpful in this respect.

Another change relates to the delineation of the potential beneficiaries. By emphasizing that they should include ‘as a minimum’ certain victims, this leaves the door ajar for more expansive national definitions. In terms of beneficiaries, Member States could also consider developing an even more inclusive state compensation scheme by, for instance, also providing state compensation to:

- victims of serious property crimes, or victims of crimes of negligence or endangerment resulting in the death or serious bodily injury of the victim
- the immediate family and dependants of victims who have become seriously injured as a result of the abovementioned crimes.

Article 14(2). The instigation that ‘compensation should be granted without undue delay, at a fair and appropriate level’, was also inspired by the current Recommendation. Regarding the damages requiring compensation the text of the current Recommendation was again closely followed. The compensation of costs related to treatment and rehabilitation for physical and psychological injuries include costs for medical and hospitalisation expenses and psychological counselling. Only article 14(9) was revised in order to make this particular recommendation more forceful. Instead of stipulating that states ‘*should at least consider* compensation for loss of income (...)’ the proposed Recommendation says that ‘[c]ompensation *should also be provided* for compensation for loss of income (...)’. The CDPC

²¹ Outcome of the questionnaire on the implementation of the European Convention on the Compensation of Victims of Violent Crimes and proposals for follow up (CDPC(2018)6rev).

²² See CDPC(2018)6rev, p. 2.

²³ See CDPC(2018)6rev, p. 2.

assessment demonstrated that these items are already covered by many national compensation schemes,²⁴ so a more stringent stipulation would align with current state practice. States are encouraged to furthermore consider compensation of immaterial damage (pain and suffering) and damage resulting from property crimes.

Article 14(2)(a). This subsection differs from the current article 8(9) in that state compensation can rather than should be awarded to the extent that the damages are not covered by other sources. The principle of subsidiarity is useful in keeping national state compensation schemes affordable, but also in expressing that, ideally, state compensation should be a measure of last resort, in particular when there is a possibility to claim compensation from the offender.²⁵ For many victims, it is important to receive compensation from the offender, rather than from any other source. The subsidiarity principle should, however, not be interpreted as a measure of last resort in a temporal fashion though. Ideally state compensation is paid to the victim as soon as possible, while the actual redistribution of the awarded amounts between sources of compensation can wait.

Article 14(3). The proposed Recommendation goes beyond the current provision in that advance payment is recommended, in particular if it is plausible that the victim needs some form of compensation urgently. In these situations, victims should not be required to first go through lengthy procedures and await final decisions on state compensation or compensation through other sources (offender, insurance, social provisions). Advance payments are already in place in many states that are Party to the European Convention.²⁶

Article 14(4). While the European Convention on Compensation of Victims of Violent Crimes limits the scope of beneficiaries to a) 'nationals of the States party to this Convention'; and b) 'to nationals of all member States of the CoE who are permanent residents in the State on whose territory the crime was committed', the current Recommendation does not contain these restrictions.²⁷ By adopting the proposed recommendation that States should adopt a compensation scheme for persons who were victimized on their territory, irrespective of the victim's nationality or resident status the proposed Recommendation also wishes to express that ideally all eligible (cross-border) crime victims – or at the very least victims of other CoE states – ought to be able to apply for state compensation, regardless of their nationality. According to the CDPC assessment, this is already standing practice in a large majority of the states who replied to the questionnaire.²⁸

Victimological research furthermore demonstrates that when it comes to state compensation, international co-operation and a cross-border dimension can pose real challenges. Problems multiply when tourist victims or cross-border workers and travellers are involved.²⁹ International co-operation remains important. For victims it can be vital to be able to apply to relevant bodies within their own state of residence, rather than to directly apply to a foreign state compensation organisation. Inspiration on how to develop such international co-operation can be drawn from EU COUNCIL

²⁴ At least those of state-parties to the European Convention and which responded to the CDPC questionnaire (CDPC(2018)6rev, p. 3).

²⁵ In practice, however, some states allow for state compensation *in addition* to indemnity from other sources or irrespective of the outcome of other procedures (e.g., UK) and this also has advantages.

²⁶ CDPC(2018)6rev, p. 3.

²⁷ According to the current Recommendation's explanatory memorandum, "[n]ational compensation schemes should compensate all eligible victims of crimes committed within their national borders." (recital 106 of the CDPC Explanatory Memorandum to the Recommendation Rec(2006)... on assistance to crime victims, CM(2006)61-add, 14 June 2006).

²⁸ CDPC(2018)6rev, p. 3.

²⁹ See, for instance, some problems CDPC(2018)6rev, p. 5.

DIRECTIVE 2004/80/EC of 29 April 2004 relating to compensation to crime victims (e.g., setting up of national contact points). International co-operation and mutual assistance should not necessarily have to depend on bilateral or multilateral agreements to that respect.

Article 15. Right to protection

The current Recommendation is relatively concise when it comes to victim protection, and the different forms of protection are ‘scattered’ all over the instrument.³⁰ Protection is furthermore not structurally differentiated into the different types of (secondary, repeat, privacy, etcetera) protection and some important protection measures are lacking altogether.

The right to protection has witnessed significant developments in the past 15 years, both in terms of international and regional law and in terms of academic research. In order to bring the Recommendation up to date with these developments a serious revision of the protection-provisions is proposed. The proposed changes rely heavily on the protection provisions and the individual assessment approach prescribed in Chapter 4 of the EU Victim Directive, albeit that a higher abstraction level is adopted in the proposed Recommendation.³¹ The proposed changes furthermore encourage states to not only change their criminal *procedures*, but also introduce protection and emergency barring orders into their *substantive* criminal, civil, and administrative (or other) laws. A further extension relates to the fact that certain protection measures may also extend to the post-trial phase or apply to situations that are not related to criminal proceedings at all.

Article 15(1). In order to emphasize the importance of victim protection against various forms of victimisation, a generic right to protection – inspired by article 18 of the EU Directive – is introduced. While some measures should be available to victims across the board, others may only be made available after an individual assessment of the victim’s particular need for such protection measures (see individual assessment above).

Article 15(2). The new article 15(2) summarizes the rights contained in articles 19 – 20 and articles 22-24 of the EU Victim Directive.

- a) Right to avoid secondary victimisation. Measures to avoid secondary victimisation (art. 15(a)) could entail the measures exemplified in article 23(2) of the EU Victim Directive (e.g., holding interviews without unnecessary delay after the victim has filed a complaint; keeping the number of victim interviews and medical examinations to a minimum; allowing victims to be accompanied by a legal representative and/or a person of their choice, unless a reasoned decision has been made to the contrary). These measures should apply to all victims, regardless of whether they are vulnerable or not. Measures such as interviewing victims in premises designed or adapted for that purpose; interviewing victims by or through professionals trained for that purpose; (to the extent possible) having all interviews conducted by the same persons; (to the extent possible) having interviews with victims of sexual violence, gender-based violence or violence in close relationships, being conducted by a person of the same sex as the victim, if the victim so wishes, could be reserved for victims whose individual assessment has demonstrated a particular need for those measures. The same goes for

³⁰ In addition to Article 10 that is dedicated to the topic of ‘protection’, reference to victim protection is also made in articles 3(3), 4(2), 4(6).

³¹ In fact, in drafting the new provision, inspiration was drawn from Chapter 4 of the EU Victim Directive, articles 52 and 53 of the Istanbul Convention, provisions of the current Recommendation, current developments in EU law and victimization research.

measures in court, such as measures to avoid visual contact between victims and offenders; measures to ensure that the victim may be heard in the courtroom without being present; measures to avoid unnecessary questioning concerning the victim's private life; and measures allowing a hearing to take place without the presence of the public (article 23(3) EU Victim Directive). Some of these measures can, for instance, be implemented through the use of appropriate communication technology or a more liberal take on the admissibility of audio(visual) recordings of victim interviews as evidence during trials.

- b) Right to protection of privacy. In the current Recommendation, privacy is dealt with in articles 10(8) and 10(9). We propose to extend the protection of privacy in the sense that the privacy of family members is now also explicitly protected. Furthermore, in order to emphasize that privacy protection is deemed important throughout criminal proceedings, including the trial and the post-trial stage, and can also be relevant outside the context of criminal justice, the phrase '*in particular during the investigation and prosecution of the crime*' was removed.

The stipulation that measures should be taken to prevent public dissemination of other information that could lead to the identification of a victim was inspired by the EU Victim Directive, albeit that this latter provision was restricted to child victims only. We propose to expand this provision to other vulnerable victims as well.³² In camera hearings could, for instance, be considered as a default setting for cases involving (certain types of) vulnerable victims, albeit that their interests carefully need to be balanced against the principle of external transparency.

The article furthermore aims to make a stronger call for (self)regulatory measures against media exposure. Although the freedom of expression and information and freedom and pluralism of the media need to be respected, there is – with some exceptions – in principle no need for media coverage to include information or data on the victim that could lead to his identification. Qualitative victimization research indicates that victims can suffer from secondary victimisation as a result of media exposure.³³ If self-regulation of the media does not work, state-imposed regulation might be considered.

- c) Right to avoid contact. This paragraph expresses the right to avoid contact between victim and offender (comp. art. 19 of the EU Victim Directive). While the Directive stipulates that this right applies 'within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact', the proposed Recommendation is silent on the exact premises where these measures need to be implemented, since the avoidance of contact is not only relevant in the context of criminal proceedings, but may require measures in other premises as well (e.g., separate waiting areas prior to restorative justice sessions, civil courts). The right to separate waiting areas in new court premises (article 19(2) of the EU Victim Directive) can be considered an example of a measure to avoid contact, but states are encouraged to create separate waiting areas in existing court premises as well.

- d) Right to protection against repeat victimisation, intimidation, retaliation. While the special protection measures in the EU Victim Directive mainly focus on the prevention of secondary victimisation, this article stipulates that states should also address the risk of repeat

³² In Belgium, (parts of) criminal trials against child victims are, for instance, in principle held *in camera*. In Belgium, *in camera* trials are also prescribed in cases involving victims of sexual violence. This could be considered a best practice that mirrors similar protection measures when child *suspects* are involved.

³³ See *Witboek Slachtofferhulp Nederland* (2020) (Whitebook, Victim Support the Netherlands).

victimisation, intimidation and retaliation. Member States could think of the following, non-limitative list of protection measures against repeat victimisation, etc., that can be imposed after the individual assessment showed a need for such measures:

- Perform a risk assessment to identify the exact risks and help the victim develop a ‘safety plan’.
- Have the contact details of the victim kept out of the report
- Allow the victim to choose domicile elsewhere (e.g., the police station)
- Provide the victim with an (AWARE) alarm system
- Impose forms of electronic monitoring.
- Assess whether the victim needs to go to a shelter
- Assess whether the victim needs personal victim protection (e.g., witness protection program)
- Allow certain victims to testify anonymously

Article 15(3). A specific measure by which states could try to combat repeat victimisation is through the use of protection, restraining and emergency barring orders.³⁴ The current Recommendation is silent on the issue of restraining, protection and emergency barring orders, leaving this up to the national legislators. Various comparative studies have nevertheless shown that national laws and policies diverge when it comes to protection orders, resulting in significant gaps in victim protection.³⁵

The proposed Recommendation aims to address this problem in the Council of Europe Member States by stipulating that member states are encouraged to introduce protection, restraining and emergency barring orders in various fields of law and in all stages of the criminal procedure, including the post-trial stage. It also indicates some standards these orders ought to live up to (in paragraph 15(3)(b)) and stipulates that violations need to be sanctioned (in article 15(3)(c)). Its redaction is based on articles 52 and 53 of the Istanbul Convention, while the addition that orders ought to be available in different fields of law and at all stages of the criminal procedure stems from victimological research.³⁶

Article 16. Right to remedy

The proposed Recommendation addresses a crucial issue, lacking in the protection of victims interests. The issue concerns the lack of remedies for victims in the cases where their rights have been violated. The past decades have seen increased attention to the position of victims across jurisdictions and across international bodies, accompanied with measure that have with varied degrees of success sought to meet the needs of victims of crime. Nevertheless victimological research reveals repetitively that for all efforts the lived reality of victims of crime fails to meet the spirit of the provisions of victims instruments, if not the letter.

To give some examples: states might promise clear, timely and transparent information to victims, but do not specify what avenues are open to victims if they fail to do so. In different jurisdictions victims may find that their possibilities to participate in criminal proceedings is highly contingent on the willingness of the magistrate in charge of their case, thereby appearing to be more like a favour that

³⁴ In some countries, these are also known as ‘coercion measures’.

³⁵ See S. [van der Aa](#), J. Niemi, L. Sosa, A. Ferreira & A. Baldry, [Mapping the legislation and assessing the impact of protection orders in the European Member States](#) (POEMS report), Oisterwijk: Wolf Legal Publishers 2015.

Recognizing this fact, the EU Commission has also announced plans to further strengthening victims’ protection by introducing minimum standards on victim’s psychical protection, including protection orders (See EU Strategy on victims’ rights (2020-2025) COM(2020)258 final, p. 10.)

³⁶ POEMS report.

may be granted to them, than an enforceable right. Victims may be subjected to demeaning and disrespectful treatment, in which the professionals charged with their case add to rather than relieve the burden of their experience.

This pervasive lack of effective remedies in the case of violations of victims' rights diminishes the extent to which they should be correctly called rights at all. There are often no repercussions whatsoever when this occurs. This greatly reduces the effectiveness of provisions for victims of crime. First, of course, because of the lack of avenues to remedy actually occurring violations, but second and importantly also because of the preventive quality of remedy provisions. The fact that such a remedy exists and may be instituted prevents the occurrence of violations. In turn the lack of such remedies makes the process less transparent and more arbitrary, not only for the victim but also for other participants, including the suspect or the offender. In this regard, it is increasingly recognized that the lack of an effective remedy runs afoul of the spirit, if not the letter, of the right to an effective remedy, for instance contained in article 13 of the European Convention of Human Rights.

The proposed Recommendation calls upon states to ensure that victim rights are no longer rights in name, but are full-fledged rights in reality, by developing adequate remedies in the case of violation of victim rights. Article 16(2) calls upon states to arm the rights covered by the Recommendation with such a remedy, in line with similar processes in the different national jurisdictions. Article 16(1) specifically focuses on the possibilities of civil remedies in doing so.

CHAPTER IV. OTHER PROVISIONS

Article 17. Right to insurance

Article 17(1). While the importance of insurance schemes for criminal victimisation should not be underestimated, the current Recommendation is the only international legal instrument to cover this topic. Full compensation for criminal damages is usually not obtained via one procedure only – although that could be preferable from a victim's point of view – but is procured with the help of several sources for compensation. Public and private insurance schemes can be such a source. First-party insurances,³⁷ for instance, can help recover the damages in case the offender remains unknown, while third-party insurances can contribute to full payment of compensation in case the offender has insufficient financial resources and compensation claims via criminal or civil proceedings would be of no avail. Another advantages could be that – depending on the restitution policy and operational practice of the insurance schemes – payments via insurance companies or services can be made to victims relatively quick in comparison to full legal proceedings.³⁸ For these reasons, the recommendations of the current Recommendation – including the stipulation that states should promote equal access to insurance – are reiterated in the proposed Recommendation as well.

Article 17(2). The provisions of the current Recommendation are extended by adding that, next to a person's belongings and his physical integrity, a person's psychological integrity ought to be covered as well (e.g., costs for psychological or psychiatric help). In some Member States (e.g., DE) insurances policies not only compensate health, pain, suffering, but also all costs related to the criminal procedure (participation, legal costs).

³⁷ First party insurances are insurances where the insurance-taker is the beneficiary.

³⁸ They can also be very lengthy in comparison.

Article 17(3). In the current Recommendation, states are only encouraged to promote the principle that insurance policies do not exclude damages caused by acts of terrorism. We propose to extend that principle to other intentional crimes as well. In the case of third-party insurances, insurance companies often adhere to the 'intentionality-clause', meaning that damages resulting from an intentional crime committed by the insured party are excluded in the insurance policy. Such clause is understandable from the viewpoint that insurance schemes mainly serve to cover accidents or neglectful behaviour, while intentional behaviour should not be 'awarded' or in any way stimulated. As a result, however, the victim can be left empty-handed. By encouraging the abolishment of the intentionality-clause in combination with the promotion of the recovery of the damages from the offender, (e.g. by allowing or even prioritizing regress by insurance companies on the offender) intentional criminal behaviour is still discouraged, while the chances of victims actually receiving payment are increased.

Article 18. Restorative Justice

Restorative justice should be a generally available service. Restorative justice services should have sufficient capacity to provide safe and effective services to all victims who may benefit, and at all stages of the criminal justice process, irrespective of the type and seriousness of the offence, whether or not that offence was prosecuted, and the victim's age and geographical location. Victims should be given the information and the support necessary to enable them to make a free and informed choice regarding whether restorative justice is right for them.

The current recommendation still speaks about mediation, which can be a form of restorative justice, but does not cover all its aspects. Recently the Council of Europe adopted a Recommendation, the Committee of Ministers' Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters. This is still state of the art today. The proposed article 18 therefore explicitly refers to the Recommendation on Restorative Justice seeking to avoid any contradiction between the new victims recommendation and this instrument. The relevance and importance of restorative justice for many victims of crime, however that it cannot and should not be omitted from a body of victims' rights, and processes of restorative justice – if executed in line with restorative justice recommendation and new article 18 of this recommendation – are a vital component in the arsenal of the protection of victims interests.

The importance of restorative justice for victims of crime is also emphasized elsewhere in the recommendation. An underlying principle of the proposed recommendation is that victims should be heard concerning decisions in which they can be assumed to have a considerable interest. Given the potential importance of restorative justice for victims, referral to restorative justice processes is such a decision. Victims should be informed about such decisions, and be offered the opportunity to voice their concerns.

In turn the potential of restorative justice also applies to other elements of victim rights, support and assistance covered by this recommendation, and the proposed recommendation therefore, in article 18(3) encourages states to consider the value of restorative justice principles elsewhere in their systems.

Article 19 Right to victim support

Article 19 is based upon the previous article 5 of the Recommendation 2006(8) and includes insights from articles 8 and 9 of the EU Directive. The right to victim support is a key component of any system of victim services. More important than a *right* to support is, however, the availability and quality of such support. That means first that victim support services should be free and confidential, and achieve national coverage. The recommendation does not specify how such coverage should be achieved, given the geographical diversity of Council of Europe states. For instance for smaller states a certain geographical spread of physical locations across the areas might be the best way to achieve national coverage, while in larger states with lower population densities, ICT solutions might offer a more practical and effective use of resources. National helplines, websites and social media solutions can be of great value in this regard, but are also an increasingly crucial element of victim services in and of themselves.

Victim support should have the best interests of victims at heart and act in accordance with their needs. This means that victim support should – as a rule- attempt to fully understand victims informed wishes and base their actions upon these stated wishes, including the actions that involve victim services acting as advocates and/ or intermediaries towards other organisations, as is the case in referral processes to other, for instance, more specialised services.

It also means that victim support services should be fully competent to deal with the problems faced by the victims they serve. This can entail diversification in the bodies offering victim support, with the characteristics of certain forms of victimisation, like domestic and sexual violence, often necessitating specialised services tailored to the needs of these victims. Such competence should be guaranteed by sufficient investment in the capabilities of victim support staff, with good practices for instance entailing the development of specific education and training modules and victim support academies. This competency should, at a minimum, concern the ability to deliver emotional, social and practical support and information about and referral to other services. Different victim support services across Europe also offer legal services, services relating to compensation and welfare and forms of psycho-social counselling.

In particular for certain forms of crime, like domestic and sexual violence, and for victims with certain characteristics, for instance children or immigrants, victim support services are an important conduit towards reporting crime to the police. Victim support services should therefore be available to victims irrespective of their contact with authorities and be able to assist victims in the decision to report their victimisation to the authorities.

In turn referral mechanisms from other bodies to victim support are of crucial importance. That applies to the police, often the first point of contact in the aftermath of victimisation. Good practices in the area of referral are opt-out procedures, in which victim support services can make the offer of support and assistance to victims unless they explicitly state that such an offer is not welcome. This reduces the extent to which individual law enforcement have to assess the use of victim support for a particular victim in question, which should not be their prerogative, but of the victims themselves. Referral mechanisms from other relevant bodies, that are likely to come into contact with victims in the line of duty, are also encouraged, although these are likely to take different forms than those that should be in place at the level of the police.

Often victim support is most needed in the immediate aftermath of victimisation. For certain groups of victims and depending on the events following victimisation more long term assistance can however be required. This is, for instance, often the case with lengthier involvement of the criminal justice system. Victims often need support and assistance in their interaction with law enforcement agencies

and criminal justice actors, during the investigation of an offence and the trial and during and after the sentencing of an offender.

Coordination of different services is essential to ensure that victims are referred to the organisation most suited to their needs, and to maintain high levels of competency and quality with the system of services. Such coordination can also serve to limit the number of different organisation with which victims need to interact in the aftermath of their victimisation, and to distribute services in efficient and effective way.

Article 20. Cross-border victims and international cooperation

The position of cross-border victims, those victimized in another state than their country of residence, lies at the heart the initial involvement of a body like the European Union in the area of victims' rights. Key is the acknowledgement of the additional difficulties that these victims can experience: they do not always speak the language, might not have an understand of the host country's legal system and have often returned to their country of origin long before the trial. The precursor of the EU Directive, the 2001 EU Framework Decision on the position of victims of criminal procedure, drew upon this notion to seek to harmonize the positions of victims across EU Member states. The underlying idea is that the additional burden of cross-border victims should be minimized as much as possible. Moreover, states should not add to this burden by, for instance, introducing country of residence as an eligibility criterion for services, rights and provisions.

The proposed article hews closely to the EU Directive article 17 in the avenues to reduce the added burden of being victimized abroad. In particular it points to the importance of offering victims the possibility of making statement in the immediate aftermath of the complaint, when the victim is still in the country where the victimization occurred. Recognizing the fact that victims in these cases will return to their country of residence soon after their victimization means that the article also emphasizes offering possibilities for access to and participation in justice processes from the relative safety of their home country. This relates to participation at a distance in criminal proceedings, by secure video or telephone links, and to the possibility that victims might chose to report their victimization to the authorities in their home country, who subsequently are tasked with communicating this fact to the authorities in the country where the victimization occurred.

For smooth communication across borders international cooperation between states is key, and therefore the participation in networks to facilitate such interactions across borders is recommended. This is particularly true as well for crimes that have a cross-border dimension by definition, such as transnational and international crimes.

Article 21. Cooperation and coordination

As stated, inter alia, in the explanatory notes relating to article 19, in many instances it is the adequate provision of services, rather than a right to such services that will impact victims' lived experience. This means that provisions in the proposed recommendation need to be supported by sufficient financial and human resources and by an organizational framework that ensures such service provision.

As was included in the recommendation 2006(8) this organizational framework should include interagency coordination and cooperation. There are many organizations that can contribute to assistance to victims of crime, and matching the needs of victims of crimes to the services they can

offer requires combining their efforts. This is true for all victims of crime, and particularly clear in cases of large scale victimization, where a concerted effort across agencies is crucial in rising to the demands of the occasion.

Included in such mechanisms of coordination and cooperation should be the acknowledgement of the vital importance of repeated monitoring and evaluation of the (quality of) services delivered to victims, see also article 26. There are good practices of monitor tools in member states of the Council of Europe, that can be adapted to suit the needs of other jurisdictions. Victim assistance is still an emerging discipline, and much is to be learnt about the most effective and efficient ways of service delivery: such ongoing learning requires repeated monitoring and evaluation.

Article 22. Confidentiality

Recommendation 2006(8) already acknowledged the crucial importance of confidentiality in the treatment of victims of crime, and this article copies its content. Falling victim to crime often is an intimate experience, that is difficult to share with others. Indeed main hurdles to reporting crimes, in particular forms of sexual and domestic violence, include the feelings of shame and guilt that victims may experience, and their worries and fears that their experience will become known to their families and friends. This highlights the need for confidentiality of services, which is further increased, due to the fact that many victims stand to suffer retaliation if the offender, but also others, became aware of their contact with agencies involved in victim assistance. There can be exceptions to this rule, for instance when disclosure is necessary to prevent clear and present danger to the victim, but such exceptions should be subject to clear and transparent rules and accompanied by easily accessible complaints procedures for dealing with alleged breaches to the rules.

Article 23. Selection and training of personnel

The importance of selection and training of personnel was already recognized in recommendation 2006(8). The proposed article 23 reiterates this text. Given the importance of quality of service delivery sufficient training and education is of course paramount, while particular features of crimes and characteristics of victims require specialised training: for example, domestic or sexual violence, terrorism, crimes motivated by racial, religious or other prejudice, as well as to families of murder victims.

It is important moreover that such training is not only offered to staff, whose primary task is the support and assistance to victims. It should be a staple element of all personnel who, in the line of duty, is likely to encounter victimisation by crime. As a priority this entails the police and personnel involved in the administration of justice, including prosecutors and judges, but also the emergency services and others attending the scene of a major incident and relevant staff in health, housing, social security, education and employment services. The importance of such training is the extent to which it contributes to the lived experience of victims of crime. That should not be taken for granted: the evaluation and monitoring activities mentioned under article 25 and article 26 also need to investigate the extent to which this key purpose of training activities is achieved in practice.

Article 24. Raising public awareness of crime victimization

A crucial element of victim assistance concerns the level of social support in their immediate and more distant surroundings. Insufficient support and/ or negative reactions have been shown to be the strongest predictors of poor outcomes for victims. In addition such negative reactions to victims often reduce the chance that victims will seek out support and assistance for their predicament, thereby increasing their risk of revictimization and reducing the chance that the offender will be brought to justice.

A sufficient level of public awareness is therefore an important factor in reducing secondary victimisation and negative outcomes for victims of crime. Recommendation 2006(8) already stressed the need of raising public awareness, the wisdom of which has been clearly underlined by the #MeToo movement of recent years. Increasingly the public is aware of phenomena such as victim blaming and of the difficulties that victims face in reaching out for help, support and assistance, including those related to institutional barriers.

Article 25. Research and data collection

One of the main drivers of the development of victim services across jurisdictions has been the availability of relevant data concerning prevalence, incidence and impact of victimization, and the needs and desires of victims. The academic domain of victimology has therefore emerged in lock-step with the development of victim services, with both academic understanding and practical expertise in this areas feeding off each other. Recommendation 2006(8) already emphasized the key importance of research and data collection and the proposed recommendation reiterates this plea.

Article 26. Monitoring and implementation of Recommendation in practice

The proposed recommendation reflects the state of the art in victim rights, services and support at the time of drafting. It is an earnest attempt to address current gaps and limitations in the treatment of victims of crime, that if sufficiently implemented across the member states of the Council of Europe will contribute much to improving the plight of victims of crime. However it neither is or should be expected to be the final word. Victimology and the understanding of the working of provisions and services for victims of crime is a quickly evolving field of academic inquiry and professional practice. Tracking the development of the implementation of the Recommendation in the coming years can not only serve to evaluate its progress, but also contribute to successful practices.