

COUNCIL FRAMEWORK DECISION of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on European Union, and in particular Article 31 and Article 34(2)(b) thereof,
Having regard to the initiative by the Portuguese Republic (1),
Having regard to the opinion of the European Parliament (2),

Whereas:

(1) In accordance with the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, in particular points 19 and 51(c), within five years following entry into force of the Treaty, the question of victim support should be addressed, by making a comparative survey of victim compensation schemes and by assessing the feasibility of taking action within the European Union.

(2) The Commission submitted a communication to the European Parliament, the Council and the Economic and Social Committee on 14 July 1999 entitled 'Crime victims in the European Union: reflections on standards and action'. The European Parliament adopted a Resolution on the Commission communication on 15 June 2000.

(3) The conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, in particular point 32 thereof, stipulate that minimum standards should be drawn up on the protection of the victims of crimes, in particular on crime victims' access to justice and on their right to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and nongovernmental, for assistance to and protection of victims.

(4) Member States should approximate their laws and regulations to the extent necessary to attain the objective of affording victims of crime a high level of protection, irrespective of the Member State in which they are present.

(5) Victims' needs should be considered and addressed in a comprehensive, coordinated manner, avoiding partial or inconsistent solutions which may give rise to secondary victimisation.

(6) The provisions of this framework Decision are therefore not confined to attending to the victim's interests under criminal proceedings proper. They also cover certain measures to assist victims before or after criminal proceedings, which might mitigate the effects of the crime.

(7) Measures to assist victims of crime, and in particular the provisions regarding compensation and mediation do not concern arrangements under civil procedure.

(8) The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.

(9) The provisions of this Framework Decision do not, however, impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings.

(10) The involvement of specialised services and victim support groups before, during and after criminal proceedings is important.

(11) Suitable and adequate training should be given to persons coming into contact with victims, as this is essential both for victims and for achieving the purposes of proceedings.

(12) Use should be made of existing contact point networking arrangements in Member States, whether under the judicial system or based on victim support group networks, (1)OJ C 243, 24.8.2000, p. 4. (2)Opinion delivered on 12.12.2000 (not yet published in the Official Journal).

Article 1

Definitions

For the purposes of this Framework Decision: (a) 'victim' shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State;

(b) 'victim support organisation' shall mean a non-governmental organisation, legally established in a Member State, whose support to victims of crime is provided free of charge and, conducted under appropriate conditions, complements the action of the State in this area;

(c) 'criminal proceedings' shall be understood in accordance with the national law applicable;

(d) 'proceedings' shall be broadly construed to include, in addition to criminal proceedings, all contacts of victims as such with any authority, public service or victim support organisation in connection with their case, before, during, or after criminal process;

(e) 'mediation in criminal cases' shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person.

Article 2

Respect and recognition

1. Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.

2. Each Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.

Article 3

Hearings, and provision of evidence

Each Member State shall safeguard the possibility for victims to be heard during proceedings and to supply evidence. Each Member State shall take appropriate measures to ensure that its authorities question victims only insofar as necessary for the purpose of criminal proceedings.

Article 4

Right to receive information

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

(a) the type of services or organisations to which they can turn for support;

(b) the type of support which they can obtain;

(c) where and how they can report an offence;

(d) procedures following such a report and their role in connection with such procedures;

(e) how and under what conditions they can obtain protection;

(f) to what extent and on what terms they have access to: (i) legal advice or (ii) legal aid, or (iii) any other sort of advice, if, in the cases envisaged in point (i) and (ii), they are entitled to receive it;

(g) requirements for them to be entitled to compensation;

(h) if they are resident in another State, any special arrangements available to them in order to protect their interests.

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

(a) the outcome of their complaint;

(b) relevant factors enabling them, in the event of prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected;

(c) the court's sentence.

3. Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary.

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

Article 5

Communication safeguards

Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants. (22.3.2001 EN Official Journal of the European Communities L 82/3)

Article 6

Specific assistance to the victim

Each Member State shall ensure that victims have access to advice as referred to in Article 4(1)(f)(iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4(1)(f)(ii), when it is possible for them to have the status of parties to criminal proceedings.

Article 7

Victims' expenses with respect to criminal proceedings

Each Member State shall, according to the applicable national provisions, afford victims who have the status of parties or witnesses the possibility of reimbursement of expenses incurred as a result of their legitimate participation in criminal proceedings.

Article 8

Right to protection

1. Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.
2. To that end, and without prejudice to paragraph 4, each Member State shall guarantee that it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar position.
3. Each Member State shall further ensure that contact between victims and offenders within court premises may be avoided, unless criminal proceedings require such contact. Where appropriate for that purpose, each Member State shall progressively provide that court premises have special waiting areas for victims.
4. Each Member State shall ensure that, where there is a need to protect victims — particularly those most vulnerable — from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.

Article 9

Right to compensation in the course of criminal proceedings

1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.
2. Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims.
3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

Article 10

Penal mediation in the course of criminal proceedings

1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.
2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.

Article 11

Victims resident in another Member State

1. Each Member State shall ensure that its competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a State other than the one where

the offence has occurred, particularly with regard to the organisation of the proceedings. For this purpose, its authorities should, in particular, be in a position:

— to be able to decide whether the victim may make a statement immediately after the commission of an offence,

— to have recourse as far as possible to the provisions on video conferencing and telephone conference calls laid down in Articles 10 and 11 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ for the purpose of hearing victims resident abroad.

2. Each Member State shall ensure that the victim of an offence in a Member State other than the one where he resides may make a complaint before the competent authorities of his State of residence if he was unable to do so in the Member State where the offence was committed or, in the event of a serious offence, if he did not wish to do so. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the national law of the State in which the offence was committed.

Article 12

Cooperation between Member States

Each Member State shall foster, develop and improve cooperation between Member States in order to facilitate the more effective protection of victims' interests in criminal proceedings, whether in the form of networks directly linked to the judicial system or of links between victim support organisations.

⁽¹⁾OJ C 197, 12.7.2000, p. 1.

L 82/4 EN Official Journal of the European Communities 22.3.2001

Article 13

Specialist services and victim support organisations

1. Each Member State shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter, whether through the provision of specially trained personnel within its public services or through recognition and funding of victim support organisations.

2. Each Member State shall encourage action taken in proceedings by such personnel or by victim support organisations, particularly as regards:

- (a) providing victims with information;
- (b) assisting victims according to their immediate needs;
- (c) accompanying victims, if necessary and possible during criminal proceedings;
- (d) assisting victims, at their request, after criminal proceedings have ended.

Article 14

Training for personnel involved in proceedings or otherwise in contact with victims

1. Through its public services or by funding victim support organisations, each Member State shall encourage initiatives enabling personnel involved in proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups.

2. Paragraph 1 shall apply in particular to police officers and legal practitioners.

Article 15

Practical conditions regarding the position of victims in proceedings

1. Each Member State shall support the progressive creation, in respect of proceedings in general, and particularly in venues where criminal proceedings may be initiated, of the necessary conditions for attempting to prevent secondary victimisation and avoiding placing victims under unnecessary pressure. This shall apply particularly as regards proper initial reception of victims, and the establishment of conditions appropriate to their situation in the venues in question.

2. For the purposes of paragraph 1, each Member state shall in particular have regard to facilities within courts, police stations, public services and victim support organisations.

Article 16

Territorial scope

This Framework Decision shall apply to Gibraltar.

Article 17

Implementation

Each Member State shall bring into force the laws, regulations and administrative provisions necessary to comply with this Framework Decision:

- regarding Article 10, 22 March 2006,
- regarding Articles 5 and 6, 22 March 2004,
- regarding the other provisions, 22 March 2002.

Article 18

Assessment

As from the dates referred to in Article 17, each Member State shall forward to the General Secretariat of the Council and to the Commission the text of the provisions enacting into national law the requirements laid down by this Framework Decision. The Council shall assess, within one year following each of these dates, the measures taken by Member States to comply with the provisions of this Framework Decision, by means of a report drawn up by the General Secretariat on the basis of the information received from Member States and a report in writing submitted by the Commission.

Article 19

Entry into force

This Framework Decision shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 15 March 2001.

For the Council

The President

M-I. KLINGVALL