

(Acts adopted pursuant to Title VI of the Treaty on European Union)

Initiative of the Portuguese Republic with a view to adopting a Council Framework Decision on the standing of victims in criminal procedure

(2000/C 243/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(e) and 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 apply the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽³⁾, in particular point 51(c), within five years following the entry into force of the Treaty, the question of victim support should be addressed, by making a comparative survey of victim compensation schemes, and the feasibility of taking action within the Union assessed.

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

(3) The European Parliament approved on 15 June 2000 a Resolution concerning the Commission Communication.

(4) In the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, especially point 32, it is stated 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 non-governmental, for assistance to and protection of victims.

(5) The Council adopted on 24 February 1997, Joint Action 97/154/JHA ⁽⁴⁾ concerning action to combat trafficking in human beings and sexual exploitation of children.

(6) The Council approved on 23 November 1995 a Resolution ⁽⁵⁾ on the protection of witnesses in the fight against organised crime.

(7) Various instruments from international bodies already exist in this area:

— Recommendation No R (85) 11 of the Council of Europe on the position of the victim in the framework of criminal law and procedure,

— the European Convention on Compensation to Victims of Violent Crimes, signed in Strasbourg on 24 November 1983,

— Recommendation No R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters,

— the United Nations Declaration of basic principles of justice for victims of crime and abuse of power;

— the work of the European Forum for Victim Services, in particular the Statement of victims' rights in the process of criminal justice.

(8) The Member States should approximate their laws and regulations concerning criminal procedure, namely with respect to supporting victims of crime and taking specific account of the principles set out hereafter.

⁽¹⁾ OJ C ...

⁽²⁾ OJ C ...

⁽³⁾ OJ C 19, 23.1.1999, p. 1.

⁽⁴⁾ OJ L 63, 4.3.1997, p. 2.

⁽⁵⁾ OJ C 327, 7.12.1995, p. 5.

(9) It is important to consider and address victims' needs in an integrated, comprehensive, interrelated manner and avoiding partial or inconsistent solutions which may give rise to secondary victimisation.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

(10) The concept of 'procedure' should therefore include victims' contacts with authorities, public services and victim support groups whose involvement, albeit not required under the criminal justice system, is essential in looking after victims' interests, both before and during or after criminal proceedings proper.

(a) 'victim' shall mean a natural person who suffers any form of crime within the territory of any Member State. In the event of crime victims' death, members of their family or persons in a similar position may also be regarded as victims, having regard in both cases to the domestic legal provisions of the Member State in which procedure takes place;

(11) The provisions of this Framework Decision are confined to looking after victims' interests under criminal procedure.

(b) 'victim support group' shall mean a non-governmental organisation whose purpose of providing assistance and acting as appropriate, free of charge, on a confidential basis, is recognised by the Member State as complementing its own action in this area;

(12) For that reason, leaving aside any future addressing of the whole issue of compensation for crime victims within the Union, the provisions of this Framework Decision regarding compensation, as well as those regarding mediation, relate to criminal procedure and thus do not concern arrangements under civil procedure.

(c) 'procedure' shall be broadly construed to include, in addition to the process laid down by law, all of victims' contacts with any authority, public service or victim support group in connection with their case, before or after criminal proceedings are in progress.

(13) It is necessary to approximate arrangements under criminal procedure as regards the standing and main rights of victims, 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, the right to have allowance made for the disadvantage of living in a different Member State from the one in which they were a victim, etc.

Article 2

Respect and recognition

(14) It is important to afford victims the best legal protection and defence of their interests, irrespective of the Member State in which they are present.

1. Member States shall take the necessary measures to ensure that victims are treated with respect for the dignity of the individual and shall recognise the rights and legitimate interests of victims at all stages of procedure.

(15) The involvement of victim support groups before, during and after proceedings is important within criminal procedure.

2. Appropriate measures shall be taken for victims who are particularly vulnerable on account of their age, their sex or other circumstances.

(16) It is necessary for personnel coming into contact with victims to receive suitable and proper training, which is essential both for victims and for achieving the purposes of the procedure.

Article 3

Right to provide information

(17) There is an advantage, in defending victims' interests in the procedure, of making use of existing contact point networking arrangements in Member States, whether they are under the judicial system or are based on victim support group networks,

Member States shall safeguard the right of victims to be heard in the procedure and their right to furnish evidence, under the conditions deemed necessary for the proper conduct of procedure.

*Article 4***Right to receive information**

1. Member States shall ensure, by appropriate means of keeping them informed, that victims have access to information of relevance for the protection of their interests from the outset, in particular as from the time of their first contact with the police, covering at least the following points:

- (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 victims can report an offence;
- (d) procedures following such a report and any action to be taken by victims in them;
- (e) how and under what conditions they can obtain protection, where warranted;
- (f) how and on what terms victims will be entitled to receive legal advice or legal aid;
- (g) requirements and preconditions in order for victims to be entitled to compensation;
- (h) if they are resident in another Member State, any special arrangements available to them in order to defend their interests.

2. Victims' right to receive information shall continue throughout the procedure, in particular after judgment has been given, in a manner appropriate to the proper conduct of the procedure, while leaving victims the option of declining to be kept informed.

*Article 5***Communication safeguards**

In the same way as for defendants, Member States shall take the necessary measures to prevent language difficulties, or inadequate powers of expression or comprehension, from impeding either victims' direct or indirect understanding of important steps in the procedure or any involvement of victims in such steps, particularly through the use of appropriate interpreting and communication facilities.

*Article 6***Right to participate in the procedure and have access to legal aid**

1. Irrespective of the possibility of victims participating in procedure as a witness or a party, Member States shall ensure an opportunity for victims to participate as such, in accordance with the provisions of this Framework Decision.
2. Member States shall ensure that all victims, regardless of their means, have access to legal advice, provided free of charge if need be.
3. Member States shall ensure provision of legal aid free of charge, where warranted.

*Article 7***Legal costs**

Member States shall not require victims to pay any legal costs or shall arrange for the possibility of having such costs refunded.

*Article 8***Right to protection**

1. Member States shall ensure a suitable level of protection for crime victims and their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where there is a serious risk of reprisals or firm evidence of intent to intrude upon their privacy.
2. Member States shall also ensure that it is possible, by means of a court order, made of the court's own motion or at a victim's request, to protect the privacy and image of victims and their families or persons in a similar position, where necessary in order to prevent secondary victimisation, particularly for vulnerable victims.
3. Member States shall further ensure, for the purposes of protecting victims, that court premises have special waiting areas for victims.

4. Where there is a need to protect victims from the effects of giving evidence in open court, as may arise on account of a victim's age or the nature of the offence or for other reasons, Member States shall ensure that victims are allowed to testify in camera or by way of a video conference or video recording or by other appropriate means, without prejudice to Article 6 of the European Convention on Human Rights.

*Article 9***Right to compensation under criminal procedure**

1. Member States shall ensure that victims have the option of seeking compensation in the course of criminal procedure.
2. In their criminal legislation, Member States shall establish ways of using compensation and restitution as criminal law penalties or measures, having particular regard to realisation by convicted offenders of the practical impact of their offences on their victims' lives.
3. As part of their criminal justice system, Member States shall make the necessary arrangements for compensating victims. Fines or sums obtained from instrumentalities or proceeds of crime shall be used primarily to compensate victims.
4. Recoverable property belonging to victims which is seized in the course of procedure shall be returned to victims as soon as possible.

*Article 10***Dispute settlement through mediation**

1. Where deemed appropriate, Member States shall ensure that mediation forms part of the measures available under their system of criminal procedure.
2. Where deemed appropriate, Member States shall ensure that mediated out-of-court settlements between victims and defendants are taken into account, with victims' agreement, in subsequent criminal proceedings, subject to compliance with the conditions laid down for the purpose.

*Article 11***Victims resident in another Member State**

1. Member States shall ensure that victims resident in another Member State are able to participate properly in the criminal procedure, being placed at a minimum of disadvantage as a result of their place of residence, in particular by means of:
 - the possibility of making statements straight away at the outset of the procedure,
 - the use of standard forms, where possible, at all stages of procedure,

— the use of modern facilities for giving evidence, such as video conferencing, telephone conference calls and video recording.

2. Member States shall ensure that the necessary measures are taken to enable victims to remain in the Member State in which the procedure is to take place, where necessary for the proper conduct of the procedure.

3. Member States shall ensure that the fact that a victim is resident in another Member State and has to return there will affect the due conduct of the procedure as little as possible. For this purpose, Member States shall ensure that international cooperation arrangements pay particular regard to the position of victims resident in another Member State.

4. Member States shall ensure that victims can report offences in their Member State of residence in the case of crimes committed against them in another Member State, in order to have the relevant proceedings initiated in that other Member State.

*Article 12***Victim support networks in the criminal procedure**

1. Member States shall foster, develop and improve networks for cooperation between Member States in order to facilitate more effective defence of victims' interests in the procedure, whether such networks come within the judicial system or are based on victim support groups.
2. Member States shall, for the purposes of paragraph 1, set up a European victim support freephone line to serve, in particular, the purposes laid down in Article 4.

*Article 13***Specialist services and victim support groups**

1. Member States shall foster the involvement in the procedure of victim support systems responsible for organising initial victim intake and for victim support and assistance, whether through services made up of specially trained personnel or through recognition and funding of victim support groups.

2. Member States shall encourage action taken in the procedure by public services or by victim support groups, particularly as regards:
 - (a) providing victims with information;

- (b) assisting victims according to their immediate needs;
- (c) accompanying victims, where necessary, at steps in the procedure;
- (d) assisting victims after judgment has been given, especially where convicted offenders have been released on probation.

Article 14

Training for personnel involved in the procedure or coming into contact with victims

1. Within public services or through funding for victim support groups, Member States shall encourage measures enabling personnel involved in the procedure or merely coming into contact with victims to receive suitable training.
2. Paragraph 1 shall apply in particular to police officers and legal operators.

Article 15

Practical conditions regarding the position of victims in the procedure

1. Member States shall create the necessary conditions, in the course of the procedure, to prevent secondary victimisation and avoid placing victims under unnecessary pressure. This shall apply particularly as regards proper reception, especially initial intake, and establishment of conditions geared to their situation at premises where they are looked after.

2. For the purposes of paragraph 1, Member States shall in particular include courts, police stations, hospitals, public services and victim support groups which may be involved in dealing with the situation.

Article 16

Execution

1. Member States shall take the measures necessary to comply with this Framework Decision by
2. Member States shall forward, by ...(*), to the General Secretariat of the Council and to the Commission the text of the provisions transposing into national law the obligations laid down by this Framework Decision. The Council shall assess by ..., by means of a report drawn up by the General Secretariat of the Council on the basis of the information received from Member States and a report in writing submitted by the Commission, to what extent the Member States have complied with this Framework Decision.

Article 17

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, ...

For the Council
The President
...

(*) Date set out in Article 16(1).