



European Communities

EUROPEAN PARLIAMENT

SESSION DOCUMENTS

English Edition

1988-89

08.03.1989

SERIES A

DOCUMENT A2-0426/88

REPORT

drawn up on behalf of the Committee on Petitions
on compensation for victims of violent crimes.

Rapporteur : Mr Edward NEWMAN

PE 127.081/fin.

A Series: Reports - B series. Motions for Resolutions, Oral Questions.

***** = Consultation procedure requiring a single reading

****I** = Cooperation procedure (first reading)

- C Series Documents received from other Institutions (e.g. Consultations)

****II** = Cooperation procedure (second reading) which requires the votes of the majority of the Members of Parliament

******* = Parliamentary assent which requires the votes of the majority of the current Members of Parliament

At its meeting of 20/21 June 1988 the committee on Petitions decided to draw up a report pursuant to Rule 129(1) of the Rules of Procedure on petitions No. 24/86 presented by Mr and Mrs Hunter, Mr and Mrs Smith and Mr and Mrs Harding on a request for financial redress after a grenade attack in Greece (which it had declared admissible at its meeting of 17/18 June 1986 pursuant to Rule 128), No. 39/87 presented by Mr and Mrs Greenway on failure to ratify the European Convention on compensation for victims of criminal violence (which was declared admissible at its meeting of 18 May 1987) and No. 167/87 presented by Mrs Norris on compensation for criminal injury in the EEC Member States (which was declared admissible at its meeting of 24/25 September 1987), and appointed Mr Newman rapporteur.

At its meeting of 19/20 September 1988 the committee decided that its report should also take into consideration petition No. 214/88 presented by Mr Abraham on his savage beating up during a holiday in Spain.

At its meetings of 19/20 September 1988, 26-27-28 September 1988, 28/29 November 1988, 1-2-3 February 1989 and 27/28 February/1 March 1989, the committee considered the draft report. At the latter meeting the committee adopted the motion for a resolution as a whole unanimously.

The following took part in the vote: Chanterie (Chairman), Peus (Vice-Chairman), Hitzigrath (Vice-Chairman), Newman (rapporteur), Cassidy, Ciccimessere, Lafuente Lopez, McMillan-Scott, Ramirez Heredia, Schmidbauer.

The report was tabled on 6 March 1989.

The deadline for tabling amendments to this report will be indicated on the draft agenda of the part-session in which it will be debated.

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The Committee on Petitions hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

A
MOTION FOR A RESOLUTION

on compensation for victims of violent crimes

The European Parliament,

- having regard to Petition No. 24/86 presented by Mr and Mrs Hunter, Mr and Mrs Smith and Mr and Mrs Harding,
- having regard to Petition No. 39/87 presented by Mr and Mrs Greenway,
- having regard to Petition No. 167/87 presented by Mrs Norris,
- having regard to Petition No. 214/88 presented by Mr Abraham,
- having regard to its resolution of 13 March 1981 on compensation for victims of acts of violence¹,
- having regard to the European Convention of 24 November 1983 on the compensation of victims of violent crimes,
- having regard to the judgement the Court of Justice delivered on 2 February 1989 in Case 186/87,
- having regard to the report of the Committee on Petitions (Doc. A 2-426/88),

A. whereas for reasons of equity and social solidarity it is necessary to deal with the situation of victims of violent crimes,

B. having regard to the need to introduce or develop schemes for the compensation of these victims by the State in whose territory such crimes are committed, in particular when the offender has not been identified, or has disappeared, or is without resources and where compensation cannot be obtained by other means (social security or an insurance scheme),

¹ OJ No. L 77, 6.4.1981, p. 77

- C. whereas this compensation should be seen as the granting of a social advantage closely connected with freedom of movement in the European Community,
- D. having regard to the disparities between Member States in the compensation of victims of violent crimes which exist at national level and which include discrimination on grounds of nationality,
1. Calls on the Commission of the European Communities to prepare a draft directive without delay requiring the Member States to harmonize at the highest level the payment of compensation for victims of violent crimes, regardless of the victim's Member State of origin;
 2. Considers that compensation should cover, at least, loss of earnings, medical and hospitalization expenses and funeral expenses, and, as regards dependants, loss of maintenance;
 3. Calls on the Commission to include in this directive provisions requiring the payment by the Member State of expenses to witnesses required to revisit the country in order to give evidence;
 4. Calls on the Member States to facilitate the implementation of administrative structures to inform the victims of their rights, especially at police and court level, and to promote campaigns of action with that purpose;
 5. Calls on the Member States to ratify the European Convention of 24 November 1983 on the compensation of victims of violent crimes and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its Additional Protocol of 17 March 1978;
 6. Instructs its President to forward this resolution and the report of its committee to the Commission, the Council, and the governments of the Member States.

B
EXPLANATORY STATEMENT

INTRODUCTION

1. After centuries of neglect, the problem of the victim is being taken up again by contemporary thinking on criminal law. Indeed, since the State assumed the monopoly of the administration of criminal justice, in order to safeguard social peace and prevent acts of private vengeance, the State and the criminal have been conceived as the sole actors in the drama of crime and criminal proceedings, with the victim consigned to the uncertainties and inadequacies of civil proceedings.

The specific tradition of States based on the rule of law has tended to emphasize a whole series of constitutional and legal guarantees for the criminal vis-à-vis the State, with no reference whatever to another essential function of systems of criminal justice, the protection of the interests of the victim.

2. In recent years, however, this situation has been changing; proposals in the areas of criminal justice policy and legislative reform now tend to place increasing emphasis on the role of the victim, as an aspect of the general concern to achieve a more humane system of criminal justice.

This return of the victim to the limelight is, moreover, consistent with the spirit of our times; today, the ideas of the victim and victimization are a basic element in political, philosophical, literary and artistic discourse. In addition, one of the plagues of our daily lives is, precisely, the experience of victimization; at the same time as the traditional forms of victimization (wars, massacres, oppression of minorities, crime) become more frequent and extensive, sophisticated new forms of aggression (ecological aggression, etc.) appear. All this explains the major stress laid on victimization in news reports, in literature, in the streets of our cities where monuments celebrating heroes and conquerors yield pride of place to those commemorating 'the dead of ...', 'the victims of ...'.

COMPENSATION BY THE STATE

3. The most important aspect of the protection of the victim's interests in criminal justice is, precisely, the problem of reparation of the physical, psychological, material or social damage sustained by the victim of the crime, conceived as a means of alleviating, as far as possible, the suffering inflicted on him by the criminal act.

The State cannot be deemed to have discharged its responsibility once it has simply granted the victim the meagre privilege of extracting compensation - the reparation of the situation affected by the crime - from the criminal, whether through independent civil proceedings or actually within the framework of the criminal proceedings (depending on the national legal system).

One merely has to invoke the cases of Petitions Nos. 24/86, 39/87, 164/87 and 214/88, received by Parliament, which concern events that took place in, respectively, Greece, France, Italy and Spain, and are characterized by victims without a criminal, that is, individuals who sustained illegal damage to person or property in situations where the criminal proceedings failed to identify an agent. To these cases may be added those in which the criminal was identified but disappeared, and those in which the guilty party was insolvent. All this should give some idea of the situations in which the victim cannot be compensated within the limits and scope for action of the criminal justice system, and which therefore involve the responsibilities of society and the State, since the main debtor, as it were, cannot be called on to pay.

This intervention on the part of the State is justified 'not only in order to alleviate, as far as possible, the damage and suffering caused to the victim, but also to resolve the social conflict resulting from the crime and facilitate the implementation of a rational and effective policy on crime' (Explanatory Report on the European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 1984). It is not a matter of establishing a principle out of the notion that the State should be presumed guilty for failing to prevent the crime - in which case the concept of social reparation would be based on the circumstance of the State's failure to provide effective protection of the person and safety of its citizens and on the 'credit' thus obtained - but, rather, of applying a principle of collective solidarity among citizens living in the same society. We are dealing, then, with a type of collective insurance, the socialization of the risk of becoming a victim and its costs. Since crime is a threat - in a sense a fatal threat - which hangs over the community and chance alone decides who is to be affected in each case, it would seem desirable to undertake the social compensation of the victim, as a form of social insurance.

THE SITUATION IN THE MEMBER STATES

4. Should renewed consideration be given, then, in these cases, to the proposals for making the community responsible for compensating the victim?

This question has been answered in the affirmative by an increasing number of national legal systems since 1963. In that year, in a pioneering move, the New Zealand legislature passed the New Zealand Criminal Injuries Compensation Act. This law gave the victims of violent crimes against the person the right to compensation by the State, subject to the decision of a special court.

We shall, however, now review the situation in the Member States of the EEC.

5. THE UNITED KINGDOM

In keeping with the spirit of Britain's legal institutions and traditions, State compensation became a topic of national debate in the early 1950s, on the basis of the notion of the State's responsibility for the existence of crime. The submission to Parliament of the White Paper 'Penal Practice in a Changing Society' (1959) marked a decisive step in the process which was to culminate, on 1 August 1964, in the entry into force of the scheme establishing a system of State compensation for the victims of crime.

Within the terms of the scheme currently in force, which dates from 1979, and which remains extra-statutory, State compensation is granted by the Criminal Injuries Compensation Board, an administrative body whose decisions are not subject to appeal or to ministerial review. Compensation is payable to victims of personal injury directly attributable to a crime of violence (including arson and poisoning) or to a threat of violence, provided none of the specified grounds for refusal apply. Specifically, compensation is not payable if the personal injury is attributable to traffic offences (except where such injury is due to a deliberate attempt to run the victim down)² if the sum involved is less than the minimum amount of compensation (£550), and in various other cases.

Provided an applicant is in all respects eligible under the other provisions, compensation is payable regardless of the victim's nationality.

The rapporteur wishes, however, to point out that while the letter of the law appears to be satisfactory, certain criticisms may be made of the way the law is implemented, especially with regard to the excessively long delays in the payment of compensation to applicants, and the rather limited amounts payable in compensation.

6. IRELAND

A non-statutory scheme, the Scheme of Compensation for Personal Injuries Criminally Inflicted, was introduced in Ireland in 1974. The scheme (amended in 1968) is administered by a Criminal Injuries Tribunal, the members of which are appointed by the Minister of Justice; there is no appeal against his final decision. This Tribunal may pay compensation in respect of personal injury where the injury is directly attributable to a crime of violence (including arson and poisoning), or to circumstances arising from the action of the victim in assisting or attempting to assist the prevention of crime or the saving of human life. Compensation is not payable in certain cases (sums of less than £Irl 50, traffic offences except if there has been a deliberate attempt to run down the victim, cases where the victim was responsible for the offence, etc.), but the scheme does not discriminate between nationals and non-nationals; the latter are entitled to compensation if the injury was sustained within the State or aboard an Irish ship or aircraft.

² In these cases, it is considered that the insurance system provides adequate cover on its own.

In 1985 an amount of £1r1 3 977 330 was paid in compensation for a total of 831 cases (15 of them fatal).

7. THE NETHERLANDS

The Law of 26 June 1975 set up a guarantee fund for the compensation of the victims of crimes of violence, which came into existence on 1 January 1976. This fund, which is managed by an independent administrative committee, is empowered to pay compensation to any person, whether or not of Dutch nationality, who has sustained serious physical injuries as a result of a crime of violence committed in the Netherlands. If the act was committed in a foreign country or on board a Dutch ship or aircraft, compensation is payable only to Dutch nationals.

Compensation is not payable if the victim's financial situation has not been significantly affected, if the costs arising from the injury are less than Fl 300, or if the injury is partly caused by the victim's behaviour. The compensation is, moreover, subsidiary in character, since it is awarded only when no other form of reparation for the injury is possible.

Appeals by applicants against the decisions of the administrative committee of the guarantee fund may be made to the Court of Appeal in The Hague.

8. Since 11 May 1976, a Gesetz über die Entschädigung für Opfer vor Gewalttaten (law on compensation for the victims of violent crime), or OEG, has existed in the FEDERAL REPUBLIC OF GERMANY.

It was principally the progress achieved in the theory and practice of social security, and its gradual extension to areas of risk involving particular responsibility on the part of the State, whether by action or omission, which paved the way for the OEG and also explain the practical measures it has given rise to - that is, the adoption of the Versorgung (maintenance payments) system, under which the OEG institute operates within the terms of the provisions and principles of the Bundesversorgungsgesetz (Federal Pensions Law), which regulates the award of compensation to war victims.

It should be noted that compensation is payable only for death or bodily injury (personal injuries).

The current law dates from 7 January 1985, and, within the terms of Article 1(4), foreigners can apply for compensation only if a reciprocal agreement exists.

A statement by the Minister of Employment and Social Welfare says that this legislation is not legally binding for foreigners from EEC countries resident in West Germany, as this payment is considered a 'social advantage' as defined in Article 7(2) of Regulation (EEC) No. 1612/68 on the granting of social advantages. Therefore workers from EEC Member States may receive this compensation if they are resident in West Germany, whether or not they are employed.

9. DENMARK

The legal basis is Law No. 277 of 26 May 1976 on compensation to be paid by the State to victims of crimes, as amended by Law No. 233 of 6 June 1985. The persons entitled to compensation are victims of violations of the Danish penal

code committed in the State of Denmark. In certain circumstances compensation may also be paid to victims of crimes committed outside the State of Denmark, provided the victim at the time of the crime had permanent residence in Denmark, was of Danish nationality or was in the service of a Danish diplomatic representation.

The law covers damage to the victim of a physical or mental nature and damage to clothes and personal belongings. In addition, damage to property is covered up to a maximum of Dkr 50 000 provided that the damage was caused by a crime committed by persons being held in custody in various State institutions for criminal and/or mentally deficient persons.

Responsibility has to be established within the terms of Danish law on compensation for damage caused outside contractual relations. Compensation is paid only to the extent that it has not already been covered by the person who committed the crime, by other legislation or by private insurance. Decisions concerning payment of compensation are taken by a council set up by the Minister of Justice. It consists of a president, who is a judge, and two other members, one of whom is proposed by the Minister of Social Affairs and the other by the Danish Barristers' Association.

In 1987 Dkr 15.3 m was paid in compensation for a total of 1293 cases. 420 claims were rejected.

10. FRANCE

On 3 January 1977, Law No. 77/5 was adopted, introducing an Article 706(3) into the Code de Procédure Pénale. This provides that any person who suffers injury as a result of acts, intentional or otherwise, which amount to an offence, may obtain compensation from the State when the relevant acts have caused physical injury with serious consequences, when the injury seriously affects living conditions as a result of, inter alia, an adverse effect upon physical integrity and when the injured person is unable to obtain compensation or effective and adequate indemnity for his loss from any other source.

Article 706(15) (introduced only in 1981) states that the provisions of Article 706(3) apply 'only to persons who are of French nationality or who, being aliens, prove that they are nationals of a State which has concluded a reciprocal agreement with France for the application of the said provisions and that they satisfy the conditions laid down in the agreement or that they are holders of a so-called residence permit'.

Also in 1981, the scope of State compensation was extended to the victims of offences against property (theft, fraud, abuse of confidence). It should also be noted that the criterion of the victim's nationality was introduced only in 1981; it was not taken into account between 1977 and 1981.

As regards the arrangements for payment of compensation, no special fund has been created: the State takes direct responsibility for compensation.

A committee having civil jurisdiction and consisting of two judges and one specialist in matters related to the victims of crime is attached to each higher court and determines the amounts to be awarded, possessing powers of inquiry for this purpose.

11. LUXEMBOURG

The Law of 12 March 1984 introduced compensation for certain victims of physical injury resulting from a criminal act, to be paid out of the State budget. Within the terms of this law, any Luxembourg citizen or person habitually resident in the Grand Duchy who has sustained serious physical injury as a result of voluntary acts constituting a crime is entitled to compensation from the State, provided it has proved impossible to obtain compensation by any other means. The maximum payable in compensation was, in 1985, LFrS 1 m.

Decisions are made by the Minister of Justice, and requests are considered by a committee. It is possible to appeal to the courts against the Minister's decision.

It should also be noted that, where the crime was committed in a foreign country, Luxembourg law admits the possibility of compensation on condition that the victim has Luxembourg nationality and that the country within whose territory the crime occurred makes no provision for compensation (see Article 15 of the Law of 12 March 1984).

12. BELGIUM

A Law of 1 August 1985 makes provision for State aid to the victims of intentional acts of violence. This aid is subsidiary in character, in that it is granted only where reparation for the injury cannot be made by other means (whether by the author of the injury, or through the social security system or a private insurance scheme) and where the injury originates in an intentional act of violence of a certain seriousness.

This aid is payable only to victims who are Belgian nationals, refugees or stateless and, under a reciprocity clause, to foreigners who are nationals of a country which would have compensated a Belgian national in parallel circumstances.

The sum payable does not necessarily correspond to the full cost of making good the physical injuries sustained; it is conceived, rather, as an equitable sum, taking into account all the circumstances of the act and the victim's financial situation. The amounts payable in compensation are determined by a special committee (the 'committee for aid to the victims of intentional acts of violence'), whose members are proposed by the relevant ministers and appointed by the King. It is possible to request annulment of its decisions by appeal to the Council of State, in cases of administrative error.

13. The existing legislation in ITALY contains no general provision for the payment of compensation out of public funds to the victims of violent crimes.

However, provisions of this nature exist in certain areas. In particular, Law No. 990 of 24 December 1969 provides for a guarantee fund for the victims of road accidents (intended to pay for damage in cases where the vehicle causing the accident has not been identified), and Law No. 466 of 13 August 1980 (amended) covers compensation to officers of the law and citizens who become victims in the course of duty or as a result of acts of terrorism. Under this law, any Italian national, foreigner or stateless person sustaining serious physical injury as a result of an act of terrorism is entitled to

compensation to the value of Lit 100 m (payable to his family in cases of death), to be awarded by the Minister of the Interior.

14. SPAIN has no general provisions on the matter. However, national legislation in force since 1984 (Article 24 of Organic Law 9/1984 of 26 December 1984, repealed by Article 64 of Law 33/1987 of 23 December 1987) provides for State compensation for bodily harm or death resulting from actions carried out by armed groups and terrorist organizations, subject to the decision of the Minister of the Interior on the basis of the criteria established in law.

There are also provisions in regional law for compensation for the victims of acts of terrorism, notably in Navarre (Regional Decree No. 100/1985 of 15 May 1985) and the Basque Country (Decree No. 221/1988 of 4 August 1988), where, in addition, there is an aid scheme for victims of terrorism comprising a wide range of specific measures aimed at providing compensation for the personal and material damage sustained by natural or legal persons who are victims of acts of terrorism in the region.

15. PORTUGAL

While the Penal Code includes provision for the establishment of social insurance arrangements where the injured party cannot be compensated by the criminal (Article 129(1)), no arrangements have been put into practice as yet, and at present there is no form of state intervention in this area. The victim has therefore to resort to criminal or civil proceedings to attempt to obtain compensation for the damage sustained.

16. In GREECE, similarly, no public fund exists for compensation for the victims of violent crimes, who are likewise obliged to resort to criminal or civil proceedings in order to obtain compensation.

17. As has been seen, the situation varies considerably from one Member State to another. One of the differences lies in the fact that some countries make provision for compensation only where the victim is one of their own nationals, or, in the case of foreigners, a resident or covered by a 'reciprocity clause'. This situation, which prevails in the Federal Republic of Germany, France, Luxembourg and Belgium, means that, in particular, tourists who are victims of violent crimes while on holiday in these countries are excluded from a compensation scheme.

With particular regard to this issue, a recent judgment handed down by the Court of Justice (in Case 186/87 on 2 February 1989) held that Article 7 of the EEC Treaty, whereby 'any discrimination on the grounds of nationality shall be prohibited', prevented a Member State from making the payment of such compensation subject to the victims' holding a residence permit or being nationals of a country which had signed a reciprocal agreement with the Member State in question.

According to the Court's judgment, this would constitute discriminatory treatment of individuals to whom community law guarantees the freedom to move to that Member State and who, as tourists, are recipients of services, which situation is relevant under Community law.

The Court considered that freedom of movement and freedom to provide services included the freedom for the recipients of such services (e.g. tourists) to travel to another Member State and to benefit, just like the citizens resident in that Member State, from protection against the threat of violence and from the right to secure the financial compensation laid down by national law, should they be victims of violence. In that sense, the situations described above would be in breach of Community law, in so far as they violate the principle of non-discrimination.

18. COUNCIL OF EUROPE

To conclude this survey, it should be noted that, after a long period of preparatory work (a resolution in favour of compensation for the victims of criminal offenses was adopted by the Committee of Ministers on 28 September 1977), on 24 November 1983 the Council of Europe adopted the Convention on the Compensation of Victims of Violent Crimes.

This Convention defines some very important basic principles:

- (a) the State shall contribute to compensating victims of intentional crimes of violence and their dependants, in the case of death caused by a crime, if compensation is not fully available from other sources (Article 2);
- (b) compensation shall be paid to the victims of crimes committed in the territory of that State (Article 3);
- (c) the compensation shall cover, at least, loss of earnings, medical and hospitalization expenses and funeral expenses, and, as regards dependants, loss of maintenance (Article 4);

The Convention has been ratified by only three Member States (the Netherlands, Luxembourg and Denmark) - and is therefore enforceable only in those States - and entered into force on 1 February 1988.

19. Last but not least, on 13 March 1981, the European Parliament adopted, a resolution on compensation for victims of acts of violence³. Stressing the close connection between social protection and freedom of movement in the EEC and emphasizing the responsibility of every community to provide assistance for such crimes, the European Parliament called upon the Commission to submit without delay a draft directive containing Community criteria for financial compensation from public funds to victims of crimes of violence against the person, and requiring the Member States to make awards under this system regardless of the victim's nationality.

PROPOSED MEASURES

20. In spite of the above resolution of Parliament and the numerous occasions on which Members have raised the matter in oral and written questions to the Council and the Commission, no Community legislation has been adopted - or even proposed - to ensure compensation for victims of violent crimes.

³ OJ No. C 77, 6.4.1981, p. 77

Where legislation exists at national level, discrimination is practised in some cases, as has been seen, on the grounds of the nationality of the victim, so that non-resident Community citizens are not covered by the legislation.

21. As is well known, criminal law generally falls within the competence of national governments, and Community-wide harmonization at this level is a particularly delicate issue.

Nonetheless, the problem of the compensation of victims of violent crimes is related primarily to questions of risk and social security, and to the protection of the right of Community citizens to move freely from one Member State to another. The benefits in question should be interpreted as being essentially social advantages (avantages sociaux) in the broad sense⁴, intended to safeguard people from the danger of aggression in the territory of a Member State; in this context, a legal basis exists which fully justifies Community intervention in the field.

22. It is therefore proposed as a basic measure that the Commission should, as rapidly as possible, prepare a directive on compensation for victims of violent crimes with a view to harmonizing existing national laws at the highest level, which implies, obviously, that there should be no discrimination on grounds of nationality.

This directive should also include provisions for the payment by the Member States of expenses to foreign witnesses who are required to revisit the country in question to testify in trials involving crimes of this nature at which they were present.

OTHER MEANS OF AIDING THE VICTIM

23. In spite of its vital importance, compensation to the victim cannot, on its own, restore the situation which existed prior to the crime. The law obviously has its limits, and it must be asked whether, in addition to legal solutions, society can contemplate the introduction of other measures with a view to aiding the victim.

Such measures could involve the social services, hospitals, the police, regional and local authorities, associations and the citizens themselves, since the problem implies a whole range of actions which would require coordination and guidance. In this connection, one may cite the example of the United States, where, in response to pressure from the feminist movement, shelters have been set up for women who are victims of physical violence or rape, while in some States charters of the victim's rights have actually been drawn up.

⁴ See, in this connection, the case law of the Court of Justice and Regulation (EEC) No. 1612/88 (OJ No. L 257, 19.10.1968, p. 2)

In this context, it seems essential, at the very least, to take steps to ensure the fuller provision of information for victims⁵, as well as, where possible, the creation of special departments in the police and the courts to deal with the needs of victims.

⁵ The French publication 'Guide des droits des victimes' (Guide to victim's rights), introduced by the Ministry of Justice in 1982, is to be particularly welcomed in this respect.