

STATEMENT OF VICTIMS' RIGHTS IN THE PROCESS OF CRIMINAL JUSTICE

Summary of victims' rights in the process of criminal justice

Guiding Principles

- The rights of victims of crime must be accorded the same priority as those of the defendant
- The process of dealing with the offender must not increase the distress or add to the problems of the victims of crime

Victims' Rights

Victims must have the right to:

- respect and recognition at all stages of the criminal justice proceedings
- receive information and explanation about the progress of their case
- provide information to officials responsible for decisions relating to the offender
- have legal advice available, regardless of their means
- protection both for their privacy and for their physical safety
- compensation both from the offender and from the State

Statement of victims' rights in the process of criminal justice

The European Forum for Victim Services

It is estimated that one in four people in Europe become victims of crime each year.

The European Forum has been set up to:

- promote the development of effective services for victims of crime throughout Europe
- promote fair and equal compensation for all victims of crime throughout Europe, regardless of the nationality of the victim concerned
- promote the rights of victims of crime in Europe in their involvement with the criminal justice process and with other agencies

In formulating this statement, the European Forum for Victim Services recognises and values existing international statements on basic human rights and also on the rights of the offender. It acknowledges the importance of the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power and the European Convention on the Compensation of Victims of Violent Crimes, and it welcomes the reports and recommendations of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure and on Assistance to Victims and Prevention of Victimisation. It also acknowledges the importance of the work of those involved in crime prevention, including those who work with offenders.

Principles for the establishment of victims' rights

- a) The rights of victims of crime must be accorded the same priority as those of the defendant.
- b) In taking account of the interests of victims, all sections of the criminal justice process must ensure that the process of dealing with the offender should not increase the distress or add to the problems of victims of crime in "secondary victimisation".
- c) Professional experience in victims' services and recent research has demonstrated beyond doubt that crime can have long-term and detrimental consequences for victims and their families, not only for their physical, financial and emotional wellbeing, but also for their attitudes towards society as a whole, and to the criminal justice authorities in particular.

Uninformed or insensitive treatment by the criminal justice process, or by individual professionals within that process, are likely to increase or prolong these negative effects. By contrast, victims who are given proper recognition and respect are more able to make a healthy and informed adjustment to their experience of crime, to understand the crime in its proper context, and to be reassured by the experience of solidarity within their community. Protection from secondary victimisation is as important as protection from the original crime, particularly because the power to provide this protection is within the competence of the authorities.

- d) Crime, and the fear of crime, affects not only the individuals involved but also the many people who become aware of events through personal contact with the victim or through the media. Accounts of secondary victimisation by the criminal justice process are likely to undermine confidence and possibly decrease co-operation. Procedures which properly recognise the position of the victim and which take steps to avoid secondary victimisation should therefore be regarded as essential to social solidarity and to the interests of justice as it is more widely understood. The provision of rights to victims of crime is therefore essential to the wellbeing of society as a whole.
- e) Throughout Europe, the State has assumed responsibility for prosecuting the offenders and has removed from the victim the burden of responsibility for determining any action to be taken in respect of the offender. The acceptance of responsibility by the State should be recognised as a fundamental right of victims of crime, and no attempts should be made to erode this by returning the responsibility for decision making to victims.
- f) It should be recognised, however, that the removal of responsibility from the victim may also have detrimental consequences. Victims may be denied the opportunity to protect themselves from the offender, to exact fair restitution, or to be fully informed about the procedures which will apply in their case, including the application of the law or the factors taken into account when decisions are made. Steps should be taken to ensure that victims' interests are protected and that justice is seen to be done by all parties with a legitimate interest in the case.
- g) It is the responsibility of the State to ensure that suitable steps are taken, although a variety of remedies may apply, involving, for example, service providing organisations, the criminal justice authorities, the courts, or the offender.

Victims' rights

1 *Respect and recognition*

- a) Victims have a right to be recognised and acknowledged as having legitimate interests which must be taken into account at all stages of criminal justice proceedings.
- b) The questioning of victims and other witnesses at all stages of the investigation and court hearings should be carried out with respect for the dignity of the individual. Special care should be taken with provisions for children or witnesses who are disadvantaged mentally, who should always be questioned in the presence of a parent, guardian or other supporter.

2 *Right to receive information*

- a) All victims, when reporting a crime, should have the right to 'opt in' to procedures for being kept informed of all developments relating to their case - eg the arrest of the offender, the decision to prosecute, dates of hearings, bail, final decisions, and any release from a custodial sentence. Victims should be given clear information to enable them to opt in or out of being kept informed at any stage of the case.
- b) For those victims who choose to be kept informed, all information should be provided at the earliest possible opportunity, with full and clear explanations of the decisions which have been taken, the information upon which they were based and, where relevant, any legal issues which had to be taken into account. Victims should have the right to inspect the case file by appointment. As far as possible, information should be given to victims by the authorities who were responsible for the decision, as they will have clearer information about the reasons. In all cases where particular distress may be expected - eg a decision not to prosecute or to reduce charges in cases of bereavement, sexual assaults, domestic violence or any form of harassment, an opportunity for a personal interview should be provided, to enable them to fully understand the decision.

3 *Right to provide information*

Victims frequently feel that they have information which is ignored by the authorities because it does not form part of the specific evidence needed to prove the case. This problem may be less acute in an inquisitorial system of justice. In all jurisdictions, victims should be able to provide information, in their own words, directly to the police and prosecution services who are responsible for decisions.

The information may include the extent of the financial, physical or emotional damage caused by the crime, the existence or otherwise of any prior or continuing relationship with the offender, and any fears for personal safety or intimidation from the offender. Victims should be free to include any information they wish, although they should recognise that the information will be disclosed to the defendant and can be challenged if necessary.

The purpose of the statement should be to:

- ensure that the victim has a right to be heard
- provide information needed for any award of financial compensation
- alert the authorities to any continuing risk to the victim which could affect release from custody
- enable the professional parties involved to take the victim's interests into account at any stage at which the public interest may be relevant to a decision
- inform the prosecutor about the wider circumstances of the case, which may alert him to potential secondary victimisation during the management of the case both before and during the court hearing
- provide the prosecutor with information which could be used to refute misleading statements made by the defence
- enable the prosecutor to provide additional relevant information to the court - for example, prior to sentence

4 *Legal Advice*

Legal advice should be available to all victims, regardless of their means. In jurisdictions in which a victim or their bereaved relative may play an active role in the prosecution, both advice and representation should be available during criminal procedures.

5 *Protection*

- a) Consistent with the principles of justice, the privacy of victims and other witnesses should be protected. The names of victims should not be published in the press or media, and details which would identify them should be withheld. The address of victims and other witnesses should not be made available to the defendant or read out in open court, unless the address is of specific relevance to the charge.

- b) Special provisions should be made available for children and other vulnerable witnesses to give their evidence without the presence of the defendant or the general public (eg in camera, recorded evidence, video link or screens). The decision as to how evidence will be given should be made in advance of the hearing with the advice of expert advisers.
- c) Where there is a reason to believe that a victim or other witness may be subjected to further threats, violence or harassment, everything possible should be done to provide protection and reassurance. Full use should be made of technology – eg by providing personal alarms linked directly to the local police and listed for a priority response – and additional resources should be made available for this purpose.
- d) Where appropriate and possible, conditions constraining defendants or convicted offenders from contacting a victim or witness should be included in the provisions of bail, non-custodial sentences and parole. Victims should always be told the details of these conditions and should have clear information regarding the action to be taken if they are breached.
- e) The police should give priority to the protection of victims during the course of their investigations and adopt procedures – for example, in relation to home visits and identity parades – which will not enable the offender to identify witnesses.

6 *Compensation*

- a) Victims should always be offered an opportunity to apply in advance for compensation from the offender when cases are dealt with in a criminal court. Where their wishes have not been made known, their views should always be obtained before an order of compensation is made.
- b) Before compensation is reduced or refused on the grounds of the offender's means, the means of the victim should also be taken into account.
- c) When an offender is given time to pay, compensation ordered should be paid directly from public funds to the victim, so that the offender's debt is owed to the State, and assistance should always be given by the State in the collection of compensation from the offender.
- d) In cases of violent crime, victims should receive compensation from public funds for their injuries, emotional distress, loss of earnings and loss of maintenance as soon as possible after a crime has occurred, regardless of whether or not an offender has been identified.

Where death has occurred, compensation should be paid for loss of dependency, funeral expenses and for bereavement for those most closely related to the victim.

7 *General Conditions*

- a) These rights, as detailed before, should be published and disseminated widely in each country.
- b) Clear complaints procedures should be established and made known to victims of crime to enable them to seek redress.
- c) All rights should apply equally to all victims of crime, and where relevant to their immediate family, regardless of age, sex, sexuality, race, disability, occupation, religious belief or political opinion of the person concerned.
- d) All individuals who come into contact with victims of crime should receive training to make them aware of the most up-to-date information regarding the effects of crime and secondary victimisation. Training should pay particular attention to the use of clear, unemotive language and the need for legal terminology and procedures to be explained.
- e) Sufficient resources should be provided to both statutory and voluntary organisations involved to enable them to honour their responsibilities.
- f) All rights should apply equally to all foreign nationals travelling or resident in Europe, regardless of the status of reciprocal arrangements with their own country of origin.