



A new Council Of Europe Victims recommendation

**Prof. Suzan van der Aa (Maastricht University)
Prof. Antony Pemberton (NSCR, Amsterdam,
LINC, KU Leuven)**



Outline

- Brief history of Council of Europe involvement in victim policy
- Process towards a new Council of Europe Recommendation
- Content of proposed new victims recommendation
- Next steps



Council of Europe and Victims rights

- General victims recommendations 1985 and 1987, groundwork for international (regional) instruments in Europe (soft law)
- Conventions: for instance compensation convention of 1983, Istanbul convention of 2011 on gender based violence (hard law)
- Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims, somewhat “drowned out” by the work of the EU



Importance C of E in addition to EU in the area of victims rights

- Wider reach of countries: 46 member states of the C of E
- EU victims directive → minimum standards → Recommendation goes beyond minimum standards
- Recommendation as soft law:
- Easier to accept challenges to MS systems
- Nevertheless influence on developments



Process towards victims recommendation

- Decision to see whether recommendation 2006(8) needs updated, see also recent recommendation on restorative justice
- Tasked Van der Aa and Pemberton with drafting a proposed recommendation
- Accompanied by working group of experts



Process towards victims recommendation (2)

- Initial draft presented to the annual meeting of the Committee on Crime Problems in June 2021
- See: <https://rm.coe.int/cdpc-2021-1-proposal-for-an-updated-coe-recommendation-on-victim-right/1680a17d66>
- Working group with representatives of 16 member states
- Two meetings in February and April 2022
- Progress report to the annual meeting of the Committee on Crime Problems in June 2022 →



Content: “Strategic choices”

- Updated CofE recommendation, following developments in legal instruments and state-of-the-art victimological understanding
- Language in line with other instruments, bodies of law, and - where needed- further clarified
- Going beyond current international instruments: in detail or in subjects
 - “Hourglass structure”
- Extensive explanatory report, clarifying the 26 articles



What is new?

- **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 support services or making a formal complaint and reduce any such barriers to the largest extent possible.
- Key notion: the largest problem – at least in prevalence/ incidence, concerns lack of access



What is new? (2)

- **Article 10. Right to be heard**
- 10(3). In accordance with national law, states are encouraged to allow 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(5). In accordance with national law, states are encouraged to ensure that this right to be heard concerns any decision which can be assumed to have a considerable impact on the victims' interests. **N.B. this includes prosecution decisions, compensation, protection, referral to restorative justice.**
- Key notion (1): right to be heard *beyond* witnessing,
- Key notion (2): right to be heard should apply to any decision with a considerable impact on victims interests



What is new? (3)

- **Article 16. Right to a remedy**
- 16(2). For the provisions of this Recommendation that are implemented into national law, states should ensure that victims have, where appropriate, access to an effective remedy before competent authorities. The conditions and procedural rules under which victims have access to such a remedy should be determined by national law.
- Key notion (1): Victims' "rights" do most often not come equipped with a remedy. What happens when they are not enforced?
- Key notion (2): The lack of remedy relegates the importance of/ attention to the enforcement of victims' rights.



What is new? (4)

- **Article 25. Research and data collection**
- 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**
- 26(2) All agencies involved in the delivery of services and measures set forth in this Recommendation should engage in regular consultation to evaluate the state of implementation of the provisions of this recommendation;
- Key notion (1): Crucial component of monitoring and research as a means to achieve progress in the development of victims' rights
- Key notion (2): Vital importance of organisations such as Victim Support Europe and APAV in doing so.



Next steps

- Final draft discussed at Working Group Meeting in October
- Final changes to draft in October/ November
- Proposal discussed at CDPC meeting at the end of November
- And then....

Questions/ suggestions?

