

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (85) 11

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE POSITION OF THE VICTIM
IN THE FRAMEWORK OF CRIMINAL LAW AND PROCEDURE**

*(Adopted by the Committee of Ministers on 28 June 1985
at the 387th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the objectives of the criminal justice system have traditionally been expressed in terms which primarily concern the relationship between the state and the offender ;

Considering that consequently the operation of this system has sometimes tended to add to rather than to diminish the problems of the victim ;

Considering that it must be a fundamental function of criminal justice to meet the needs and to safeguard the interests of the victim ;

Considering that it is also important to enhance the confidence of the victim in criminal justice and to encourage his co-operation, especially in his capacity as a witness ;

Considering that, to these ends, it is necessary to have more regard in the criminal justice system to the physical, psychological, material and social harm suffered by the victim, and to consider what steps are desirable to satisfy his needs in these respects ;

Considering that measures to this end need not necessarily conflict with other objectives of criminal law and procedure, such as the reinforcement of social norms and the rehabilitation of offenders, but may in fact assist in their achievement and in an eventual reconciliation between the victim and the offender ;

Considering that the needs of the victim should be taken into account to a greater degree, throughout all stages of the criminal justice process ;

Having regard to the European Convention on the Compensation of Victims of Violent Crimes,

I. Recommends the governments of member states to review their legislation and practice in accordance with the following guidelines :

A. At police level

1. Police officers should be trained to deal with victims in a sympathetic, constructive and reassuring manner ;
2. The police should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and state compensation ;
3. The victim should be able to obtain information on the outcome of the police investigation ;
4. In any report to the prosecuting authorities, the police should give as clear and complete a statement as possible of the injuries and losses suffered by the victim ;

B. *In respect of prosecution*

5. A discretionary decision whether to prosecute the offender should not be taken without due consideration of the question of compensation of the victim, including any serious effort made to that end by the offender ;
6. The victim should be informed of the final decision concerning prosecution, unless he indicates that he does not want this information ;
7. The victim should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to institute private proceedings ;

C. *Questioning of the victim*

8. At all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity. Whenever possible and appropriate, children and the mentally ill or handicapped should be questioned in the presence of their parents or guardians or other persons qualified to assist them ;

D. *Court proceedings*

9. The victim should be informed of :
 - the date and place of a hearing concerning an offence which caused him suffering ;
 - his opportunities of obtaining restitution and compensation within the criminal justice process, legal assistance and advice ;
 - how he can find out the outcome of the case ;
10. It should be possible for a criminal court to order compensation by the offender to the victim. To that end, existing limitations, restrictions or technical impediments which prevent such a possibility from being generally realised should be abolished ;
11. Legislation should provide that compensation may either be a penal sanction, or a substitute for a penal sanction or be awarded in addition to a penal sanction ;
12. All relevant information concerning the injuries and losses suffered by the victim should be made available to the court in order that it may, when deciding upon the form and the quantum of the sentence, take into account :
 - the victim's need for compensation ;
 - any compensation or restitution made by the offender or any genuine effort to that end ;
13. In cases where the possibilities open to a court include attaching financial conditions to the award of a deferred or suspended sentence, of a probation order or of any other measure, great importance should be given—among these conditions—to compensation by the offender to the victim ;

E. *At enforcement stage*

14. If compensation is a penal sanction, it should be collected in the same way as fines and take priority over any other financial sanction imposed on the offender. In all other cases, the victim should be assisted in the collection of the money as much as possible ;

F. *Protection of privacy*

15. Information and public relations policies in connection with the investigation and trial of offences should give due consideration to the need to protect the victim from any publicity which will unduly affect his private life or dignity. If the type of offence or the particular status or personal situation and safety of the victim make such special protection necessary, either the trial before the judgment should be held in camera or disclosure or publication of personal information should be restricted to whatever extent is appropriate ;

G. *Special protection of the victim*

16. Whenever this appears necessary, and especially when organised crime is involved, the victim and his family should be given effective protection against intimidation and the risk of retaliation by the offender ;

II. Recommends the governments of member states :

1. to examine the possible advantages of mediation and conciliation schemes ;
2. to promote and encourage research on the efficacy of provisions affecting victims.