

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0355/2000

24 November 2000

REPORT

on the initiative of the Portuguese Republic with a view to adopting a Council Framework Decision on the standing of victims in criminal procedure
(9650/2000 – C5-0392/2000 – 2000/0813(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Carmen Cerdeira Morterero

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 27 July 2000 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative of the Portuguese Republic with a view to adopting a Council Framework Decision on the standing of victims in criminal procedure (9650/2000 – 2000/0813(CNS)).

At the sitting of 4 September 2000 the President of Parliament announced that she had forwarded this initiative for consideration to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0392/2000).

At its meeting of 14 September 2000 the Committee on Legal Affairs and the Internal Market appointed Carmen Cerdeira Morterero rapporteur.

At its meetings of 19 September 2000, 14 November 2000 and 23 November 2000 the committee considered the initiative of the Portuguese Republic and the draft report.

At the last meeting the committee adopted the draft legislative resolution unanimously .

The following were present for the vote: Graham R. Watson (chairman); Robert J.E. Evans (vice-chairman); Bernd Posselt (vice-chairman); Carmen Cerdeira Morterero (rapporteur); Jan Andersson (for Michael Cashman), Maria Berger (for Adeline Hazan), Charlotte Cederschiöld, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Jorge Salvador Hernández Mollar, Anna Karamanou, Ewa Klamt, Jean Lambert (for Patsy Sørensen), Minerva Melpomeni Malliori (for Margot Keßler), Hartmut Nassauer, Elena Ornella Paciotti, Ana Palacio Vallelersundi (for Mary Elizabeth Banotti), Hubert Pirker, Martine Roure (for Joke Swiebel), Ingo Schmitt (for Rocco Buttiglione), The Earl of Stockton (for Timothy Kirkhope, pursuant to Rule 153(2)), Anna Terrón i Cusí and Jan-Kees Wiebenga.

The opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities are attached.

The report was tabled on 24 November 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

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

(9650/2000 – C5-0392/2000 – 2000/0813(CNS))

The initiative is amended as follows:

Text proposed by the Portuguese Republic¹

Amendments of Parliament

(Amendment 1) Recital 1

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.

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 **points 19 and** 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.

Justification:

Paragraph 19 of the Communication also includes a clear reference to crime victims and the support owed them by the EU.

(Amendment 2) Recital 2

(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".

(2) **Account must be taken of the contents of the Communication submitted by the Commission** on 14 July 1999 to the Council, the European Parliament and the Economic and Social Committee, **under the title** "Crime victims in the European Union: reflections on standards and action"**(1)**.

¹ COM(1999) 349

¹ OJ C 243, 24 August 2000, p. 4

Justification:

The text has been rewritten in the interests of clarity. The main objective is to stress that the contents of the Commission Communication have been taken into account. A reference is provided to that document to facilitate consultation.

(Amendment 3)
Recital 3

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

3. Account must be taken of the Resolution of the European Parliament adopted on 15 June 2000 approving the Commission Communication of 14 July 1999.

Justification:

The text has been rewritten in the interests of clarity. Stress is laid on the need to indicate that Parliament's resolution has been taken account as a background element to this legislative initiative. The date of adoption of the Commission communication is added.

(Amendment 4)
Recital 4a (new)

4a. In the conclusions of the Tampere European Council of 15 and 16 October 1999, specifically in paragraphs 5, 29, 30 and 31, it is stated that the enjoyment of freedom requires a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own; in order to facilitate access to justice, the European Council calls on the Commission to establish an easily accessible information system, to be maintained and updated by a network of competent national authorities; it invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in crossborder cases throughout the Union; and it calls for common minimum standards for multilingual forms or documents throughout the Union.

Justification:

The conclusions of the Tampere European Council must be mentioned: their general purport apart, they are directly related to the resolution of the complex problems which arise when dealing with the victim of a crime committed in an EU Member State who does not habitually reside in that Member State.

(Amendment 5)
Recital 5

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

5. The Council adopted, ***on the basis of Article K.3 of the Treaty on European Union and*** on 24 February 1997, Joint Action 97/154/JHA concerning action to combat trafficking in human beings and sexual exploitation of children.

Justification:

It should be added that it was the Treaty on European Union, signed in Maastricht on 7 February 1992, that introduced the concept of 'cooperation in the fields of justice and home affairs'. Article K.3 of that Treaty introduced a number of new legislative forms, notably 'joint actions', as defined in paragraph 2(b) of that article.

(Amendment 6)
Recital 6

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

6. ***It should be recalled that*** the Council approved on 23 November 1995 a Resolution on the protection of witnesses in the fight against organised crime.

Justification:

This text is an important background element for the framework decision.

(Amendment 7)
Recital 7

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

7. ***It is necessary to recall the various instruments from international bodies which*** 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.

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,

- the Recommendation of the Council of Europe of 17 September 1987 on aid to victims and prevention of persecution,

- 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, **adopted in Resolution 40/34 of the UN General Assembly of 29 November 1985,**

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

Justification:

The international legal instruments listed are background elements to the framework decision which facilitate its comprehension.

A further important international text is mentioned, and the date of adoption of UN Resolution 40/34 is added.

(Amendment 8)
Recital 8

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.**

8. The Member States should, **as a matter of urgency and necessity**, approximate their laws and regulations concerning criminal **and civil** procedure, namely with respect to supporting victims of crime and taking specific account of the principles set out **below:**

Justification:

THE EU must, as a matter of urgency, ensure for its citizens that the single European area of freedom is also an area of justice and that anyone who is the victim of a crime outside his Member State of origin will have his case dealt with on the basis of the same principles in any

(Amendment 9)
Recital 9

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.

a) 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.

Justification:

This amendment is, in the first place, formal. Recital 8 sets out the principles to be respected by the Member States when harmonising their laws, with particular reference to support for victims. These principles are then set out over recitals 9 to 17. On formal and logical grounds, these recitals, linked as they are to recital 8, have been regrouped as lettered paragraphs [(a) to (i)]: this makes it clear at all points that they are bound up with recital 8 and constitute different aspects of a single whole.

(Amendment 10)
Recital 10

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.

b) The concept of "procedure" should, **for the above reason**, 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.

Justification:

From the formal viewpoint, the reasons for replacing 10 by b) are the same as those set out under Amendment 8.

It is added that the principle affirmed in this amendment follows from that set out in a).

(Amendment 11)
Recital 11

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

c) The **rules** of this Framework Decision are **concerned with** looking after victims' interests under criminal procedure.

Justification:

From the formal viewpoint, the reasons for this amendment are the same as those for Amendment 8.

'Provisions' has been replaced by 'rules' on legal grounds. 'Confined to' has been removed as excessively restrictive.

(Amendment 12)
Recital 12

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.

d) For that reason, **while it is also necessary to address** 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.

Justification:

The letter-for-number substitution is for the reasons set out under Amendment 8.

All problems related to victims of crimes committed outside their Member State of origin must be tackled using an integrated approach, despite the undoubted difficulties involved in harmonising widely varying legal provisions.

(Amendment 13)
Recital 13

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.*

e) **The need** to approximate arrangements under criminal procedure as regards the standing and main rights of victims, **particularly children, including** 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 (**one word deleted**).

Justification:

The amendment highlights the particular need to take into account the situation of children who are victims of crime, which can include all forms of paedophilia, including, in this regard, abuse of the Internet. The abbreviation 'etc' has no clear meaning and could be deleted.

(Amendment 14)
Recital 14

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.

f) The need to guarantee victims **proper access to justice with** the best legal protection and **appropriate** defence of their interests, irrespective of the Member State in which they are present.

Justification:

For the formal aspect, see justification to Amendment 8.

The change proposed is on the grounds that the EU is legally obliged to guarantee its citizens' rights where they have been infringed.

(Amendment 15)
Recital 15

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

g) The importance of involving victim support groups before, during and after proceedings is important within criminal procedure.

Justification:

The reasons for replacing 15 by g) are the same as those set out under Amendment 8.

The proposed wording clarifies the invocation of a general principle.

(Amendment 16)
Recital 16

16. It is necessary for personnel coming into contact with victims to receive suitable and

h) The need 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.

proper training, which is essential both for victims and for achieving the purposes of the procedure.

Justification:

See preceding justification.

(Amendment 17)
Recital 17

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,

i) The 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,

Justification:

The replacement of 17 by i) is on the same grounds as those set out under Amendment 8

(Amendment 18)
Article 1(a)

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;***

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 ***shall*** also be regarded as victims;

Justification:

Where the crime has resulted in the victim's death, it is essential that action be taken to repair part of the damage caused. The victim's relatives or persons in a similar position must be defined as victims with a view to the payment of fair compensation.

(Amendment 19)
Article 1(b)

b) "victim support group" shall mean a non-

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;

governmental organisation ***legally constituted in a Member State*** whose ***objectives and/or activities of providing assistance to the victims of crime*** 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;

Justification:

Victim support groups must be legally constituted. This is in order to prevent fraud.

(Amendment 20)
Article 1(ba) (new)

(ba) "criminal procedure" shall mean the procedure laid down by the applicable national legislation;

Justification:

It is vital to differentiate the criminal procedure, which takes place in each Member State in accordance with the national laws on penal procedure, from the procedure, defined in a broad sense, which applies to the victims of crime. The latter includes not only the criminal procedure proper but also all the activities which the victim has to realise in his capacity as victim.

(Amendment 21)
Article 1(c)

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.

c) "procedure" shall be broadly construed to include, in addition to the ***criminal procedure***, all of victims' contacts ***in their capacity as victims*** with any authority, public service or victim support group (***5 words deleted***), before or after criminal proceedings are in progress.

Justification:

The legal procedure by which a Member State determines the liability of the presumed author of a crime is the criminal procedure, whose operational rules are very different from those of the civil procedure or other specialised procedures.

Where crime victims are confronted with a legal procedure, it will obviously be a criminal procedure.

(Amendment 22)
Article 1(ca) (new)

ca) "Mediation in penal matters" shall mean any endeavours, before or during the criminal procedure, to negotiate a settlement between the victim and the author of the crime via the mediation of a competent person.

Justification:

Due recognition must be paid to the mediation procedure, which is recognised in a number of Member States. This procedure permits the settlement of the dispute between the victim of a crime and its author by means of an agreement reached by the parties through the intervention of a third person who has received specific training in carrying out this delicate and difficult task.

(Amendment 23)
Article 2(1)

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.

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, ***especially in the framework of the penal procedure, by means of the recognition of the legal status of the victim.***

Special attention shall be paid to groups which are particularly vulnerable owing to their age, their gender or other reasons.

Justification:

Victims must not remain unprotected and unrecognised. Their interests must be taken into account and Member States must ensure them a key role in the procedure, especially in the penal procedure: this must also apply where the procedure has been primarily conceived with a view to securing the criminal liability of the offender.

It is important to offer appropriate treatment to victims and to the most vulnerable persons.

(Amendment 24)
Article 2(2)

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

2. *All Member States shall adopt appropriate measures to ensure that* victims who are particularly vulnerable on account of their age, their sex or any other circumstances ***receive specific treatment corresponding as closely as possible to their particular situation.***

Justification:

Particular attention must be paid to crime victims who are especially vulnerable, to ensure that they receive treatment tailored to their specific traumatic situation and aimed at facilitating their recovery.

(Amendment 25)
Article 3

Right to provide information

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.

Right to be heard and to furnish evidence

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.

Member States shall ensure that their authorities question victims only on such matters as are strictly necessary for the proper conduct of the penal procedure. Member States shall take into account in the procedure the particular rights and needs of children who are victims of crime.

Justification:

It is necessary to highlight the situation facing children who are to be heard in the procedure and their rights and needs when furnishing evidence, which can be a traumatic experience. This links in to Article 8(4) of the proposal on the right to protection in which reference is made to videoconferencing, video recording and any other appropriate means for a victim to give evidence.

(Amendment 26)
Article 4(1)

1. Member States shall ensure, by appropriate means of keeping them

1. Member States shall ensure, by appropriate means of keeping them informed

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:

covering all the official languages of the European Union, 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 ***or the relevant services***, covering at least the following points:

Justification:

Victims of crimes committed outside their Member State of residence must be provided with full information. Such information may be furnished in any of the official languages of the EU, including the victim's own language where he knows no other. Only in this way is it possible to prevent an unacceptable degree of vulnerability.

(Amendment 27)
Article 4(1)(a)

(a) the type of services or organisations to which they can turn for support;

(a) the type of services or organisations to which they can turn for support, ***in particular assistance with finding suitable accommodation providing appropriate security arrangements***;

Justification:

To prevent secondary victimisation, it is essential to arrange accommodation for victims who have no home they can return to or the financial resources to provide one.

(Amendment 28)
Article 4(1)(e)

(e) how and under what conditions they can obtain protection, ***where warranted***;

(e) how and under what conditions they can obtain protection (***2 words deleted***);

Justification:

The last two words need to be deleted. What is at issue is the provision of information which is necessary for the victim, and there is no question here of any type of evaluation, be it subjective or objective.

(Amendment 29)
Article 4(1)(f)

(f) how and on what terms victims will be

(f) how and on what terms victims will be

entitled to receive legal advice **or** legal aid;

entitled to receive legal advice, legal aid **or any other form of assistance or counselling**;

Justification:

The right of victims to advice must be unconditional. Victims must have the right to the advice they need, whatever its nature and even if it is not strictly legal in character.

(Amendment 30)
Article 4(1)(fa) (new)

(fa) the extent to which victims have a right to personal medical and psychological support, the more especially in cases of major trauma suffered by victims of physical and/or sexual violence;

Justification:

Sexual violence - as well as any other form of violence - are intolerable violations of fundamental rights. Offences of this type must be considered as requiring an ad hoc response and the services of highly qualified judicial and medical staff to treat such victims.

(Amendment 31)
Article 4(1)(g)

(g) requirements **and preconditions** in order for victims to be entitled to compensation;

(g) requirements **(2 words deleted)** in order for victims to be entitled to compensation;

Justification:

The right of victims to compensation must be unconditional.

(Amendment 32)
Article 4(1)(h)

(h) if they are resident in another Member State, **any special arrangements available to them in order to defend their interests.**

(h) if they are resident in another Member State, **whatever special means, procedures, mechanisms or arrangements are most suited to the defence of their rights and interests.**

Justification:

Victims are confronted outside their country of origin with an unfamiliar legal and administrative environment. They must be supplied, in the Member State where the crime occurred, with all possible information on the options and methods open to them and the most suitable means of affirming their rights and interests.

(Amendment 33)
Article 4(2)

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.

2. All Member States shall guarantee that every victim of a crime is kept informed:

a) of the action taken on his complaint or suit;

b) of the relevant elements enabling him to follow the course of the penal procedure, where it is taken out against the person, persons or organisation responsible for the crime against him, other than concerning such exceptional elements as might impede the normal conduct of the procedure;

c) of the judgment given by the legal authorities.

Justification:

Victims are entitled to be supplied with information on the action taken on their complaint, the course of the procedure and, finally, the verdict delivered in the trial of the author or authors of the crime committed against them.

(Amendment 34)
Article 4(2a) (new)

2a. All Member States shall adopt the necessary measures to ensure that in cases where the victim may be at risk he is informed of the release of the person arrested or sentenced for the crime against him and of any other circumstance that might give special cause for concern.

Justification:

All necessary measures must be taken to protect victims against any threats or reprisals from the offender or persons connected to him. The victim must therefore be informed when the person arrested or sentenced has been released, as well as of any other essential information.

(Amendment 35)
Article 4(2b) (new)

2b. All Member States shall guarantee the right of the victim to decline the information referred to in paragraphs 2 and 2a above, except where its provision is explicitly required under the penal law applying to the case.

Justification:

In certain cases the victim may not wish to receive the information: he may not need it, or may risk suffering the effects of 'secondary victimisation' by being forced to relive painful events. In these circumstances, he must have the right of refusal.

However, where the law in force states that the victim must absolutely be informed, these binding provisions must be respected and the necessary information must be communicated to the victim.

(Amendment 36)
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.***

Communication safeguards

*In the same way as for defendants, Member States shall **furnish the interpreting and communication facilities which are required to ensure that the victim can fully understand and participate in the procedure and can testify in the penal procedure, with the right to use any of the official languages of the European Union for this purpose.***

Justification:

The victim must, on the same basis as the defendant, be given guarantees that, at all stages of the procedure (both the general procedure and the penal procedure) he will be able to express himself, understand and be understood in any of the official languages of the EU. At a time when internal frontiers no longer apply within the EU, there is no reason for European

citizens to be confronted with a language barrier at such difficult and painful moments.

(Amendment 37)
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.***

Legal costs
Member States shall not require victims to pay any legal costs ***(remainder deleted).***

Justification:

Member States which, being part of the EU, have not been able to guarantee the victim's security on their territory, must ensure that crime victims are not liable to pay costs.

(Amendment 38)
Article 8(1)

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.

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 ***the competent authorities in the procedure believe*** there is a serious risk of reprisals or firm evidence ***permitting the victims to presume the existence*** of intent to intrude upon their privacy.
Member States shall cooperate reciprocally where it becomes necessary, for reasons of safety, to move victims and their families or persons in a similar position from their State of residence to a State regarded as safer.

Justification:

The competent authorities in the procedure should be responsible for all necessary protection measures where they consider that there is a serious risk to the safety or privacy of the victim or those close to him.

It is also useful to establish cooperation between States in cases where the protection of victims needs to be ensured by transferring them from one State to another for safety reasons

(Amendment 39)
Article 8(2)

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.

2. Member States shall also ensure ***the protection of*** the privacy ***and/or*** image of victims and their families or persons in a similar position, ***(2 words deleted)*** in order to prevent secondary victimisation, particularly for vulnerable victims.

Justification:

The right to privacy and respect for family life is a fundamental right recognised by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which the Union is obliged to respect, pursuant to Article 6(2) of the Treaty on European Union.

The same right is recognised by Article 12 of the Universal Declaration of Human Rights of 10 December 1948, and is reaffirmed in Article 7 of the draft EU charter of fundamental rights.

This right must therefore be respected in all circumstances.

(Amendment 40)
Article 8(3)

3. Member States shall further ensure, for the purposes of protecting victims, that ***court premises*** have special waiting areas for victims.

3. Member States shall further ensure, for the purposes of protecting victims, that ***the premises on which the legal proceedings take place*** have special waiting areas for victims ***designed so as to prevent contact with the author of the crime, unless the victims themselves request otherwise.***

Justification:

Once again, in order to avoid 'secondary victimisation' it is important to ensure that the person traumatised by the crime is not obliged to confront the offender.

(Amendment 41)
Article 8(4)

(4) Where there is a need to protect victims from the effects of giving evidence in open court, as may arise on account of victims 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.

(4) Where there is a need to protect victims from the effects of giving evidence in open court, as may arise on account of victims 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 by other appropriate means, without prejudice to Article 6 of the European Convention on Human Rights.

Justification:

The provision concerning video recordings ,which has already given rise to controversy in the Legal Affairs Committee should be deleted, since the right of the victim must be offset against the fundamental rights (Article 6 of the European Convention on Human Rights) of the accused to a fair trial, which in particular includes the right to put questions directly to witnesses for the prosecution. This right is not guaranteed merely by playing back video recordings.

(Amendment 42)
Article 8(4a) (new)

4a. In all cases where physical protection (for security) and/or moral protection (for dignity) of victims is required, the criminal trials shall be held in camera and any divulging of victims' personal data shall be subject to appropriate restrictions.

Justification:

It is important to restrict the divulging of information. Releasing details to the media can be counter-productive in terms of victims' safety, the need to safeguard their dignity, and their ability to act as witnesses.

(Amendment 43)
Article 9(1)

1. Member States shall ensure that victims

1. Member States shall ensure that victims

have the option of seeking compensation in the course of criminal procedure.

have the option of seeking compensation in the course of criminal procedure ***or outside it.***

Justification:

The victim must in all circumstances have the right to compensation for the damage suffered as a result of the crime.

(Amendment 44)

Article 9(2)

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.

2. All Member States shall adopt the necessary measures making it possible, where this can be done within a reasonable time, for the compensation due to the victim to be paid by the author of the crime.

Justification:

Compensation and restitution can never be considered to be criminal penalties: the former is a consequence of civil liability and the latter of criminal liability, even where both are consequences of a single crime. The two forms of liability may apply either jointly under a penal procedure or separately under a penal and a civil procedure respectively.

(Amendment 45)

Article 9(4)

4. Recoverable property belonging to victims which is seized in the course of procedure shall be returned to victims as soon as possible.

4. Recoverable property belonging to victims which is seized in the course of procedure shall be returned to victims ***immediately, save where it is absolutely necessary for the penal procedure.***

Justification:

Any property forfeited by the victim seized as a result of the crime should be returned to him immediately after seizure. The option must exist, however, of later return where the property has absolutely to be produced in the course of the penal procedure..

(Amendment 46)

Article 10(1)

1. Where deemed appropriate, Member States shall **ensure** that mediation forms part of the measures available under their system of criminal procedure.

1. Where deemed appropriate, Member States shall **adopt the necessary measures to ensure, taking into account the specific interests of victims**, that mediation forms part of the measures available under their system of criminal procedure.

Justification:

Mediation between the author of a crime and the victim may be arranged immediately, through the police or the public prosecutor's office or through a third person who negotiates an agreement on behalf of the victim. At all events, mediation can prove a significant means of repairing the damage caused, given that the prospect of a lengthy penal procedure may deter the victim from seeking the reparation due. Member States should therefore provide for this possibility in their legal systems where it operates to the benefit of the victim.

(Amendment 47)

Article 10(2)

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**.

2. Where deemed appropriate, Member States shall **adopt the necessary measures to ensure** that mediated out-of-court settlements between victims and defendants are taken into account, with victims' agreement, in subsequent criminal proceedings **(remainder deleted)**.

Justification:

Mediation can prove an effective legal instrument for reducing the relational tension between criminal and victim in the context of the need to repair the damage caused. Any freely reached agreement between the parties should be respected but must not constitute an obstacle to the continuation of the penal procedure should the law so require.

(Amendment 48)

Article 11(1)

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

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**.

residence, in particular by means of:

- the possibility of making statements straight away **as from the moment of the crime**,
- the use of standard forms, **in all the official languages of the European Union**, at all stages of procedure,
- the use **as widely as possible** of modern facilities for giving evidence, such as video conferencing **and** telephone conference calls **(pursuant to Articles 10 and 11 of the European Union agreement on mutual legal aid in criminal matters of 29 May 1999, to enable victims resident abroad to be heard)**.

Justification:

Member States must ensure that victims can make a declaration to the competent authorities of a Member State other than that in which they are normally resident and in which a crime has been committed against them, immediately following the crime and without having to wait for the penal procedure to begin.

The forms used should be standardised and should be available in all the official languages of the EU: any other arrangement would entail an unacceptable discrimination against highly vulnerable citizens.

It is also essential to take all measures to prevent secondary victimisation and facilitate the use of all the means offered by modern technology to individuals and to the legal system which exists to serve them

Video recording, however, should not be included as it does not offer sufficient guarantees.

(Amendment 49)

Article 11(2)

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.

2. Member States shall **enable victims who so wish** to remain in the Member State in which the procedure is to take place, where necessary for the proper conduct of the procedure.

Justification:

With the objective of preventing secondary victimisation, victims must have the right not to

remain in the Member State where the crime was committed unless they actually so wish. Should they not wish to remain, they must be free to leave.

(Amendment 50)
Article 11(3)

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.

3. Member States shall **adopt the necessary measures to ensure** that the fact that a victim is resident in another Member State and has to return there **will not affect the due conduct of the procedure**. For this purpose, Member States shall **guarantee** that international cooperation arrangements pay particular regard to the position of victims resident in another Member State.

Justification:

The fact that the victim needs to return to his Member State of origin must not become an obstacle to the normal course of the procedure. Member States must use all necessary and currently feasible means, instruments and methods to ensure that this circumstance does not obstruct the normal course of the penal procedure in the context of the European legal area.

(Amendment 51)
Article 11(4)

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**.

4. Member States shall **adopt the necessary measures to ensure** that victims can **lodge a complaint or suit with the competent authorities** in their Member State of residence in the case of crimes committed against them in another Member State. **The above-mentioned authorities shall forward the complaint or suit submitted to the competent authority of the Member State in which the crime was committed in order to have the relevant proceedings initiated in that other Member State.**

Justification:

A citizen who has been the victim of a crime outside his Member State of residence must have the right to lodge a complaint or suit in that Member State where he has been unable or unwilling to lodge it in the Member State where the crime occurred.

(Amendment 52)
Article 12(2)

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.

2. Member States shall, for the purposes of paragraph 1, set up a **24-hour** European victim support freephone line ***operating in all the official languages of the Union*** to serve, ***inter alia***, the purposes laid down in Article 4.

Justification:

The introduction of a 24-hour freephone number valid throughout the EU at all times of the year, available to all citizens and operating in all of the official languages, is essential if victims' needs are to be met.

(Amendment 53)
Article 12a (new)

Article 12a

Cooperation between Member States

1. Member States shall cooperate closely to ensure the protection of victims' interests.

Justification:

Member States must cooperate to ensure that a single European legal area truly applies in matters relating to the defence of crime victims' interests - rather than fifteen separate and mutually impermeable legal areas, an arrangement which can only be to the detriment of citizens' interests.

(Amendment 54)
Article 14(1)

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.

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 ***specifically adapted to the needs of the most vulnerable groups.***

Justification:

Those called upon to intervene and support victims must receive appropriate professional training to enable them to cope with emergencies as they arise. In the case of the most vulnerable persons, it is important for those providing help to be able to adapt their working

methods to the victim's needs.

(Amendment 55)
Article 15(1)

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.

1. Member States shall create the necessary conditions, in the course of the procedure, to prevent secondary victimisation (***7 words deleted***). This shall apply particularly as regards proper reception, especially initial intake, and establishment of conditions geared to their situation at ***suitable*** premises where they are looked after.

Justification:

The concept of secondary victimisation covers all aspects of the treatment received by the victim at each of the stages following the crime, during which the trauma suffered can actually be worsened unless the necessary measures are taken.

One of the measures required to prevent secondary victimisation is to create conditions suitable to the victim's situation on all premises where victims may be received.

(Amendment 56)
Article 15(2)

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.***

2. For the purposes of paragraph 1, Member States shall ***adopt the necessary measures to ensure that the above conditions are met by all administrations*** and victim support groups ***at all premises where victims are received.***

Justification:

Victims must be offered suitable attention based on their particular painful circumstances, by the most appropriate personal and material means.

(Amendment 57)
Article 16(1)

Execution

1. Member States shall take the measures necessary to comply with this Framework Decision by

Execution

1. Member States shall take the measures necessary to comply with this Framework Decision ***by the following deadlines:***

- a) for Article 10, within three years from the entry into force of this framework decision;*
- b) for Articles 5 and 6, within one year from the entry into force of this framework decision;*
- c) for the remaining provisions, within six months from the entry into force of this framework decision.*

Justification:

In view of the great variations between legal systems in the EU Member States, reasonable but absolute deadlines are proposed to enable the Member States to adopt the measures required if there is to be harmonisation of their laws and administrative provisions in line with the framework directive.

(Amendment 58)
Article 16(2)

Evaluation

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.

2. Member States shall forward, ***by the dates specified in paragraph 1 above***, to the General Secretariat of the Council and to the Commission ***of the European Communities*** the text of the provisions transposing into national law the obligations laid down by this Framework Decision. The Council shall, ***within a period of one year from the above-mentioned dates, assess***, 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.

Justification:

One year should be more than sufficient for the Council to prepare an evaluation of the measures adopted by each Member State in implementation of the framework decision.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution of the European Parliament on an initiative of the Portuguese Republic with a view to adopting a Council Framework Decision on the standing of victims in criminal procedure (9650/2000 – C5-0392/2000 – 2000/0813(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Portuguese Republic (9650/2000¹),
 - having regard to Article 34(2)(b) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0392/2000),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities (A5-0355/2000),
1. Approves the initiative of the Portuguese Republic, subject to Parliament's amendments;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the initiative of the Portuguese Republic;
 4. Instructs its President to forward this opinion to the Council, the Commission and the Government of the French Republic.

¹ OJ C 243, 24.8.2000, p. 4

EXPLANATORY STATEMENT

I. INTRODUCTION

Most of the Member States have in recent years been obliged to develop policies with genuine teeth for the protection of the victims of crime.

We are living in a world characterised by ever-greater crossborder movements of enormous proportions, to an extent totally unprecedented in human history. It should be sufficient to recall that in 1997, within the EU, over 200 m people crossed the border between their Member State of residence and another Member State.

Crossborder mobility is an increasingly prominent element in today's world. This mobility exists for a number of reasons. In the first place, technical factors have increased the capacity of means of transport (air, rail, sea and road) while transport costs have fallen; secondly, crossborder mobility is closely linked to economic factors which have brought about major increases in business travel or, quite simply, tourism.

The EU has created a single market: this in its turn implies the creation of an area without internal frontiers in which the free movement of goods, persons, services and capital must be guaranteed within the territory of the Member States, as is stipulated in Article 14 of the EC Treaty.

All these factors, both acting separately and through multiplication of their effects where they act jointly, have led to a situation in which, every day and perfectly naturally, millions of people cross the borders of their Member State of residence to enter other EU Member States, for purposes of residence, work or study or simply to travel.

This phenomenon, whose political consequences in the medium and long term cannot be predicted, has negative implications for citizens crossing the borders of national criminal jurisdictions. One of these is the undeniable risk of becoming the victim of a crime, whether inside or outside one's Member State of residence: the risk exists of being robbed or even of falling victim to terrorist crimes. The latter phenomenon remains a cruel and inhuman blemish on the record of certain Member States. However - and incomprehensibly - the EU has until now not managed to create suitable means of ensuring a united fight against a scourge which has no regard for physical borders: where judicial matters are concerned, the Member States continue to ensconce themselves obstinately behind their fifteen national frontiers.

II. TOWARDS A EUROPEAN STATUTE FOR THE VICTIMS OF CRIME

The paradoxical situation in the EU at present is that, side by side with the abolition of internal frontiers for the free movement of goods, persons, services and capital, we still have fifteen near-hermetically sealed frontiers in police and criminal law matters, jealously guarded by the Member States. A similar situation, albeit to a lesser degree, applies in the field of civil law.

This obstinate clinging of the Member States to their sovereign powers in police and criminal

law matters has unfortunate and damaging consequences for European citizens moving freely within the Union. A citizen who suffers the traumatic experience of being a victim of crime in a Member State other than that of his habitual residence will inevitably realise that the Member States' inability to establish a genuine European legal area has the result of quite unacceptably undermining the victim's right to protection.

Particular attention needs to be paid to the predicament of individual victims of everyday crime: these people are not able to benefit from the general mobilisation which occurs in the wake of a crime affecting large numbers of people or committed in exceptional circumstances. People in this situation, whatever their place of residence, should be guaranteed respect for their rights and the certainty that they will receive equitable treatment and rapid and real compensation, irrespective of their nationality and in conformity with their innate rights as human beings. They should have the right to attention in any Member State on whose territory they have become crime victims. It is therefore absolutely essential to create a genuine 'statute for the victims of crime', to apply on a common basis in all the EU Member States.

III. THE PROTECTION OF VICTIMS: SUBSTANCE, JUSTIFICATION, EVOLUTION

A) SUBSTANCE

Substantive penal law is traditionally defined as the set of rules by which a state establishes penalties for behaviour which it considers incompatible with its social norms, with the objective of deterring criminals from repeating their offences and deterring others from committing similar acts. This concept has in recent times been amplified to include the notions of rehabilitation and reintegration.

It obviously follows from this definition that penal law has in the past systematically centred its attention on the offender - on his punishment and his rehabilitation and reintegration - while almost totally neglecting the victim of the crime.

However, there has recently been a considerable rise of interest in the question of the promotion of the rights of crime victims, in both academic and political circles and at national and international levels. Some distinguished legal scholars have even gone so far as to base the very existence of criminal law on the need to repair the damage caused to the victim.

In recent decades, criminologists and penal policy administrators have come to pay particular attention to the status of the victim as regards the crime itself and the protection of the victim's interests. It has been stressed that support for victims must, in a proper criminal policy, be as important an area of concern as the penal treatment of the offender.

This policy calls for a balanced examination of all the elements in operation in a criminal act. Victimological studies carried out in various countries in recent years have stressed the possible interaction between criminal and victim at the moment of the crime. They have also highlighted the psychological and material distress suffered by the victim in the wake of the crime, as well as the obstacles typically encountered by the victim in affirming his rights. These considerations provide further support for the view that, if particular attention must be paid to the treatment and social reintegration of the offender, the victim and the protection of

his interests require the same degree of attention and must be considered equally important.

Support for victims entails measures of two kinds: action to repair the psychologically traumatic effects of the crime; and action to compensate the victim or those dependent on him for the material damage suffered.

From this viewpoint, compensation for the victim must be guaranteed, not only to alleviate the harm and suffering caused as far as this can be done, but also to deal with the social conflict produced by the crime and facilitate the application of a properly rational criminal policy.

B) REASONS FOR STATE INTERVENTION

In principle, reparation or compensation should be made by the offender as the direct author of the damage, the level concerned being set by decision of a civil court (or, in some countries, a criminal court) or else determined by a judicial or out-of-court settlement between victim and offender. However, while this is theoretically a means by which victims may obtain satisfaction, in practice full compensation by the offender has been a rare event: far more often, the offender remains undiscovered, has died or is unable to pay.

Since the 1960s numerous countries have, for these reasons, adopted legislative measures aimed at creating compensation systems for crime victims, via the establishment of public funds, for those cases (the majority) in which the victim cannot be compensated by any other means.

A number of arguments have been adduced to justify state intervention in this area:

1. Some sources argue that compensation is the state's responsibility because:
 - the state has failed to prevent the crime through an effective criminal policy;
 - there has been a failure of its criminal policy measures;
 - given that acts of private justice are against the law, the state is obliged to remedy the predicament of the victim or his dependants.
2. Other sources consider that state action is justified by the principles of social solidarity and equity. The damage suffered by individual citizens who have been more exposed to harm or less fortunate than others must be repaired with the participation of all of society.
3. Others again believe that state intervention is justified because it facilitates the implementation of a less repressive and more effective criminal policy: compensation of the victim eliminates the sensation of injustice produced in him by the crime.

It is generally accepted that state compensation is justified on grounds of social solidarity and equity.

C) EVOLUTION

1. At national level

The first steps in victim protection were taken in 1965 by the US and Canada, both of which adopted laws to protect the victims of crime. Their example was followed in Europe by Finland (1973), Ireland (1974), the Netherlands (1975), Norway (1976), France (1977), Luxembourg (1984), Belgium (1985), Germany (a law of 1976 was modified in 1983 and 1987) and Spain (1995). In addition, a number of countries, including Italy (1980), France (1986) and Spain (1992), have adopted laws specifically for the victims of terrorist attacks, in response to the systematic and brutal fashion in which those countries are afflicted by terrorist crimes which threaten to undermine the very foundations and essential values of civilisation and of humanity itself.

2. At international level

In many cases someone may be the victim of a crime committed in a Member State which is not that of his habitual residence. This makes the problems and suffering caused worse, a situation compounded by an accumulation of adverse circumstances which typically recur in the treatment of victims: the victim cannot communicate because he does not know the language, he is not given sufficient information, he feels helpless and unprotected in circumstances in which each Member State has preserved its own separate legal provisions.

With a view to responding properly to the needs of victims of this type, instruments have been introduced at international level to take due account of the defence of victims' rights and interests.

Outside the scope of the EU itself, we may note the following:

a) Convention No 116 of the Council of Europe of 24 November 1983 (European Convention on Compensation to Victims of Violent Crimes).

Despite the importance of this convention as a key point of reference in Europe, it had, as at 18 September 2000, still not been ratified by the following EU Member States: Austria, Belgium, Greece, Ireland, Italy, Portugal and Spain.

This convention entered into force - for those countries which had ratified it - on 1 February 1988.

It obliges the signatories to operate, in law or administrative practice, a system for the financial compensation, from the public purse, of the victims of intentional crimes of violence leading to bodily harm or death.

It lists the elements constituting damage giving rise to mandatory compensation. These include: loss of income of a person immobilised by physical injuries; medical costs; hospitalisation costs; funeral expenses; and, in the case of dependants, loss of material support.

The convention is founded on the principle of social justice, under which all countries are

required to compensate not only their own nationals but also other victims of violence perpetrated on their territory, including migrant workers, tourists, students and others.

b) The recommendations of the Council of Europe (Nos 11 of 1985 and 21 of 1987) on the position of the victim in the framework of criminal law and procedure.

c) The United Nations Declaration of basic principles of justice for victims of crime and abuse of power, adopted in Resolution 40/34 of the UN General Assembly of 29 November 1985.

IV. THE INITIATIVE OF THE PORTUGUESE REPUBLIC WITH A VIEW TO ADOPTING A COUNCIL FRAMEWORK DECISION ON THE STANDING OF VICTIMS IN CRIMINAL PROCEDURE

The fourth indent of Article 2 of the Treaty on European Union includes among the objectives of the Union the following: 'to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured ...'. Similarly, albeit from the viewpoint of the creation of the internal market and with a broader frame of reference, Article 14(2) of the EC Treaty - as indicated by your rapporteur at the beginning of this text - states: 'The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty'.

In addition, Article 31(e) of the Treaty on European Union explicitly provides, under the heading 'Common action on judicial cooperation in criminal matters', for 'progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking'.

The area of freedom, security and justice offered by the EU to its citizens must include proper access to justice enabling citizens to benefit from proper legal protection anywhere in the Union. We will not have a true 'citizens' Europe' until measures have been adopted, among others, to further and take due account of the rights of crime victims, considered from an integrated perspective having regard to the whole range of their rights and interests and, in Community terms, bringing together the legislations of the fifteen Member States.

All crime victims in any EU Member State should receive the same minimum treatment. The victim must be treated as a person in a particular situation of disorientation and distress. The Union must not accept the notion that a victim's treatment can vary according to the Member State where the crime was committed. Such discrimination is absolutely unacceptable.

Accordingly, the Tampere European Council held on 15 and 16 December 1999, with the objective of setting the basic guidelines for the creation of an area of freedom, security and justice in the Union, stated in its conclusion 32 that 'minimum standards should be drawn up on the protection of the victims of crime'. Conclusions 5, 29, 31 and 33 also, if more generally, point in this direction.

The present initiative of the Portuguese Republic on the standing of victims in criminal procedure should be considered as part of this same line of action, the aim being to give

practical expression to the political intention made explicit at the Tampere European Council.

Your rapporteur here wishes to congratulate the former Portuguese presidency most warmly for bringing into being this courageous and pioneering legislative initiative, as well as the current French presidency for keeping it in motion.

The initiative marks a major new step towards the creation of a European penal area. It may appear an incomplete or limited initiative, but it is a response to the real needs of an enormous mass of European citizens who have until had effectively no protection if they became victims of crime outside their Member State of residence. It will also oblige those Member States which have hitherto failed to pay specific attention to the victims of crime within their territory, be they nationals or non-nationals, and those which have only taken half-hearted action, to adopt basic legislation taking the victim into account.

Your rapporteur therefore underscores once more the key importance of the Portuguese initiative. It fills a huge legal vacuum entailing unacceptable and damaging discrimination against the millions of citizens who move freely within the Union but run the risk of becoming victims of crime, while fifteen different frontiers continue to exist in the field of criminal law - frontiers which have in practice proved incapable of protecting their rights but nonetheless remain open for the free movement of criminals.

The initiative has a large number of positive aspects, including a generous but fair definition of the concept of 'victim' and the introduction of measures intrinsically linked to the need to deal with the victim from an integrated perspective. It marks an important advance towards the harmonisation of the Member States' penal laws, thanks to a non-restrictive interpretation of Article 29, third indent and Article 34(2)(b) of the Union Treaty.

Your rapporteur considers that Articles 9, 10, 11 and 12 fall fully within the scope of the framework decision, covering as they do areas which may be dealt with under the third pillar.

Similarly, the present framework decision is a perfectly correct context for legislating for the introduction of a freephone number, to be identical in all Member States, for a helpline which would provide all the information needed by victims in any of the Union's official languages. On this point your rapporteur once again congratulates the Portuguese and French presidencies.

Your rapporteur believes, however, that the initiative of the Portuguese presidency should also have included, in the framework decision, the creation of:

- a) a European victims' organisation, which would be responsible for implementing the victims' statute, coordinating the different national victim support bodies and preparing legislation to apply at Community level;
- b) a European compensation fund, which would ensure the compensation of crime victims within the Union on the basis of Community-wide criteria.

Your rapporteur also feels, in view of the need to protect citizens' interests, that there is no justification for a divided approach to the legal regulation of victims' status. This division involves, on the one hand, the penal aspects related to title VI of the TEU (third pillar), and,

on the other, the remaining aspects, essentially those concerning compensation pursuant to the rules laid down in the EC Treaty (first pillar).

In view of this two-layered treatment by the Union of these problems affecting the citizen, your rapporteur urges the Commission and Council to reach a unanimous agreement, pursuant to Article 42 of the Union Treaty, to the effect that all the actions referred to in that Treaty's Article 29 shall be brought under Title IV of the EC Treaty. This would make it possible to bring together, within the Community framework, the area of cooperation in police and criminal law matters and that of cooperation in civil law matters and measures related to the free movement of persons.

Logic and justice require that all measures adopted for dealing with crime victims are taken horizontally and at the same level. There is no justification for handling the penal aspects under the third pillar and the civil aspects under the first pillar.

Your rapporteur is, in view of the above, fully aware of the limits which both the Portuguese presidency and the current French presidency have come up against. These limits arise from the need to take account of the national interests of each and every Member State if any action at all is to be taken in this twofold quicksand. Most of the amendments tabled should be understood in this context. Some are formal in nature, but the majority are aimed at making it possible for the rights of crime victims to be respected and recognised and their interests and circumstances taken into account. The basic point is that crime victims in any of the EU Member States should be guaranteed the same minimum treatment, should have their dignity respected, should have the guaranteed right to inform and be informed and guaranteed access to justice, and should have the right to immediate, full and effective compensation for the damage suffered.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative of the Portuguese Republic with a view to adopting a Council Framework Decision on the standing of victims in criminal procedure
(9650/2000 – C5-0392/2000 – 2000/0813(CNS))

Draftsman: Klaus-Heiner Lehne

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Klaus-Heiner Lehne draftsman at its meeting of 17 October 2000.

It considered the draft opinion at its meeting(s) of 23 October and 22 November 2000.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Ana Palacio Vallelersundi (chairman); Willi Rothley and Rainer Wieland (vice-chairmen); Klaus-Heiner Lehne (draftsman); Maria Berger, Carmen Cerdeira Morterero (for Luis Marinho pursuant to Rule 153(2)), Francesco Fiori (for Antonio Tajani pursuant to Rule 153(2)), Janelly Fourtou, The Lord Inglewood, Ioannis Koukiadis, Helmut Kuhne (for Enrico Boselli pursuant to Rule 153(2)), Donald Neil MacCormick, Arlene McCarthy, Manuel Medina Ortega, Bill Miller, Ria G.H.C. Oomen-Ruijten, Elena Ornella Paciotti, Bernhard Rapkay (for Evelyne Gebhardt pursuant to Rule 153(2)), Astrid Thors, Diana Paulette Wallis, Joachim Wuermeling and Stefano Zappalà.

SHORT JUSTIFICATION

Background

Following a Commission communication of 14 July 1999 on the victims of criminal acts and the conclusions of the European Council meeting in Tampere (15-16 October 1999), the Portuguese Republic submitted the initiative under review on 24 August 2000.

The EP called for measures to protect victims in its resolution of 15 June 2000.

General assessment of the initiative

Fundamentally, the initiative should be viewed in a positive light. It embraces all aspects of the protection of victims of crime.

Some of the main points are:

- the article on respect and recognition of victims,
- the right to provide and receive information,
- communication safeguards,
- the creation of a separate status for victims in criminal proceedings (Art. 6: participation not only as a witness or a party),
- the right to protection (Article 8(4) includes provisions to allow victims to testify by video conference, which gave rise to heated debate in the Legal Affairs Committee when the Di Pietro report¹ was considered),
- the right to compensation (the Member States being required to use compensation and restitution as 'criminal law penalties or measures', Art. 9(2)),
- the possibility of dispute settlement through mediation,
- the establishment of specialist services,
- prevention of secondary victimisation (not defined in any further detail)

etc.

This is all worthy of consideration and of high moral value and is akin to a list of desired objectives.

Ultimately, the Portuguese initiative may result in many Member States' codes of criminal procedure, which are based on the principle of public prosecution by a legally bound prosecuting authority, having to be changed to accommodate, at least to some extent, an *inter partes* style of conducting proceedings (the 'party' of the victim versus the 'party' of the accused, whose culpability has yet to be proved). This could be a significant encroachment upon the principles on which national proceedings are based.

¹ A5-0019/2000, Resolution R5-0061/2000 of 17 February 2000 (Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000. p. 1).

The legal basis

The only flaw in the Portuguese initiative is the lack of legal basis both in the EC Treaty and the EU Treaty.

The article cited, Article 31(e) TEU, refers only to 'progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts ...'.

However, the initiative as a whole is not concerned with substantive criminal law but with procedural criminal law.

It would, therefore, seem questionable whether the adoption of a framework decision is permissible. If the Portuguese initiative were adopted simply as a Council recommendation, the reservations concerning the legal basis would be less serious.

Conclusions

The initiative is to be welcomed as such.

The lack of a legal basis in the Treaties for the adoption of a binding measure is regrettable. It is only possible to adopt the initiative in its current form as a recommendation.

The provision concerning video recordings, which has already given rise to controversy in the Legal Affairs Committee (see Di Pietro report¹), should be deleted since the right of the victim must be offset against the fundamental rights (Article 6 of the European Convention on Human Rights) of the accused to a fair trial, which in particular includes the right to put questions directly to witnesses for the prosecution. This right is not guaranteed merely by playing back video recordings.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendment in its report:

¹A5-0019/2000, Resolution R5-0061/2000 of 17 February 2000 (Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1).

(Amendment 1)
Article 8(4)

(4) Where there is a need to protect victims from the effects of giving evidence in open court, as may arise on account of victims 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.

(4) Where there is a need to protect victims from the effects of giving evidence in open court, as may arise on account of victims 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 by other appropriate means, without prejudice to Article 6 of the European Convention on Human Rights.

Justification:

The provision concerning video recordings, which has already given rise to controversy in the Legal Affairs Committee (see Di Pietro report) should be deleted since the right of the victim must be offset against the fundamental rights (Article 6 of the European Convention on Human Rights) of the accused to a fair trial, which in particular includes the right to put questions directly to witnesses for the prosecution. This right is not guaranteed merely by playing back video recordings.

¹ OJ C 243, 24.8.2000, p.4.

22 November 2000

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative of the Portuguese Republic with a view to adopting a Council Framework Decision on the standing of victims in criminal procedure
(9650/2000 – C5-0392/2000 – 2000/0813(CNS))

Draftsman: Miet Smet

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Miet Smet draftsman at its meeting of 14 September 2000.

It considered the draft opinion at its meetings of 21 November 2000.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Theorin, chairman; Van Lancker, vice-chairman; Smet, draftsman; Avilés Perea, Fraisse, Ghilardotti, Gröner, Klass, van der Laan, Lulling, Mann, Martens, Prets, Sörensen, Swiebel and Torres Marques.

AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and -Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1) Article 2

Respect and recognition

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.

Respect and recognition

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. ***Special attention shall be paid to groups which are particularly vulnerable owing to their age, their gender or other reasons. Member States shall moreover recognise the need for a multidisciplinary approach to the treatment of victims, according to the type of offence committed against victims and according to the different needs experienced by victims.***

Justification:

It is important to treat both victims and the most vulnerable persons in the most appropriate way.

(Amendment 2) Article 3

Right to provide information

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.

Right to provide information

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. ***Member States shall recognise the importance of increasing victims' confidence in the criminal law***

¹ OJ C 243, 24.8.2000, p. 4.

system, the more so vis-à-vis the most vulnerable persons, and of encouraging their cooperation in acting as witnesses.

Justification:

To ensure smooth operation and to enable victims to make constructive contributions, it is absolutely essential to win their confidence. That appears all the more necessary in the case of the most vulnerable persons.

(Amendment 3)
Article 4(1)

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:

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 ***at*** the time of their first contact with *(one word deleted)* police ***or other law enforcement services specially trained to treat victims in an understandable and reassuring manner***, covering at least the following points:

Justification:

The part played by the police or other law enforcement services is crucial, since it often provides the victim's first safe point of human contact, the function of which must be not only to ensure the victim's immediate personal safety but also to provide psychological reassurance. The quality of the initial contact provided by the police will depend crucially on their ability to provide all the information the victim needs.

(Amendment 4)

Article 4(a)

(a) the type of services or organisations to which they can turn for support;

(a) the type of services or organisations to which they can turn for support, ***in particular assistance with finding suitable accommodation providing appropriate security arrangements;***

Justification:

To prevent secondary victimisation, it is essential to arrange accommodation for victims who have no home they can return to or the financial resources to provide one.

(Amendment 5)

Article 4(fa) (new)

(fa) the extent to which victims have a right to personal medical and psychological support, the more especially in cases of major trauma suffered by persons who are victims of physical and/or sexual violence;

Justification:

Sexual violence, as well as any other form of violence, are intolerable violations of fundamental rights. Offences of this type must be considered as requiring an ad hoc response and the services of highly qualified judicial and medical staff to treat such victims.

(Amendment 6)

Article 4(fb) (new)

(fb) where justified, in what circumstances victims have the right to assistance with securing their return to their country of origin or residence and/or provisional residence status.

Justification:

The return home of displaced victims can be the last logical stage in the treatment of victims, the more especially in the case of mothers who have left their children in their country of origin.

(Amendment 7)

Article 4(g)

(g) requirements and preconditions in order for victims to be entitled to compensation;

(g) requirements and preconditions in order for victims to be entitled to compensation ***and to restitution of their personal property;***

Justification:

To be consistent with Article 9.

(Amendment 8)
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.

Communication safeguards

In the same way as for defendants, Member States shall take the necessary measures, ***on first contact with the police or other law enforcement services,*** 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.

Justification:

The importance to victims of being able to communicate from the outset in their mother tongue is self-evident.

(Amendment 9)
Article 8(4a) (new)

4a. In conducting criminal inquiries and proceedings Member States shall ensure that policies on information to and relations with the public (media) shall take due account of the need to protect victims against all forms of publicity liable to encroach upon their private lives or their dignity, in particular in all cases of sexual violence.

In all cases where physical protection (for security) and/or moral protection (for dignity) of victims is required, the

criminal law trials should be held in camera and any divulging of victims' personal data shall be subject to appropriate restrictions.

Justification:

Sexual violence must be considered as requiring an ad hoc approach. It is important to restrict the divulging of information. Releasing details to the media can be counterproductive in terms of victims' safety, the need to safeguard their dignity and their ability to act as witnesses.

(Amendment 10)
Article 9(4a) (new)

4a. Payment of compensation to victims must take priority over payment of fines and court costs to the State.

Justification:

Restitution of property or an initial compensation payment, even if only partial, have the effect of helping the victim financially from the outset. Such action also helps to give the victim confidence in the judicial process and does so constructively. For that reason it is also important for priority to be given to victim compensation.

(Amendment 11)
Article 10(1a) (new)

1a. Member States shall ensure that mediators are recruited from all categories of society, that they are of both sexes and that they have a good understanding of local cultures and communities.

Justification:

Mediators must have received training enabling them to understand the full breadth and depth of the damage done to victims and the context in which it has been perpetrated.

(Amendment 12)
Article 12(1a) (new)

1a. Member States shall seek to harmonise the procedure for lodging complaints for investigation and the forms to be completed in order to avoid delays

due to differences in criminal law procedures.

Justification:

Harmonising procedures would be a welcome step towards improving cooperation between Member States and speeding up the criminal law procedure.

(Amendment 13)

Article 14(1)

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.

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 ***specifically adapted to the needs of the most vulnerable groups.***

Justification:

Those called upon to intervene and support victims must receive appropriate professional training to enable them to cope with emergencies as they arise. In the case of the most vulnerable persons, it is important for those providing help to be able to adapt their working methods to the victim's needs.

(Amendment 14)

Article 14(2)

2. Paragraph 1 shall apply in particular to police officers and ***legal operators***.

2. Paragraph 1 shall apply in particular to police officers and ***departments of public prosecution***.

Justification:

The term used is not specific enough.