
National Roundtable on Victim Compensation

Exploring the Role and Future of Crime Victim Compensation

National Center for Victims of Crime

Compensating Victims of Violent Crime in the European Union With a Special Focus on Victims of Terrorism

*Dr. Jo Goodey
Crime Programme, United Nations
Vienna*

Discussion Paper
May 2003



Introduction

A civilised society denounces violence and seeks to protect the innocent against the guilty and, to the extent that it can do so, it will be more stable and confident than one which does not.

Victim Support, UK, 1993: 4

It is usually futile for courts to award heavy damages for personal injuries; the isolated individual offender can rarely make large amends. What, then, could be done to provide the compensation which the victim ought to receive?

Fry, 1959: 192

The above quotes from Britain's national Victim Support organisation, and the pioneering penal reformer Margery Fry, illustrate two considerations that lie at the heart of State compensation for victims of violent crime in the EU; namely:

1. The need for the State to be doing something for victims of violent crime as a reflection of its moral duty to innocent citizens who have been wronged;
2. The practical ineffectiveness of court-awarded offender compensation to victims, and the need for State intervention to ensure that victims receive some level of monetary compensation when no offender is found.

The relationship between the State's moral duty to crime victims, and the practical inability of offenders to pay compensation, are two factors that are explored in this paper with respect to the 'place' of State compensation in the European Union (EU).

State compensation emerged for a number of reasons in Europe, but principally on the back of welfare state developments, and, in the latter part of the twentieth century, as an astute political response to the problem of rising crime and increases in interpersonal violence.

In this paper, the philosophical underpinnings of State compensation to victims of violent crime are explored in the context of the EU. State compensation is examined alongside offender-based compensation in an effort to understand the "place" of State initiatives in different legal systems. As a starting point, international instruments are referred to as providing benchmark standards for victim compensation, and, at the same time, are limited in what they afford victims as a "right." In outlining provision for victim compensation in the

EU, the paper points to similarities and differences between Member States. Given this roundtable's focus on victim compensation in the aftermath of September 11, special reference is made towards the end of the paper to EU provisions for compensating victims of terrorist violence.

International Instruments and State Compensation

Looking specifically at victim compensation for victims of violent crime, most international legal instruments that address victims' rights do, at some point, indicate the desirability of, first, offender-based compensation, and, second, State compensation. Selecting four international victim-centred instruments for comparison, two from the 1980's 'heyday' of victim-centred developments, and two more recent instruments, that, in turn, are 'worldwide' and 'European' in scope, each provides for victim compensation from the offender and the State:

1. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹
2. The 1985 Council of Europe Recommendation (85) 11 On the Position of the Victim in the Framework of Criminal Law and Procedure
3. The 2000 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, Commission on Human Rights of the UN Economic and Social Council²
4. The 2001 Council of the European Union Framework Decision on the Standing of Victims in Criminal Proceedings³

Of the four international instruments selected for comparison, only the 2001 Council of the EU Framework Decision includes State compensation as an 'optional' undertaking for governments. This reflects the other three instruments' status as 'soft law'; that is, they are not legally binding upon signatories. As a consequence, it is relatively easy for the other three instruments to state what States should undertake to do for crime victims with respect to

¹ General Assembly Resolution Nr.40/34.

² E/CN.4/2000/62.

³ 2001/220/JHA.

offender and State compensation. In comparison, the 2001 Council of the EU Framework Decision on the Standing of Victims, as a legally binding instrument, is more cautious in its interpretation of State compensation to victims.

States can readily agree that offenders should pay compensation to victims because this does not generally incur vast expenditure on the part of the State. The State can, of course, incur expenses if it: (a) pays victim compensation up front, and then pursues reimbursement of this payment from the offender⁴; and (b) is actively obliged to ensure that offenders pay any compensation ordered to the victim. In comparison, most States, at least in the developing world, are not in an economic position to offer extensive and comprehensive State-funded compensation to victims of violent crime. In recognition of this, international legally binding instruments, and national legislation, tends to steer clear of State compensation as a victim ‘right’. Instead, State compensation is usually referred to as a ‘good practice’ ideal that States can adopt.

European Union Member States, as relatively affluent countries, are ideally placed to provide some level of State compensation. The Council of Europe, encompassing countries beyond the EU’s borders, already addressed the issue of compensation to crime victims from public funds in the early 1970s, and, in 1983, adopted the European Convention on the Compensation of Victims of Violent Crime⁵.

While Council of Europe Conventions represent soft law, the Council’s human rights agenda has been influential in shaping legally binding instruments at the level of the European Community. In this regard, the 1983 Council of Europe Convention resurfaced in the 1998 Action Plan of the Council of the European Union and the European Commission with regard to implementation of provisions under the Treaty of Amsterdam on an Area of Freedom, Security and Justice in the EU; namely, point 51 of the resultant Action Plan refers to State compensation. In turn, the European Commission’s 1999 Communication to the European Parliament, the Council of the EU, and the Economic and Social Committee on ‘Crime

⁴ In Austria, the victim can receive compensation payments from the State, and the State may then seek recovery of payments from the offender; Code of Criminal Procedure (StPO, amended in 1978, article 373a).

⁵ In turn, the European Parliament, as the democratic forum for debate of the European Community, has variously turned its attention to victims of crime and the related question of victim compensation; for example: European Parliament Resolution on Victims of Violence; OJ C 256, 9.10.1989, p.32; and European Parliament Resolution on Crime Victims in the EU; OJ C 67, 1.3.2001, p.308.

Victims in the EU: Reflections on Standards and Actions’⁶, included reference to compensation, and resulted in the 2001 Council of the European Union Framework Decision on the Standing of Victims in Criminal Proceedings. Parallel to this Framework Decision, the European Commission presented a Green Paper for discussion, in September 2001, on ‘Compensation to Crime Victims’⁷. This paper emerged from an expert group meeting in Sweden on compensating crime victims in the EU⁸. The onus of the paper being to further initiatives on State compensation to victims at the level of binding legislation across the EU.

These provisions indicate the extent to which victim compensation is on the agenda of the Council of Europe, and, more importantly with respect to binding legislation, the Council of the European Union and the European Commission. State compensation is now promoted as part of victim-centred justice in the EU. However, the nature and extent of victim-centred justice, including State compensation, differs dramatically across the EU, and reflects the ‘place’ of victims in each jurisdiction. In this regard, there is a yawning gap between what international instruments promote as ‘gold standards’ for victim-centred justice, and what victims are actually offered in practice. In turn, each jurisdiction’s legislation can be contrasted with the reality of national victim-centred practice.

And, as the EU is due to expand in the next year or so to include new Member States from eastern Europe, the place of State compensation will need addressing with regard to how compensation schemes might be promoted and financed in these countries. In turn, as the 2001 European Commission Green Paper on victim compensation highlighted, attempts at standardising State compensation across the EU are complicated by a number of factors:

- Varying degrees of generosity offered by each scheme
- The different reciprocal provisions available to EU citizens who are victimised in another Member State to their own
- Differences between Member States’ awards of compensation to legally resident or visiting non-EU citizens who are victimised while in the EU

⁶ COM (1999) 349 final.

⁷ COM (2001) 536 final.

⁸ Umeå, Sweden, 23-24 October 2000, Swedish Crime Victim Compensation and Support Authority; the author attended as a rapporteur.

In turn, consideration needs to be given to the place of compensation for victims of violent crime who are not legally resident in the EU; namely, illegal immigrants and victims of trafficking. Particular attention should be paid to the plight of trafficked women who are illegally transported to work in the EU's sex trade and, as a consequence, often suffer violent and sexual abuse in transit and at their final destination. Determining the 'place' of State compensation in the EU, as a moral and pragmatic response to citizens' victimisation, can, arguably, be more generously framed to take into account the needs of non-citizens, both legal and illegal, who are victims of violent crime in the EU⁹. However, given that some Member States do not, as yet, have any State compensation scheme in place for their own citizens, let alone illegal immigrants, one has to start with an overview of State compensation in the EU to understand the presence, absence, and generosity of different State compensation schemes.

An Overview of State Compensation in the EU

In 1964, Britain became the first country in Europe to introduce a modern scheme of State compensation¹⁰. In 1983, with the adoption of the Council of Europe's Convention on victim compensation, State compensation schemes were also in place in the following European jurisdictions: Northern Ireland (1968); Sweden (1971); Austria (1972); Finland (1973); Ireland (1974); Norway (1976); Denmark (1976), The Netherlands (1976), Germany (1976); and France (1977)¹¹. After 1983, the following jurisdictions also adopted some form of State compensation: Luxembourg (1984), Belgium (1985); Spain (1995); Portugal (1991-93); and Switzerland (1992).

EU jurisdictions generally award compensation for crimes of violence that include: homicide, assault, rape and robbery. A distinction can be drawn between those jurisdictions that compensate injuries arising from intentional or deliberate criminal acts that are inherently violent (for example; Britain and Portugal), and those that cover any crime that causes

⁹ The 2000 UN Convention against Transnational Organised Crime and its Accompanying Protocol against Trafficking in Persons, especially women and children, addresses the responsibility of States towards offender and State compensation to victims of trafficking. However, State compensation is forwarded as an 'optional' undertaking given: (a) the legally binding status of the Convention and Protocol on its signatories, and (b) the worldwide application of the UN instruments that cannot afford to exclude the world's poorer countries with unreasonable claims upon limited State funds.

¹⁰ New Zealand was the first country in the world to legislate for State compensation. The New Zealand Criminal Injuries Compensation Act (No.134) came into force a few months before the British scheme, in 1964.

¹¹ See: Greer (1996).

personal injury (Denmark, France and Sweden)¹². However, this distinction is not absolute as many schemes include compensation for reckless acts that are not intentional.

According to estimates of state compensation for the year 2000¹³ – see table - the British scheme, covering claims in England, Wales, and Scotland, is the most generous compensation scheme in the EU. When compared alongside compensation schemes in other EU member states with similar or larger populations, and roughly equivalent levels of criminal victimisation (Germany and France), the British scheme remains at the forefront of state compensation provision. In comparison, Greece and Italy are notable for their absence, as neither has a general compensation scheme for victims of violent crime¹⁴.

ESTIMATE OF STATE COMPENSATION – 2000		
EU Member State	Total compensation in Euros	Applications received
Austria	1,400,000	200-300
Belgium	6,307,000	740
Denmark	5,456,000	3,156
Finland	5,130,000	4,770
France	147,550,000	*13,353
Germany	*106,694,000	9,787
Ireland	3,329,000	232
Luxembourg	42,000	16
The Netherlands	4,706,000	3,650
Portugal	972,000	68
Spain	1,540,000	1,468
Sweden	7,421,000	6,522
United Kingdom	340,926,000	78,165

Estimates of State Compensation in the EU, Year 2000

* indicates data from 1999.

Differences in provision of State compensation reflect a number of factors; foremost amongst which is the place of victim compensation in each Member State as a reflection of general

¹² See: Greer (1996), p.697.

¹³ Mikaelsson, J. and Wergens, A. (2001) *Repairing the Irreparable*, Umeå: The Swedish Crime Victim Compensation and Support Authority; source European Commission Green Paper on 'Compensation to Crime Victims', COM (2001) 536 final, p.18.

victim-centred provisions in each jurisdiction, and the prominence given to civil claims over State provision of compensation.

Understanding EU State Compensation in the Context of Civil Claims

There are two principal means by which the victim of violent crime can obtain monetary compensation in EU jurisdictions, namely: from the offender or the State. Offender based compensation is prioritised in most jurisdictions before State compensation; principally for the financial burden that State compensation schemes place on European governments that foot the mainstay of funding. The 1983 Council of Europe Convention on Compensation also makes it clear that the offender, rather than the State, has the primary responsibility to compensate victims.

Compensation from the offender can be pursued by victims either through civil or criminal proceedings. Most western European jurisdictions also recognise crimes of violence as delict, or tort, for which the offender is civilly liable. In common law jurisdictions in the EU – England and Wales, and Ireland – offenders can be sentenced to pay a compensation order to victims in the course of a criminal trial¹⁵, or victims can pursue a civil case for damages. In continental European jurisdictions, the victim has the right – in place since the early 19th century - to bring a civil claim in the course of criminal proceedings as the ‘partie civile’, or through the adhesion principle. In theory, the victim’s right to act as the partie civile bestows on them rights they do not enjoy in common law jurisdictions. Recently, other channels have emerged in the EU by which the victim may receive compensation from the offender; namely mediation programmes. But, given the narrow applicability of mediation in cases involving inter-personal violence, it is unlikely that these initiatives will provide for much in the way of compensation.

A survey from the mid 1990s attempted to determine the level of damages that would be awarded to hypothetical compensation claims, payable to victims of tort in a civil court, in

¹⁴ Italy has a special scheme for victims of terrorist violence and organised crime – see page 10.

¹⁵ In England and Wales, the 1972 Criminal Justice Act introduced payment of compensation by the offender to the victim for any loss, damage or injury. The 1982 Criminal Justice Act prioritised the offender’s payment of compensation to the victim before any payment of a fine to the State. As a response to courts’ non-compliance with the demands of the 1982 Act, the 1988 Criminal Justice Act stipulated that the courts had to give reasons for not awarding a compensation order in cases where there was an identifiable victim eligible for compensation.

different European jurisdictions¹⁶. The hypothetical cases involved a worse case scenario; namely, a victim of violent crime losing use of all form limbs. In the first case (A), the victim was a male doctor, aged 40, married and with two children aged 7 and 5. In this case, the range of awards between EU jurisdictions was based on estimates provided by legal practitioners in each country. As the survey's editors explained, the different estimates for awards were largely attributable to variations in the following factors between jurisdictions: relative income, cost of medical treatment, and the provision and level of social security benefits. Bearing this in mind, estimates of awards for damages ranged, in case A; from 251,000 pounds sterling in Norway, through to 1,193,000 in France. In comparison, for the same case, awards for 'pain and suffering' ranged from zero in Spain, where legislation does not recognise this, through to 225,000 pounds sterling in Ireland.

Comparison of hypothetical cases has to be read cautiously. However, what this survey illustrates is the extent to which claims for damages, in a civil court, can differ greatly between European jurisdictions. The advantage of civil claims is that awards can, if successful, be significant. At the same time, there is also the danger that no or very little award can be made. In comparison, European State compensation schemes offer compensation with upper limits, and, in some cases, tariff-payments based on the nature of injury sustained.

However, in contrast to hypothetical awards of compensation through the civil law, research indicates that the right to bring a civil claim for compensation in the course of criminal proceedings, as the 'partie civile', is unsuccessfully applied in most EU jurisdictions (Goodey, 2002). Victims in continental justice systems are often not encouraged by lawyers and judges to bring a civil claim for compensation against their offender. In this regard it appears that continental justice systems suffer from the same misgivings as common law European jurisdictions, as members of the legal profession are often uncomfortable mixing civil and criminal law. In those cases when a civil claim is successfully brought, many continental jurisdictions do not assist the victim in the recovery of any award. Consequently, victims rarely see all or any of the money they are awarded. However, some researchers indicate that efforts have been made in recent years to improve the effectiveness of the

¹⁶ McIntosh, D. and Holmes, M. (1994) (eds) *Personal Injury Awards in the EU and EFTA Countries*, London, 2nd edition; cited in Greer (1996), pp.684-85.

victim's right to act as 'partie civile'¹⁷. These developments are mirrored by changes to common law systems in Europe that now prioritise victim compensation over payment of a fine to the State, and stipulate the need for courts to justify the absence of a compensation order payable by the offender to the victim¹⁸.

Efforts to improve the effectiveness of civil claims for compensation in the course of criminal proceedings can also be considered as a means of diverting attention away from State compensation as an alternative to offender-based compensation. But, given that many offenders are not brought to justice for violent crime, State compensation presents a real alternative for vast numbers of victims who are eligible for compensation but are not in a position to bring a civil claim.

Philosophical Underpinnings of EU State Compensation

To understand variation in the extent and nature of State compensation between EU jurisdictions, it is useful to explore the victim's place in each jurisdiction, and any philosophical justification for the presence, or absence, of State compensation in addition to civil claims. In summary, those who are eligible for State compensation can, essentially, be divided into two groups, and sometimes three:

- First, the direct victim; that is, the person towards whom a crime is directed; covered by all State schemes in the EU.
- Second, the indirect victim; that is, dependants and other relatives of the direct victim; not covered by all States schemes in the EU.
- A third group is occasionally included in compensation awards; that is, a person who is accidentally caught in the turmoil of an offence.

Historically, as communitarian justice tells us, crime victims played a central role in the resolution of their own conflicts. This included reparation to victims by known offenders in the guise of natural justice. As formal justice took over the role of informal justice resolution, so the central role played by victims diminished. Reparation, traditionally from offender to victim, was now made by offenders to the State, and crime was reconstructed as a harm committed against the State; the victim, as a citizen of the State, simply becoming the

¹⁷ See: Greer (1996), 690.

¹⁸ See footnote 14.

instrument through which crime was played out. It was only in the latter half of the twentieth century that developed western nations took the initiative to consider financial reparation to victims.

In some countries, the move to State compensation developed alongside the rise of the welfare state; for example, New Zealand, Britain, Sweden. While it might appear logical that victim compensation should be enthusiastically promoted in those countries with little or no welfare benefits, the inverse proved to be the case in the early days of State compensation schemes. As countries extended social provision to various groups in society, so innocent crime victims were included as a special category in need of recognition. And, as public expenditure on law enforcement and imprisonment increased, as a response to increasing crime rates, so attention began to be focused on the flipside of offending; that is, victimisation. In particular, the plight of innocent crime victims emerged as a worthy and popular cause for politicians to adopt from the 1960s on. In this regard, State compensation can, somewhat cynically, be viewed as a convenient means by which politicians can be seen to be doing something for ‘innocent’ victims, without actually resolving the crime problem and resultant victimisation. As Miers indicated, in his comparison of State compensation schemes in Britain and Canada:

There is, in my view, little doubt but that political factors were the single most important determinant behind the introduction of victim compensation schemes.

Miers, 1978: 51

Undoubtedly, political factors have played a part in the development of State compensation schemes. Burns (1980) suggests that the number of people applying for compensation, and the final number receiving it, is irrelevant when measuring a scheme’s success if its political goal is simply to placate public criticism of the criminal justice system. However, State compensation schemes that promise much and deliver little in the way of actual compensation can, in the long run, reflect badly on the political party administering the scheme.

Research by Miers (1978), Burns (1980), and Shapland (1984) would seem to indicate the significant part played by political considerations in the early development of State compensation schemes in North America. Miers goes so far as to paint early compensation

schemes as mere symbolic acts on the part of States. But, as Maguire and Shapland (1990: 214) indicate: ‘Though this seems to be true in some parts of the world, it is less applicable in Europe’. In support of this claim, Maguire and Shapland proceed to state (1990: 214): ‘where European countries have set up schemes, they have attracted applications and made awards’. However, turning to evidence presented in the table on page 5, it is obvious that awards are far less than generous in some European countries, and, in this regard, can also be read with respect to the political goals that lie at the heart of each jurisdiction’s provision of State compensation.

It would be naive to think that state compensation is solely initiated as a good samaritan act for victims; to do this would be to deny the political significance afforded to justice and home affairs, and, in particular, victims. However, alongside political ambitions, there were, and remain, a number of practical reasons why State compensation to crime victims emerged in developed countries as a response to victims’ non-receipt of financial reparation. First, as Margery Fry noted, most offenders’ inability or unwillingness to pay compensation means that victims rarely receive financial reparations. Second, States have traditionally prioritised the payment of fines to the State over financial reparation to victims. And, at a basic but fundamental level, many offenders are not apprehended for their crimes, and, as a result, victims have no recourse to financial reparation.

In turn, there are two core rationales for the justification of State compensation schemes; namely: (1) the legal duty rationale; and (2) the moral duty rationale. The first implies a legal duty of the State to compensate victims for the State’s failure to protect them against victimisation, and its failure to ensure reparation from offenders to victims. The second argument promotes state compensation on humanitarian and welfare grounds, and, in turn, can be viewed as a form of loss distribution along the grounds of social insurance. While the first rationale leans towards the idea of the victim’s right to receive compensation, and, therefore, is clearly unworkable in practical terms, the second rationale is formulated in the language of expectations and, as a result, does not imply that States have to compensate victims for harm suffered.

Victim-centred justice in European jurisdictions is predominantly a needs-based response, and, as such, can be interpreted in the framework of a moral duty rationale. And, reflecting the development of the welfare state across large parts of Europe, State compensation has

been framed as a means of assisting some of the most vulnerable members of society. The preamble to the 1983 European Convention on Compensation indicates that State compensation is justified on grounds of ‘social solidarity and equity’. However the Convention leaves the definition of these terms open for interpretation. In practice, ‘who’ is eligible for compensation differs across EU jurisdictions, with social solidarity and equity only being extended to certain victim categories. In this regard, involvement in organised crime, or membership of an organisation engaged in criminal activity, excludes a victim of violent crime from State compensation in England and Wales, Northern Ireland, and, in certain circumstances, Italy¹⁹. In comparison, in Finland, the Netherlands, and Sweden, the victim’s relationship to organised crime does not automatically bar them from State compensation.

While the joint State compensation scheme for England, Wales and Scotland might be the most generous in the EU, in terms of the number of victims awarded compensation, it also turns down roughly one third of all applications on the grounds of the applicant’s current, or prior, association with criminal activity. Other common grounds for denying State compensation in EU jurisdictions variously include: the applicant’s financial situation; the victim’s or applicant’s conduct before, during or after the crime, and the victim’s or applicant’s involvement in organised crime or membership of an organisation engaging in acts of violence. While the strict applicant criteria in EU common law jurisdictions can be understood as an efficient means of controlling excessive applicant numbers, it results in a narrow definition of ‘who’ is deserving of State compensation. In comparison, civil claims are more equitable in terms of who can apply.

Finally, as various commentators have noted when exploring the development of State compensation across Europe, there is little to no clear statement of the philosophical underpinnings of State schemes. All that can be stated with any certainty is that State compensation is not constructed as a right in Europe. It is more of a pragmatic response to victims’ needs. The development of State compensation across Europe reflects the cultural context of each jurisdiction’s system of law. While common law jurisdictions have responded to the absence of the victim’s right to play an active part in the criminal trial as the *civile partie*, by devising an extensive State compensation scheme, continental systems of justice

¹⁹ However, Italy is a special case as it only provides compensation to victims of organised crime and terrorism.

have recognised the limited scope of the civile partie, and have tried to improve upon it at the same time as enhancing their own systems of State compensation.

The Special Case of Compensating Victims of Terrorism

Special attention is given over in some EU jurisdictions to compensating victims of terrorist offences; namely in Italy, Spain and France. The focus on terrorist victims in these countries needs to be interpreted in the context of heightened terrorist activities in each country in the latter half of the twentieth century.

Italy

In Italy, there is no general State scheme for compensating victims of violent crime. Initially, State compensation was limited to police officers and members of the armed forces who were injured, or killed, as a result of violent crime²⁰. However, in response to the number of ordinary citizens injured or killed in the course of Italy's increasing problems with terrorism and organised crime, from the 1970s, there have been two important developments. First, Law No.466, from 1980, extended compensation to victims who were injured or killed in the course of assisting the police or armed forces in response to an act of terrorism. Ten years later, with terrorism and mafia activity unabated, Law No.302, from 1990, extended awards of State compensation to anyone who was injured or killed as a result of an act of terrorism or organised crime, without the prerequisite that they were acting to assist the authorities. Compensation is payable for certain injuries that are caused by an act of terrorism or subversion of the democratic order, including acts attributable to the mafia. However, compensation is only available in cases causing permanent disability that reduce the victim's capacity to work by 25 per cent or more. Under the terms of the 1990 Act, compensation is also payable to the dependents of persons who die as a result of violent acts of terrorism or organised crime. According to data available in the mid 1990s, the maximum sum payable for total disability or death is 150 million Lira, or 61,000 pounds sterling²¹. A compensation board decides on the eligibility of applications, and can award provisional payments. Somewhat surprisingly, provisional payments do not have to be returned to the State should it be decided that a final award of State compensation is not forthcoming.

²⁰ Law No.974, 1967.

²¹ Piva, P. (1996) 'Italy' in D: Greer (ed) *Compensating Crime Victims: A European Survey*, Freiburg-im-Breisgau: IUSCRIM; p.382.

Spain

In Spain, the government introduced State compensation for victims of terrorism eleven years before compensation was made available to victims of violent and sexual acts²². In 1984, the country's internal problems associated with the Basque Separatist movement resulted in the introduction of State compensation for victims of terrorism²³. A Royal Decree from October 1988, and subsequent amendments throughout the 1990s, have enhanced the scope of the State Compensation Scheme for Victims of Terrorism. The scheme compensates any loss arising from physical or psychological injuries, medical expenses, and material damages to the victim's house or car as a result of crime committed by a terrorist organisation or armed gang. Royal Decree 1734, from 1998, also added to provisions available to victims of terrorism by declaring that victims' homes should be restored, to the extent feasible, to their original state, and provisional housing paid for in the course of restoration. In turn, State compensation is awarded in addition to any other compensation that the victim is awarded in court or as a result of payment from insurance claims; with the exception of medical expenses that are only met in full if they are not covered by other means. And, financial loss as a result of a victim's incapacity to work is awarded on the basis of an incremental tariff scheme that reflects the duration of disability. But, commenting on the difference between the theory and practice of law in Spain, with respect to actual payments of State compensation, Brienen and Hoegen state (2000: 852): 'However, no real Funds have been established'. To this end, and with an absence of research evidence on the impact of State compensation, it is difficult to say whether the Spanish scheme can be regarded as a 'success'.

France

In France, a State Fund for victims of violent crime was introduced in 1977. In turn, targeted State funds were introduced for victims of natural catastrophes (1982), road accidents (1985), AIDS (1991)- and, terrorist acts (1986). In 1990, a Reform Act substantially enlarged the scope of the 1977 Fund²⁴. Today, the State Fund for Victims of Crime, or CIVI (Commission d'Indemnisation des Victimes d'Infractions), is generally regarded as a successful victim-centred criminal justice innovation. Applications to the committee administering the fund are not free, but can be considered for legal aid. In turn, the Fund's success is largely attributable to the assistance it receives from criminal justice agencies in the recovery of money from

²² Law 35/1995; 1995 Act for the Provision of Aid and Assistance to Victims of Violent Crimes and Sexual Offences.

²³ Law 9/1984.

offenders to reimburse compensation paid to victims from State funds. When compared with the impossible task faced by victims who have to pursue their own compensation awards without any assistance from the State, the Fund has a headstart. As compensation to victims of terrorism forms just one part of the Fund's comprehensive range of victim compensation, the French scheme cannot be considered in the same light as either the Italian or Spanish schemes.

Northern Ireland

In turn, while Northern Ireland does not, at present, have a special compensation scheme for victims of terrorism, it presents an interesting case study of State compensation in a province that has long suffered political and terrorist unrest.

Northern Ireland's criminal injuries compensation scheme was put on a statutory footing by the 1968 Criminal Injuries to Persons (Compensation) Act (N.I.); (in comparison, the State compensation scheme for England, Wales and Scotland was initiated in 1964, but was only put on a statutory footing in 1996). Under the 1968 Act, applications to the Northern Ireland scheme were initially determined by the civil courts. This was revised in 1977, with the Criminal Injuries (Compensation) Order (N.I.) assigning responsibility for deciding claims to the Criminal Injuries Branch of the Northern Ireland Office. The Northern Ireland scheme reflected the 'criminal injuries code' that had been in force in Northern Ireland since the 1920s, when the Republic of Ireland split from the North. The 'criminal injuries code', as the predecessor of the 1968 Act, was based on a long tradition of State compensation to victims of violent crime that also included victims of political, or terrorist, violence. As Greer points out (1996: 643), 'just and reasonable' compensation had been payable since 1836 from public funds to individuals, and presumably their relatives, who were injured, or murdered, as result of testifying against someone who was charged with an offence against the public peace. And, from 1919, compensation from public funds was payable for injury or murder at the hands of an illegal (terrorist) organisation. The 1968 Act was simply an extension of this tradition of payment, and was more broadly framed to include all victims of violent crime.

Political (terrorist) violence erupted in the province soon after the 1968 Act came into force, and continued for the next quarter of a century. More than 3,000 people have been killed

²⁴ Reform Act, 6 July 1990.

since the start of ‘The Troubles’, and many more have been seriously injured. Injuries and death resulting from terrorist activity came under the remit of the 1968 Act as they constitute violent crime. In the mid 1970s, the level of violence in Northern Ireland, with a population of 1.5 million, was such that compensation payments out-stripped combined payments for England, Wales and Scotland, with a collective population of 54 million. Although violence associated with terrorist activity declined in Northern Ireland in the 1980s and 1990s, the total expenditure on compensation in the province was, for the period 1993-94, six times that for England, Wales and Scotland per head of population²⁵. In the mid 1990s, one application in four was related to terrorist violence. With terrorist violence tending to involve more serious injuries, individual payments were also considerably higher than injuries resulting from non-terrorist violent crime²⁶.

Thirty years after the start of ‘The Troubles’, in 1998, an Independent Review body was established, under the Chair of Sir Kenneth Bloomfield, to review the suitability of Northern Ireland’s compensation scheme. Sir Bloomfield outlined his job at the beginning of the Review process as follows: ‘My remit is to look at the scheme ... in the light of the experiences of victims of terrorist violence and make recommendations to the Government for the future direction of criminal injuries compensation’²⁷. A quick reading of the new compensation scheme, effective from 1 May 2002, reveals it to be broadly similar to the compensation scheme for England, Wales and Scotland²⁸. As the Chair of the Review body went on to state: ‘Any new statutory framework would of course have to apply to all criminal injury cases, not only those resulting from terrorism’²⁹. To this end, the new compensation scheme is, in fact, very similar to the State compensation scheme for victims of violent crime in England, Wales and Scotland, and, therefore, cannot be considered as having a ‘special focus’ on the needs of terrorist victims.

Comparing Schemes

In its broad frame of reference to all victims of violent crime, the Northern Ireland compensation scheme is in reality more generous than the targeted terrorist schemes in other

²⁵ Greer D. (1996) ‘Northern Ireland’ in D. Greer (ed) *Compensating Crime Victims: A European Survey*, Freiburg-im-Breisgau: IUSCRIM, p.644.

²⁶ *Ibid*, p.645.

²⁷ www.nio.gov.uk/issues/agreelinks/implemgov/980930b-nio.htm; information about review of criminal injuries compensation in Northern Ireland, 30 September 1998.

²⁸ www.compensationni.gov.uk/pdf/complete-guide.pdf, a Guide to the Northern Ireland Criminal Injuries Compensation Scheme 2002.

countries. While Italy and Spain can point to their schemes as targeted responses to victims of terrorist violence, they need to be interpreted in the context of cultures that do not provide much, if anything, in the way of State assistance to victims of crime. As Piva notes, in his review of compensation in Italy (1996), there are a number of reasons why the Italian State has not initiated a general scheme for victims of violent crime; fraud and an inability or unwillingness to fulfil European instruments being key factors. In addition, one can add that a general mistrust of the State has meant that Italian citizens would typically seek assistance from family and institutions that are not connected with the State in the aftermath of victimisation. And, in the case of Spain, the country's recent history of dictatorship, and its absence of a comprehensive welfare system, have not sewn the seeds of a generous compensation scheme for victims. In turn, one can speculate, in the absence of research, that the Catholic Church has played a strong role in victim assistance in both Italy and Spain. In comparison, France, also a Catholic society, provides more generously than Italy or Spain for a range of crime victims. After England, Wales and Scotland, France is the most generous country in the EU with respect to State compensation for victims of violent crime (see table).

Whether the USA is able to learn anything from these examples of State compensation to victims of terrorist acts in the EU is questionable. Compensation schemes in the EU have largely emerged as a response to long-term and on-going internal terrorist activities. No EU scheme has been established in response to a 'one-off' terrorist act. While the Northern Ireland scheme is steeped in the province's history of political and terrorist turmoil, it is also part of a long-established and larger remit to assist victims of violent crime, in general, from State funds. As Northern Ireland's 1968 Compensation Act came into force before the start of 'The Troubles', it cannot be interpreted as a purely political response to terrorism. And, given the considerable amount of money awarded victims by the Northern Ireland scheme, neither can it be regarded as a means for the State to simply be seen to be doing something for victims without actually providing them with hard cash. In comparison, the Spanish scheme might be accused of paying mere lip-service to victims than actual assistance.

Concluding Comments

The absence of clear philosophical underpinnings for State compensation in Europe means that its provision is susceptible to political fluctuations and the shifting priorities of State

²⁹ See footnote 16.

budgets. However, as illustrated by the 2001 Green Paper from the European Commission on Compensating Crime Victims, there are concerted efforts afoot at the level of the EU to standardise State compensation so that EU citizens, at the very least, can enjoy some degree of equality of justice between member States. But, with imminent entry of eastern European countries into the EU, and their limited finances, the place of State compensation will need readdressing if it is to be more than a political gesture for victim-centred justice.

It is difficult to generalise about State compensation in the EU, as some Member States have very generous compensation schemes, while others have no State compensation scheme for victims of violent crime. The history, extent and nature of State compensation in the EU can be conveniently interpreted with respect to general differences in common and civil law justice systems, and the general 'place' assigned to victims of crime in each jurisdiction. In this regard, the *partie civile* model has gone unchallenged for too long for its failure to effectively deliver compensation to victims. The rights of the victim in many continental justice systems appear, at least on paper, to afford ready access to civil claims from the offender (Wergens, 1999). But, with little promotion of civil claims in the course of criminal proceedings, and with no to negligible assistance in the recovery of successful awards of compensation, the victim's right to bring a civil claim for compensation appears more as a paper right than a practical reality. State compensation schemes have responded to this glaring difference between the law in theory and practice, with varying degrees of 'success' in terms of what victims actually receive by way of compensation. In comparison, the common law system of State compensation, now based on a tariff scheme, offers, and delivers, large payments to victims of violent crime. In this regard, common law schemes are heavily subscribed to, in the absence of a *partie civile* model, and, in no small part, because of their promotion at the hands of various criminal justice and non-governmental agencies.

State compensation schemes have to offer more than the possibility of compensation. To be a 'success' they have to award funds on a regular and extensive basis to a range of victims. Specialist provisions for certain victim categories, if unaccompanied by general State compensation, leave other victims of violent crime untouched. As the Northern Ireland compensation scheme illustrates, it is not always necessary to offer a dedicated compensation scheme for victims of terrorism, as their victimisation can be encompassed by a comprehensive scheme that acknowledges terrorism as another form of violent crime. The 'place' of specialist compensation schemes for victims of terrorism in the EU has been a

political response, and a limited financial response, to the terrorist activities of different eras in the context of individual Member States. Terrorist activity is both an established activity in the EU, and an activity that is focused on particular political conflicts in a handful of Member States. In this regard, the impact of 9/11 on EU State compensation schemes is marginal given their own experiences with long-established and on-going terrorist conflicts.

Given that the experiences of individual State compensation schemes in the EU are steeped in the socio-legal context of each jurisdiction, it is debatable to what extent the US can ‘learn’ from generalised and targeted schemes that are context specific. However, the ‘success’ or ‘failure’ of EU State compensation schemes can certainly provide US schemes with food for thought if not actual models for the transfer of practice.

For more information on the National Roundtable on Victim Compensation:

National Center for Victims of Crime
2000 M Street, NW, Suite 480
Washington, DC 20036
Tel. 202-467-8700
Web. www.ncvc.org

Attn: Michelle Waul
Email. mwaul@ncvc.org

Suggested citation:

Jo Goodey. 2003. “Compensating Victims of Violent Crime in the European Union with a Special Focus on Victims of Terrorism.” Paper presented at the National Roundtable on Victim Compensation, June 10, 2003. Washington, DC: National Center for Victims of Crime.

References

- Brienen, M. and Hoegen, E. (2000) *Victims of Crime in 22 European Criminal Justice Systems*, Nijmegen: Wolf Publishing.
- Burns, P. (1980) *Criminal Injuries Compensation*, Toronto: Butterworth.
- Fry, M. (1959) Justice for Victims, *Journal of Public Law*, 8, pp.191-194.
- Goodey, J. (2002) 'Compensating Victims of Violent Crime in the European Union: The Case for State Restitution' in B. Williams (ed) *Reparation and Victim-Focused Social Work*, London: Jessica Kingsley, pp.16-33.
- Greer, D. (1996) (ed) *Compensating Crime Victims: A European Survey*, Freiburg im Breisgau: IUSCRIM.
- Maguire, M. and Shapland, J. (1990) 'The "Victims Movement" in Europe' in A.J. Lurigio, W.G. Skogan and R.C. Davies (eds) *Victims of Crime: Problems, Policies and Programs*, London: Sage, pp.205-225.
- Miers, D. (1978) *Responses to Victimisation*, Abingdon: Professional Books.
- Piva, P. (1996) 'Italy' in D. Greer (ed) *Compensating Crime Victims: A European Survey*, Freiburg im Breisgau: IUSCRIM, pp.373-399.
- Shapland, J. (1984) 'Victims, the criminal justice system and compensation', *British Journal of Criminology*, 24.2, pp.131-149.
- Victim Support (1993) *Compensating the Victim of Crime*; report of an independent working party, London: Victim Support.
- Wergens, A. (1999) *Crime Victims in the European Union*, Umeå: The Crime Victim Compensation and Support Authority.