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**MAX PLANCK INSTITUTE  
FOR FOREIGN AND INTERNATIONAL  
CRIMINAL LAW**

**VICTIMS OF TERRORISM POLICIES AND LEGISLATION  
IN EUROPE**

**An Overview on Victim Related Assistance and Support**

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## Foreword

The promotion of the right of victims of crime to compensation has been on the international political agenda since the late 1970s. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the 1983 European Convention on the Compensation of Victims of Violent Crime, and the 1987 Recommendation No. R (87) 21 on the Assistance to Victims and the Prevention of Victimisation were certainly the most influential international instruments and continue to be the most relevant cornerstones in this field. These instruments, however, refer to the situation from a general perspective at most, focusing on victims of all kinds of serious crime. Since the drafting of the European Convention of 1983 and the adoption of the Recommendation of 1987, significant developments have taken place in Europe and worldwide. Numerous new texts have emerged which deal more specifically with particular categories of victims and additional aspects of the protection of and assistance to victims.

As a consequence of the terrorist attacks of 9/11 and the ensuing public awareness of victims of terrorism, such victims now also receive special attention. At their Conference in October, 2003 in Sofia, the European Ministers of Justice invited the Committee of Ministers to adopt new rules where necessary, concerning the improvement of the support to victims of terrorist acts and their families. This matter is currently under review by the Committee of Experts on Terrorism (CODEXTER). In March, 2005, the Committee of Ministers adopted new guidelines on the protection of victims of terrorist acts. It considered that victims directly or indirectly suffering from harm caused by such acts should receive national and international solidarity and support. Under article VII (1), the guidelines provide that

*"victims of terrorist acts should receive fair, appropriate and timely compensation for the damages which they suffered. When compensation is not available from [...] the perpetrators, organizers and sponsors of terrorist acts, the state on the territory of which the terrorist act happened must contribute to the compensation of victims for direct physical or psychological harm, irrespective of their nationality".*

The text sets minimum standards, yet member states can freely adopt services and measures over and above those outlined in the guidelines.

In a more general framework, the Council of Europe has also established a Group of Specialists on the assistance to victims (PC-S-AV), with a view to drafting a new recommendation on the assistance to victims of crimes. This includes, according to the terms of reference on the mandate of the Group, all

aspects of victim compensation. In this context, the Max Planck Institute for Foreign and International Criminal Law was asked to support the work of the Group by elaborating in a report on the current situation of victims of terrorism and the legislation on this matter in all CoE member states.

The report is based on country briefs which have been structured on information concerning specific regulation relating to victims of terrorism and particular regimes established for victims of terrorism. Protection and assistance (including judicial procedure) have been covered as well as compensation regulation and information on national victim support associations and/or services. Where no particular regime exists for victims of terrorism, information is provided as regards the situation and practice in the field of protection and assistance outside the context of the judicial procedure on compensation and support for victims in general. The country related research component was based on five questions set by the Group of Specialists. Due to time restraints, no – or no reliable – information could be obtained from Albania, Latvia, Monaco and San Marino. All other member states are represented in the report.

The report was presented to the Group of Specialists during its second meeting in Strasbourg in May, 2005. The original version is available on the website of the Council of Europe<sup>1</sup>. This brochure presents an updated excerpt of the paper. It provides information on two more member states (Andorra, the Former Yugoslav Republic of Macedonia) and an additional number of notes and references.

The authors would like to thank the many experts, academic colleagues and officials from the responsible ministries in the member states for their valuable support and contribution to this report by providing relevant information on their countries. In addition, the authors would like to express their best wishes to the Group of Specialists on the assistance to victims (PC-S-AV) for a successful outcome. Victims of terrorism deserve the highest solidarity. The establishment of standards for compensation for the loss and harm suffered by victims of terrorism is one of the most important responsibilities of the international community.

Freiburg, October 2005

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<sup>1</sup> The report and other working documents of the Group are available at [www.coe.int/tjc/](http://www.coe.int/tjc/) (>Assistance to victims >Meeting documents >document no. PC-S-AV (2005) 4).

## 1. Introduction

### 1.1 Key Issues

Questions related to the compensation and assistance of victims of terrorist acts must be dealt with from a broad perspective that includes general victim related policies, for example compensation, restitution and the role of the victim in criminal proceedings, policies against (transnational) terrorism, legal and political responses to situations of mass violence or war as well as racist or, more generally, hate violence.

From the 1980s onwards, the crime victim received particular attention in criminal policy and subsequently also in criminal legislation<sup>2</sup>. This led to legislation that was protective as regards possible adverse impacts of criminal proceedings and supportive as regards compensation of material and immaterial losses caused by the victimizing event. National legislation and policies generated amendments of criminal procedural codes and victim support schemes. The Council of Europe and the EU developed standards and instruments supporting the movement for better treatment of crime victims. As of the 1970s, terrorism, then found mostly in the form of national, separatist and political terrorism, started to trouble European countries. The policy response was more or less restricted to tailoring police and criminal procedural laws to the new demands placed on law enforcement in the face of organized violence. This emerging type of crime targeted individual exponents of economy and politics in order to exert pressure on legitimate governments. A few exceptions may be observed with France and Italy introducing specific victims of terrorism legislation after experiencing terrorist violence in the 1970s and 1980s. However, it was only after the attack on the WTC on 9/11 with its devastating consequences for civil society and the extreme toll on human life that more attention has been devoted to the question of how victims of terrorist attacks can be better accommodated. This process has been accelerated by the terrorist acts in Madrid in March 2004 that claimed almost 200 lives. The policies developing since may be compared to such policies adopted in response to the aftermath of mass violence such as state wars or civil wars. The developments may also be considered to be part of a recent trend towards general victim of crime policies that branch out into specialized policies devised to meet the needs of particular groups of victims such as victims of trafficking, victims of sexual violence and abuse or victims of traffic

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<sup>2</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations November 1985; UN General Assembly Resolution 40/34, 1985.

accidents. Yet the phenomenon of terrorist violence and its impact on civil society and individuals also exhibits a close relationship to racist or hate violence and ethnic hatred. The latter may be understood as the little brother of international terrorism, which feeds on the vulnerability of modern societies and seeks to destroy the very basis of social integration, namely trust and social solidarity.

Indeed, solidarity with victims (in terms of individual and victimized states) is regularly mentioned in official statements addressing terrorism and the fight against terrorism.

## **1.2 Terrorism: Legislation after 9/11 and the Victim**

Anti-terrorism legislation that has been drafted and enacted following 9/11 certainly exemplifies clear signs of coordination and convergence<sup>3</sup>. Such coordination and convergence has been pushed by precise demands voiced by the UN, the Security Council as well as other international and supra national bodies. Moreover, anti-terrorism legislation post 9/11 implements a program that developed during the 1980s and 1990s in the context of controlling transnational organized crime, money laundering as well as illegal immigration. The Madrid bombing of March 2004 has once again quickened the pace of actions against terrorism, in particular in Europe and within the framework of the EU. Anti-terrorism legislation is of a cross sectional nature as it is headed towards amending not only criminal law but also telecommunication law, immigration law, police law etc. In criminal law, we find new offence statutes that penalize support of terrorist organizations and the financing of terrorism; in procedural law police powers have been widened while telecommunication providers are now subject to prolonged periods of retaining data. Cooperation between police and intelligence agencies has been facilitated; the emergence of task force approaches that combine police, intelligence agencies, customs, immigration authorities etc. also demonstrates the convergence of policies of prevention and repression. In general, anti-terrorism legislation demonstrates the transformation of the formerly privileged status of politically and ideologically motivated violence into behaviour deemed to be particularly dangerous and therefore eligible for increased penalties and incapacitation. Such transformation can be also understood as the emergence of an enemy type criminal law which is opposed to the version of criminal law which addresses citizens and with that treasures the salience of civil liberties. The focus of

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<sup>3</sup> Albrecht, H.-J.: Antworten der Gesetzgeber auf den 11. September – eine Analyse internationaler Entwicklungen. *Journal für Konflikt- und Gewaltforschung* 4 (2002), pp. 46-76.

terrorism legislation so far has been, and still is, on ways to improve prevention and repression of terrorist acts.

The issue of victims of terrorism, however, did not play a significant role in international and national anti-terrorism policies despite the US Department of State's accounts of global patterns of terrorism clearly showing that civilians bear the main toll of terrorist violence. Up to 90% of deaths linked to terrorist violence worldwide are suffered by the civilian population<sup>4</sup>.

Yet in its resolution 1566 (2004)<sup>5</sup>, the Security Council requests the elaboration of recommendations by a working group to establish a fund to compensate victims of terrorism and their families. Funds should be raised by voluntary contributions and through assets seized and forfeited from terrorists and terrorist groups.

## **2. European Developments in the Field of Support of Victims of Terrorism**

### **2.1 The Council of Europe and Victims of Terrorism**

The Council of Europe addressed the issue of compensation for crime victims, drawing from public funds to effect such as early as the early 1970s, eventually leading to the establishment of the European Convention on the Compensation of Victims of Violent Crimes in 1983<sup>6</sup>. The Convention entered into force in 1988. The aims of the Convention are to introduce and develop schemes for compensation to crime victims and to establish minimum provisions for compensation of material and immaterial losses. The Convention states that compensation shall be paid by the state on whose territory the crime was committed to nationals of the states party to the Convention as well as to nationals of all member states of the Council of Europe who are permanent residents in the state on whose territory the crime was committed. Regarding eligibility, those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence as well as the dependents of persons who have died as a result of such a crime shall be eligible for compensation. This shall also apply if the offender cannot be prosecuted or punished. Compensation shall cover, at the very least, loss of earnings, medical and hospitalization expenses, funeral expenses and, as regards dependants, loss of maintenance. Compensation may be made

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<sup>4</sup> United States Department of State: Global Patterns of Terrorism 2003. Washington, April 2004.

<sup>5</sup> Adopted by the Security Council at its 5053<sup>rd</sup> meeting on 8 October 2004.

<sup>6</sup> ETS No. 116.

subsidiary to compensation obtained by the victim from any other source. The Convention obliges the contracting states to designate a central authority to receive and take action on requests for assistance from any other party in connection with the matters covered by the Convention. The Council of Europe then issued Recommendations on Assistance to Victims of Persecution and the Prevention of Persecution on 17 September 1987.

Recently the Council of Europe drafted guidelines on the Protection of Victims of Terrorist Acts<sup>7</sup>. Herewith, it was recognised that the suffering of victims of terrorist acts deserves national and international solidarity and support. The guidelines underline the states' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist violence, in particular the right to life and thus refers also to the European Convention on Human Rights as well as decisions of the European Court on Human Rights holding that states are under a strict duty to implement policies devised to provide for effective protection of human life<sup>8</sup>. According to the guidelines, states should ensure that persons who have suffered physical or psychological harm as a result of terrorist violence, including under certain circumstances close relatives, can benefit from the services and measures prescribed by these guidelines. A couple of principles are elaborated in the guidelines which reflect fairly well and consistently those principles which have been developed for ordinary victims (of violence). When looking at the approach taken to victims of terrorism, we find the principle that the granting of services and support should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act as well as the principle of respect for the dignity, private and family life of victims of terrorism which should be also protected against intrusive media practices. The importance of emergency assistance is stressed as well as long-term medical, psychological, social and material assistance. Furthermore, the duty of effective investigation of terrorist acts is highlighted, a duty which accords with decisions of the European Court on Human Rights as regards protection of human life<sup>9</sup>. In the case of decisions not to prosecute, it is recommended that states give victims the right to have this decision re-examined. Effective access to the law and to justice for victims of terrorist acts should be provided and the position of victims of terrorist acts adequately recognized in criminal proceedings. Fair, appropriate and timely compensation for the damages is

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<sup>7</sup> Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies.

<sup>8</sup> The guidelines are available on the website of the Council of Europe at [www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Fight\\_against\\_terrorism/2\\_Adopted\\_Texts](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Fight_against_terrorism/2_Adopted_Texts).

<sup>9</sup> European Court on Human Rights 28 March 2000, *Kiliç vs Turkey*; 18 May 2000, *Velikova vs Bulgaria*.

declared not to be affected by national borders. Material compensation should come with support in order to provide for relief as regards other effects of terrorist acts. Protection of the right to privacy and family life against overly intrusive media practices is strongly suggested as is protection of witnesses against risks to life and health that can come with testifying in terrorist trials. The latter evidently refers to organized crime legislation where victim and witness protection has been recognised as an important issue<sup>10</sup>. The guidelines then address the need for information to be delivered to victims of terrorist activities, which – such as the well known information standards of general victim policies – refers to information on criminal proceedings, victim rights and victim support. The guidelines conclude with urging states to establish specific training programs for officials dealing with victims of terrorism.

The victims of terrorism guidelines insofar reflect general standards of delivering support and granting compensation to crime victims. With its focus on protection in criminal proceedings, safeguarding privacy, fair and effective compensation (including advance payments), adequate training of law enforcement staff, those focal concerns are raised which have been dealt with by partisans of crime victims for the last three decades.

## 2.2 European Union

The EU has dealt with victims of crime and victims of terrorism in various Green Papers<sup>11</sup>, declarations, framework decisions issued by the European Council and the European Parliament. The attention paid to victims of crime became visible in a Council Joint Action (97/154/JHA) which aims at combating trafficking in human beings and sexual exploitation of children<sup>12</sup>; in the Vienna Action Plan of the Council and the Commission of 1998 which deals with how to implement with best effects the provisions of the Treaty of Amsterdam on the “area of freedom, security and justice” (pointing in particular to art. 19 and 51(c) thereof)<sup>13</sup>; in the Commission's communication to the Council, the European Parliament and the Economic and Social Committee which carries the title “Crime Victims in the EU Reflections on Standards and Action”<sup>14</sup>; in the resolution of 12 December 2000 on the initiative concerning the Council Framework Decision on the stand-

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<sup>10</sup> Kinzig, J.: Die rechtliche Bewältigung von Erscheinungsformen organisierter Kriminalität. Berlin 2004.

<sup>11</sup> Commission of the European Communities: Green Paper. Compensation to crime victims (presented by the Commission) Brussels, COM(2001) 536 final, 28.9.2001.

<sup>12</sup> OJ L 63E, 4.3.1997, p. 2.

<sup>13</sup> OJ C 19, 23.1.1999, p. 1.

<sup>14</sup> OJ C 59E, 23.2.2001, p. 5.

ing of victims in criminal procedure<sup>15</sup>, as well as in the final Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings<sup>16</sup>. However, the combating of terrorism only first became a focus of the EU in the resolution of the Parliament of 5 September 2001 concerning the role of the EU in combating terrorism<sup>17</sup>, just days before the terror attacks in New York and Washington, followed by the resolution of 6 February 2002<sup>18</sup> on the proposal for a Council Framework Decision on combating terrorism<sup>19</sup> and the actual Council Framework Decision of 13 June 2002<sup>20</sup> with its definition of terrorist offences. When dealing with terrorism, EU statements also recognise that victims of terrorism must be taken care of in order to respond effectively to terrorist goals that aim at destroying social solidarity.

The establishment of an area of freedom, security and justice must also take account of the needs of crime victims in the EU. The Vienna Action Plan<sup>21</sup> of the Council and the Commission, adopted by the Council in 1998, called for addressing the question of victim support by making a comparative survey of victim compensation schemes and assessing the feasibility of taking action within the EU. The Commission presented a Communication<sup>22</sup> on crime victims in 1999, covering not only compensation aspects but also other issues that could be addressed to improve the position of crime victims in the EU. The conclusions of the European Council in Tampere 1999 called for the drawing up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages. It also called for the setting up of national programs to finance supportive measures, and for effective protection of victims. For decades the European Parliament has firmly supported improvements of crime victim compensation schemes. The Council adopted a framework decision<sup>23</sup> on the standing of the victim in criminal proceedings on 15 March 2001. The framework decision, based on title VI of the EU Treaty, includes an obligation for Member States to ensure that crime victims can obtain a decision on compensation from the offender in the course of crimi-

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<sup>15</sup> OJ C 232, 17.8.2001, p.36.

<sup>16</sup> OJ L 82, 22.3.2001, p.1.

<sup>17</sup> OJ C 72E, 21.3.2002, p. 135.

<sup>18</sup> OJ C 153E, 27.6.2002, p. 275.

<sup>19</sup> COM(2001) 521 final, 19.9.2001; see also OJ C 332E, 27.11.2001, p. 300.

<sup>20</sup> OJ L 164, 22.6.2002, p. 3.

<sup>21</sup> OJ C 19, 23.1.1999, p. 1. point 51 (c).

<sup>22</sup> Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee. Crime victims in the European Union – reflexions on standards and actions. COM(1999) 349 final, 14.7.1999.

<sup>23</sup> OJ L 82, 22.3.2001, p. 1.

nal proceedings. An in-depth study<sup>24</sup> of the position of crime victims in the EU covered, among other things, the possibilities for crime victims to receive compensation from the state under the national laws of the Member States. The results of this study have been published as a Green Paper on Compensation of crime victims<sup>25</sup>. Therein, it is stated that recognition of crime victims' needs and comparable legal regulation are required in a common space of free movement, justice and security. Reference was made in particular to the principles of non-discrimination and the right to have a fair hearing as well as decisions by the European Court of Justice that provide for certain basic standards<sup>26</sup>. The study found that current victim compensation rules in principle encompass three groups: direct and indirect victims as well as third parties (victimized through helping the victim or by official interventions aimed at helping the victim). Most systems cover all crime victims independent of nationality and residence, some requiring reciprocal victim support in the case of non-EU citizens. In general a violent and/or intentional crime is required. The type of losses that can be recovered through compensation schemes concern primarily medical expenses and partially also compensation for property losses. Permanent disability is recognised by all member states as a ground for compensation. Quite significant differences can be observed as regards compensation for immaterial damages (pain and suffering). Differences are found also with respect to how the principle of subsidiarity is to be applied. A formal complaint is mostly required to be brought to the competent authorities within a defined, though varying, period of time. Almost all member states allow for advance payments. The basic legitimation for setting up victim compensation legislation throughout the EU is perceived — besides for criminal policy rationales — to be equity and social solidarity which also constitute the basic principles behind the 1983 European Convention on Compensation of Crime Victims. Other Member States connect the need for state compensation schemes to considerations of criminal policy. While it is recognised that the one primarily responsible for compensation should be the offender it is argued everywhere that most crime victims in fact cannot get compensation from those responsible for various reasons. The Green Paper draws from that the conclusion that the function of state compensation schemes lies in providing a safety net for victims and it is then not surprising that the general approach

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<sup>24</sup> Wergens, A.: *Crime victims in the European Union*. Brottsoffermyndigheten, Umeå 2000.

<sup>25</sup> Commission of the European Communities: *Green Paper. Compensation to crime victims* (presented by the Commission) Brussels, COM(2001) 536 final, 28.09.2001.

<sup>26</sup> Case 186/87 *Ian William Cowan v. Trésor public*, 1989, ECR 195; Case of *Rolf Gustafson v. Sweden*, judgment of 27 May, 1997.

adopted optimizes the crime victims' rights to compensation with total lack of regard given to costs and problems associated with such a re-distribution of funds scheme (funds that ultimately are borne by civil society through taxes).

The need to adopt a common EU policy is justified specifically in order to alleviate obstacles faced in cross border situations as well as to streamline information on the eligibility requirements for state compensation, the application process and to the necessary investigation that follows the application. Reference is made to judicial cooperation between the Member States for service of documents and for taking of evidence<sup>27</sup>.

A resolution of the European Parliament<sup>28</sup> welcomes the Green Paper<sup>29</sup> and puts the issue of victim compensation and victim support in such a light as to stress free movement under conditions of security and justice, the heavy toll criminal victimization places on citizens of the EU, the need to recognize indirect victimization and the particular damage caused to victims by terrorism. The need to develop a common EU victim of terrorism policy is grounded on equity, solidarity and a rational crime policy that overcomes differences between the systems of crime victim compensation in the member states.

The Committee on Legal Affairs and the Internal Market for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs has welcomed the Commission's Green Paper on Compensation to crime victims, endorsing the move by declaring that that the EU should adopt binding Community provisions in order to create a common area of justice for citizens who are the victims of crime. The Committee adopted the view that in order to be complete and efficacious, any such compensation must cover both material and non-material damage. To this effect, the Commission requested priority be given to issues relating to time-limits for submission of claims for compensation, procedural guarantees and the introduction of uniform claim forms in all the Member States' languages. Furthermore, the need for minimum requirements for subsidiary application of the state's responsibility was stressed as well as the need to make compensation independent from nationality. Finally, the declaration voiced the opinion that a mutual assistance system must apply to bring an end to the problems crime victims experience in the case of cross border victimization.

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<sup>27</sup> 21 Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, OJ L 160, 30. 6. 2000, p. 37. Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States of the European Union in the taking of evidence in civil and commercial matters, OJ L 174, 27.6.2001, p. 1.

<sup>28</sup> European Parliament resolution on the Commission Green Paper on compensation to crime victims (COM(2001) 536) – C5-0016/2002 – 2002/2022(COS))

<sup>29</sup> OJ C 125, 27.5.2002, p. 31.

In line with the preparatory work, a Council directive regarding compensation to crime victims was adopted 29 April 2004. Primarily, this directive shall ensure that by 1 July 2005, each Member State has a national scheme in place which guarantees fair and appropriate compensation to victims of crime. Moreover, the directive aims at implementing easy access to compensation regardless of where in the EU a person becomes a crime victim. Implementation of this aim shall be facilitated by creating a system accommodating cooperation between national authorities. This system should be operational by 1 January 2006.

The approach emerging — particularly considering the EU statements and decisions — is certainly in agreement with the traditional concept of a welfare state which aims to compensate for the risks faced by individuals in modern societies and to fully compensate for damages resulting from such risks. Yet it goes beyond the conventional welfare approach in that it pushes compensation towards tort law and a full compensation approach that is normally justified only by a perpetrator being individually responsible for an act that causes damage to another person. As such, the approach is hardly consistent with the fact that the welfare systems in all member states are overburdened, or that such systems are already encountering cut backs whilst reassessments take place regarding the extent of state responsibility vis-à-vis the individual. Furthermore, material on problems of fraud and exploitation of such compensation schemes is also thin on the ground.

The statements and declarations consistently refer to solidarity, solidarity with individual victims of terrorist attacks as well as states falling prey to terrorism. In a declaration on Combating Terrorism, the European Council, responding to the Madrid massacre, stresses the need to assist victims of terrorist crimes by way of adopting the Council Directive on compensation for crime victims. The Council goes on to demand the Commission allocate its funds available in the 2004 budget for supporting victims of terrorism. Also mentioned is the need for effective protection of witnesses in terrorist cases and protection against indirect victimization in terms of minority communities that are at risk of falling prey to a backlash after a terrorist attack<sup>30</sup>. The latter in particular should receive thorough attention as the backlash against minority communities is evidently part of terrorist strategies devised to destroy social solidarity and establish a climate of fear, ethnic and religious hate favourable to the spread of violence.

In the EU Guidelines for a Common Approach to Combating Terrorism larger concepts of protection of victims are introduced with demands for the enhance-

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<sup>30</sup> See also Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001, SN 140/01, p. 4.

ment of the capability of Member States to deal with the consequences of a terrorist attack on the civilian population in the area of vulnerable infrastructure.

## **2.3 Experiences of Victim of Terrorism Compensation and Support Outside Europe**

### **2.3.1 Victim of Terrorism Legislation in the United States of America**

Specific victim of terrorism legislation and practice have been developing in the US since the early 1980s. The process is based on the conviction that although victims of terrorism have much in common with other violent crime victims and with disaster victims, they appear to experience higher levels of distress and display different needs, partially due to the magnitude and scope of specific violent events. Specific stress is placed on those elements caused by the cross border or transnational character of both terrorism and victimization, leading to new demands for procedure and organization of victim relief and support schemes. In fact, the US has a rather long history of legislation to the benefit of victims of terrorism. The first law providing federal assistance to victims of terrorism was the Hostage Relief Act of 1980, which was enacted in response to the Iranian hostage crisis. However, the Bill was also enacted in response to the treaty concluded between the US and Iran which contained a provision that barred victims from seeking tort damages in US courts against Iran. The benefits included hostages' loss of income, medical expenses due to captivity, tax exemptions on compensation and payments for educational expenses for a partner or a child. In particular medical compensation was accompanied by a subsidiarity clause. A second piece of legislation concerns the Victims of Terrorism Compensation Act 1986. This act applies to government employees only but is not restricted to a specific terrorist act. In addition to the benefits described above the Act awards each victim US\$50 for each day of captivity. Another law responding to the bombing of PanAm flight 103 provided aid and support to all US citizens victimized by this event (United States Response to Terrorism Affecting Americans Abroad, Title 22, Aviation Security Improvement Act of 1990). The Oklahoma City bombing resulted in the Justice for Victims of Terrorism Act (amending Title 42 of the Antiterrorism and Effective Death Penalty Act). In this Act, federal payments to states, public agencies and NGOs for relief for terrorism victims are provided for, as well as offering immediate crisis response efforts to the victims. The amendment also provided for the right of victims to participate in trial proceeding arising from the Oklahoma City bombing. The Antiterrorism and Effective Death Penalty Act of 1996 also contained a provision requiring state crime

victim compensation programs to include in their compensation programs state residents who are victims of terrorism while outside the United States.

The most recent Bill relates to the 9/11 attacks and their aftermath<sup>31</sup>. The Victims of Terrorism Tax Relief Act provides tax relief to relatives of victims of the September 11 attacks, the Oklahoma City bombing and the anthrax attacks following 9/11. Income tax liability of a deceased victim is waived for both the year of the attack and the previous year by the Act, as well as providing for other tax exemptions. The Air Transportation Safety and System Stabilization Act of 2001 establishes a Victim Compensation Fund which addresses economic and non-economic losses but also seeks in particular to shield airlines from civil litigation<sup>32</sup>. An eligible claimant can receive an immediate advance payment of US\$50,000 in cases involving death or US\$25,000 in cases involving serious injury. The Act authorizes the head of the Compensation Fund to examine economic and non-economic harm suffered in light of individual circumstances. Compensation for non-economic loss is set at US\$100,000 for spouses and each dependent of a deceased victim, in addition to a US\$250,000 lump sum payment awarded to the collective decedents. Other payments and sources of compensation, however, are to be deducted with the exception of tax relief, Social Security benefits, workers compensation benefits and support from charitable donations.

US legislation in the area of victims of terrorism is characterized by responding to specific acts of terrorism. However, US-American law provides also for effective civil legislation which enables victims of terrorism to sue foreign perpetrators in US federal courts and is based on US tort law.

In terms of organization and procedure, the Office for Victims of Crime (OVC) plays a decisive role. In 1996, OVC was given the authority to access the Victims of Crime Act emergency reserve fund of US\$50 million to assist victims of terrorism and mass violence.

There are five types of support available from OVC to respond to terrorism and mass violence: (a) Crisis response grants; (b) consequence management grants; (c) criminal justice support grants; (d) compensation grants; and e) technical assistance/training services.

The Office created the Terrorism and International Victims Unit (TIVU), the task of which is to help victims of terrorism, mass violence, and such international crimes as trafficking of women and children and child abduction. More-

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<sup>31</sup> Peck, R.S.: The Victim Compensation Fund: Born from a Unique Confluence of Events Not Likely to Be Duplicated. *DePaul Law Review* 53(2003), S. 209-30.

<sup>32</sup> Mariani, R.L.: The September 11th Victim Compensation Fund of 2001 and the Protection of the Airline Industry: A Bill for the American People. *Journal of Air Law and Commerce* 57(2002), S. 141-186; the final rules governing the Victim Compensation Fund of 2001 were published on March 6, 2002 (P.L. 107-42).

over, the administration of the international terrorism victims compensation program is entrusted to the unit as is the maintenance of an International Crime Victim Compensation Programme Directory in collaboration with the State Department that links victims abroad to available resources and lists crime victim compensation programs in various foreign countries in an attempt to deal effectively with international terrorism affecting citizens at home and abroad. The Office for Victims of Crime has issued guidelines to provide compensation and assistance to victims of acts of terrorism or mass violence within the United States and assistance to U.S. citizens and government employees who are victims of terrorism and mass violence abroad.

The specific victim of terrorism programs are built on federal and state law — emerging parallel to European developments since the early 1980s — assigning certain responsibilities and duties to agencies involved in investigating and prosecuting crime with respect to crime victims. The rights to be respected and services to be provided concern identifying the victims, providing them with information on the availability of medical, psychological counselling, compensation and restitution, providing information about the status of the criminal investigation and later the prosecution of the criminal case against the suspects, facilitating victim participation in the criminal case through trial attendance, and presenting impact information (Victim Impact Statements) during the sentencing part of the trial.

The US have thus adopted an individualized approach which focuses on specific terrorist attacks. With this, flexibility is adopted as is the possibility to consider various and differing (political and economic) goals when deciding whether, and to what extent, victim of terrorism legislation should be enacted to respond to terrorist attacks. The basic problem then concerns control of discretion and implementation of equal treatment<sup>33</sup>.

The US approach to compensation for victims of terrorism has not only been criticized because of problems of equal treatment. Critique has also been voiced as regards its guiding principles that tend to be rather close to tort law principles, moving away from a support and social welfare approach<sup>34</sup>.

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<sup>33</sup> See for example Shapo, M.S.: Compensation for Victims of Terror: A Specialized Jurisprudence of Injuries. *Indiana Law Review* 36 (2003), pp. 237-249.

<sup>34</sup> Diller, M.: Tort and Social Welfare Principles in the Victim Compensation Fund. *DePaul Law Review* 53 (2003), pp. 719-768.

### 2.3.2 Israel

Israel is certainly a country which has experienced mass violence, terrorism and war in abundance over the last four decades. Insofar, it does not come as a surprise that Israel has also collected vast experiences with legislative and practical efforts to cope with problems of victimization through terrorism and various forms of collective violence. The Israeli legislator has in fact devised comprehensive legislative responses to two of the primary issues arising in the context of compensation for harm caused by terrorism: first, the Victims of Hostile Action (Pensions) Law, 1970 provides compensation for bodily injuries suffered in terrorist attacks, as well as compensation for family members of deceased victims. Second, the Property Tax and Compensation Fund Law, 1961 provides compensation for property damage caused by terrorism<sup>35</sup>. The Israeli system is a permanent compensation system emerging out of the political will that damages caused by war shall be borne by the whole public by way of public funds and not by individuals suffering such damages. This approach was then expanded to cover victims of terrorism. The compensation system is therefore in line with the principle of solidarity and the recognition that general risks such as war, collective violence and terrorism must be borne by the general public. While historically risks stemming from war were considered to be restricted to members of military forces or warring factions, such differences no longer play a role following World War II and subsequent wars which drastically demonstrated that the main toll of losses in human life and property will be borne by civil society and not by the military alone. Terrorism — when drawing a parallel to war — targets and drags random civilians into violence and renders them (and the whole of civil society) involuntary draftees<sup>36</sup> in a kind of war that is different from conventional wars between states and has adopted the characteristics of small or private wars<sup>37</sup>. Israeli law makes no distinction between civilians harmed by war and civilians harmed by terrorism. Both are addressed as suffering from “enemy-inflicted injury” (which encompasses also losses due to “friendly fire”)<sup>38</sup>. As do specific US laws, Israeli law covers Israeli citizens falling prey to terrorism at home and abroad. Foreign nationals (having entered Israeli territory legally) are covered when victimized on Israel territory. Providing evidence is facilitated

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<sup>35</sup> Sommer, H.: Providing Compensation for Harm Caused by Terrorism: Lessons Learned in the Israeli Experience. *Indiana Law Review* 335 (2003).

<sup>36</sup> Sommer, H.: opus cited, 2003.

<sup>37</sup> Münkler, H.: *Die neuen Kriege*. Reinbek 2002; Beck, U.: *Das Schweigen der Wörter. Über Terror und Krieg*. Frankfurt 2002.

<sup>38</sup> Sommer, H.: opus cited, 2003.

through a presumption of a hostile act, given a reasonable basis to assume such act. Benefits drawn from compensation and support schemes are administered by The National Insurance Institute. Compensation includes costs incurred for medical care as well as living stipends while in medical treatment. Financial support is calculated on the basis of the victims' pre-victimization income. Aside from medical expenses, the law compensates for a range of other costs. Family members of victims are treated in the same fashion as family members of military forces who died in the line of duty. In cases where several options for compensation are available, the victim has a choice. The compensation for property loss is also seen as an extension to compensation schemes established for losses due to war. The system applicable to property damage underwent changes from an insurance model to a social support system. The law covers direct and indirect damages to property (excluding, however, those damages that are general consequences of an economy deteriorating after major terrorist attacks). Difficulties may arise out of distinctions to be made between hostile acts and mere acts of violence (or property crime). The applicant has to provide for evidence as regards a hostile motive.

### **3. Legislation on victims (of terrorism) in the Member States of the Council of Europe**

#### **3.1 Andorra**

The national law has no specific provisions, neither in relation to victims of terrorism nor regarding victims in general.

#### **3.2. Armenia**

Specific legislation related to victims of terrorism does not exist either. According to the Armenian Code of Criminal Procedure (Section 20, Art. 154-164) victims of terrorism can apply for compensation of damages caused by a criminal act.

#### **3.3 Austria**

The Austrian system of crime victim compensation does not provide for particular rules or regimes for victims of terrorism. However, the general system in place to provide relief, support and protection for victims of violent crime also covers terrorist acts and their consequences. In addition, Austria has a public

crime victim compensation program, based on the Victim Support Act (VOG)<sup>39</sup> which provides financial compensation to victims of serious (violent) crime who have suffered physical/mental injuries. Family members are eligible for compensation in the case of violence resulting in murder, as are citizens of other EU countries (but only if Austrian citizens are reciprocally covered by the respective state's compensation scheme). There are no statutory maximum limits to compensation. Benefits drawn from the program cover medical expenses, lost income, lost maintenance (in case of relatives of murder victims). As a result of the 2004 amendment to the Pension and Maintenance Act<sup>40</sup>, the costs of psychotherapy will be covered in the future as well. Advance compensation to victims of crime was introduced in 1978 in the Code of Criminal Procedure. Conditions for advance payment are so strict that in practice virtually no use is made of advance benefits. The program is funded through criminal fines and other (public) sources.

The compensation program is administered by the Federal Social Welfare Office (*Bundessozialamt*) which receives applications by victims and reviews the applications.

In terms of NGOs, the "*Weisser Ring*" is the most important victim support organization which is engaged in compensation but also in providing for legal advice and general information.

As regards the position in criminal proceedings, under certain conditions the crime victim has the right to actively participate in criminal proceedings and to be represented by a lawyer (Sec. 50-1 Criminal Procedural Code). Costs for legal representation, however, must be borne by the victim. Criminal procedure amendments of 1987 and 1993 introduced statutory duties of criminal justice agencies to provide for information on victims rights (rights to participate, date and place of trial, compensation) and protective devices for vulnerable witnesses in the form of video transmitted witness interrogation (in particularly for cases of vulnerable victims of sexual crimes and abuse) and the anonymous witness (to be protected against intimidation and violent retaliation). Compensation within the framework of criminal proceedings is dependent on a victim joining criminal proceedings in an active role (as a civil claimant).

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<sup>39</sup> *Verbrechensopfergesetz über die Gewährung von Hilfeleistungen an Opfer von Verbrechen (VOG)* of 9 June 1972, BGBl [official journal] 1972/288.

<sup>40</sup> *Versorgungsrechtsänderungsgesetz 2004 (VRÄG 2004)*, BGBl I 2004/19.

### 3.4 Azerbaijan

Azerbaijan has enacted legislation as regards terrorism which includes compensation for victims of terrorism. According to the Law Against Terrorism of June 18, 1999, social rehabilitation measures are provided for victims of terrorist acts. Social rehabilitation comprises judicial assistance, medical and psychological support and assistance in finding employment and accommodation. The cost for social rehabilitation are borne by the federal budget of the Republic of Azerbaijan.

### 3.5 Belgium

In the Belgium justice system a special program for victims of terrorist acts has not been established. A general statutory crime victim regime applies (Victim of Violent Crime Compensation Act of 1985) which offers compensation to victims of (intentional) violent crime that has been committed on Belgium territory. There are exemptions from eligibility for negligent manslaughter, property crime and traffic offences. Foreign citizens are covered by the program if they are legal residents. The compensation program covers medical expenses, income loss, disability benefits (also provided to relatives taking care of victims of violence or dependent relatives of deceased victims) but does not award advance payments. The program's sources are public (partially criminal fines collected by the state).

As regards NGOs, private victim support groups started to receive public funding from the 1980s onwards. In the Flemish-speaking part of Belgium, the organization "Victim Support Flanders" (*Slachtofferhulp Vlaanderen*) provides support for victims. In the French-speaking region, victim support groups are integrated into the existing services for offenders (*aide sociale aux justiciables*). At the municipal level, police victim units exist through which police are able to provide information and practical aid. Furthermore victims must then be referred by such police units to victim support or social service organizations. Within the prosecutor's offices and the courts 'reception and information services for victims' (*slachtofferonthaal op de parketten en rechtbanken, accueil des victimes dans les tribunaux et parquets*) have been established. Moreover, a National Forum on Victim Policy (*Nationaal Forum voor Slachtofferbeleid*) was founded on 16 June 1994, which has the task of coordinating the community-based victim policies and making recommendations to the Minister of Justice.

A 1998 procedural code amendment demands that victims of crimes must be dealt with with respect and provided with information on victim support and compensation. Victims now have the right to have themselves registered as in-

jured persons which results in the right to be informed on certain aspects of criminal proceedings as well as the right to demand for additional investigation. A 1992 amendment to the Police Act requires that police have to inform crime victims about their rights and available victim support. The Victim of Violence Compensation Act of 1985 was amended in 1997 and 2003. Application procedures have been facilitated and maximum benefits have been increased. Financial compensation is dependent on the victim joining criminal proceedings as a civil claimant and is excluded if the victim receives compensation by the offender or insurance. Compensation covers permanent or temporary disability, immaterial damages, medical expenses, loss of income, and costs stemming from the trial itself. Compensation is finally dependent on the financial situation of the victim.

Privacy protection is mainly achieved through holding the trial in camera. A strict ban on publication implemented by the 1989 Act on Sexual Offences is restricted to the identity of victims of sexual crimes.

### **3.6 Bosnia and Herzegovina**

In Bosnia and Herzegovina no specific legal provisions related to victims of terrorism exist. The general legal rules related to compensation are applicable for victims of terrorism as for victims of crime in general.

When it comes to protection and assistance outside of the context of judicial procedure, it should be noted that in post-war ages the NGO sector has been developing in two main directions. Firstly, due to the 1992-1995 war, the population of Bosnia and Herzegovina has been seriously victimized as a consequence of numerous war crimes. This resulted in direct as well as indirect victims among which men as well as women and children could be found. In order to organize on a local and regional level, very specific NGOs were formed with an almost exclusive focus on coping with traumas from the war. The second direction emerged from democratization processes and a need for fight for the human rights of specific categories of population, such as disabled persons, children, women etc.

However, despite the fact that during the last 10 years Bosnia and Herzegovina experienced some criminal events that were at the time characterized as terrorist attacks on a local scale (i.e. without an international dimension) there is no specific NGO that within its mission statement focuses specially on victims of terrorism. Nevertheless, all kinds of support, counselling etc. are provided for victims of terrorism by the existing NGOs.

Regarding compensational matters, the procedure in Bosnia and Herzegovina is defined in The Laws on Obligations (entity level<sup>41</sup>) and within the Civil Procedure Codes (entity levels) and Criminal Procedure Laws (on both state and entity level).

According to these laws, a victim, or any other authorized (entitled) person, can submit a request for compensation in a criminal or a civil procedure. However, due to the fact that the procedure is clearly defined in the Laws on Obligations, the request will be discussed and decided upon based on the provisions of that law, regardless of whether the request is submitted to a criminal or to a civil court. If the request is submitted to a criminal court, that court can, but does not have to, decide about the compensation request. If the court decides not to discuss the request in the course of criminal proceedings (e.g. because discussing it would unnecessarily prolong the criminal proceedings) the criminal court is obliged to inform the victim that the request can be submitted to a civil court as a civil claim.

The law of Bosnia and Herzegovina provides for compensation with regard to material damage (funeral costs, medical care and other treatments related to medical treatment, and loss of income) as well as non-material damage (fear, physical or psychological pain).

In the case of the death of the victim, compensation can be awarded to the marital partner, the children and parents for psychological pain they suffered; brothers and sisters and the victim's life partner (even if they were not formally married) can apply under the condition that they lived together with the deceased victim in the same household. The same provision applies to the legal successors but only as far as it is clearly stated within a court's decision.

The victim himself will be compensated by the offender. The state, represented by its official institutions and organs, can be obliged to compensate a victim only if victimization is the result of misconduct by the state.

Special funds for compensation that could be used in cases where an offender is not known or where an offender does not have resources to compensate a victim do not exist in Bosnia and Herzegovina.

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<sup>41</sup> Federation of Bosnia and Herzegovina, Republica Serbska and Brcko District of Bosnia and Herzegovina.

### 3.7 Bulgaria

Under Bulgarian criminal legislation no specific regimes concerning victims of terrorism exist. The Code of Criminal Procedure allows for the anonymous witness (Art. 97a) and witness protection programs. The crime victim in general has the right to join a civil law suit against the accused to the criminal proceedings.

Establishing a compensation scheme is evidently seen as resulting in an economic burden too heavy in the face of the poor economic situation of the country. Furthermore, a working group has been established within the Ministry of Justice which deals with adapting legislation to the changing needs with the entry into the EU. The working group will also discuss the victim related EU framework decisions.

### 3.8 Croatia

In 2003 Croatia adopted a Law on the responsibility for Damage caused by Terrorist Acts and Public Demonstrations<sup>42</sup>. This act regulates the responsibility for damages caused by terrorist acts and other acts of violence which is exerted with the aim to seriously disturb public order by intimidating and spreading the feeling of insecurity among the public and during demonstrations or riots in public places. The Republic of Croatia has, in this act, accepted to liability for damages caused by terrorism and public demonstrations on the basis of social solidarity, an equal distribution of a public burden and the principle of fair and prompt compensation. Compensation is not dependent on identification, prosecution or conviction of the offender. Victims eligible for compensation include direct victims of terrorist violence as well as those who suffered losses as a consequence of preventing the violence or helping the victim of violence.

Croatia has enacted legislation aiming at the protection of vulnerable witnesses<sup>43</sup>. The law has implemented a witness protection program designed to counter intimidation and retaliation attached to organized crime and other serious crime (including terrorism). Inclusion in the program is made dependent on the willingness of the witness and an assessment of the specific vulnerability level. Moreover, the criminal procedural act was amended several times in order to allow for protection of vulnerable witnesses and victims during trial proceedings. This includes anonymity of witnesses and testimony through a video link.

Private victim support organizations exist.

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<sup>42</sup> Official Journal no. 117/03.

<sup>43</sup> Witness Protection Act, Official Journal no. 163/03, in force since January 1<sup>st</sup>, 2004.

### 3.9 Cyprus

Cyprus has no specific regulations as regards victims of terrorism. Moreover, a compensation of crime victims scheme is not well developed. Compensation is available within criminal proceedings as a penal sanction and can be imposed by the court. In practice, victims are evidently rarely compensated. Police have no special duties as regards, e.g., informing crime victims. Victims, however, can sue the offender before a civil court. Legal aid provisions do not exist for victims of crime, nor do state compensation schemes exist.

National victim support services are not available in Cyprus.

Particular rules devised to protect the victim during trial proceedings have been enacted as part of conventional criminal procedural provisions that allow, under certain circumstances, for trials to be held in camera.

Witness protection programs have not been introduced until very recently. Protective measures as regards victims are so far restricted to victims of domestic violence.

### 3.10 Czech Republic

The Czech Republic has a statutory crime victim compensation program to provide financial compensation to victims of violent crime. Victims of terrorist acts are not mentioned but they fall under the rules of compensation as far as violent victimization is concerned. Victims of violent crime who have suffered physical injury and family members of murder victims are eligible for benefits awarded according to the Compensation Act Law<sup>44</sup>. Applicants must be either citizens of the Czech Republic or foreigners authorized to stay permanently in the territory of the Czech Republic. Foreign nationals are eligible for compensation only if this is provided for by an international agreement. Following submission of the application and appropriate documentation of the case and the damages resulting from violence the Ministry of Justice must decide on compensation with a period of three months. The law does not set maximum limits to compensation. Medical expenses and loss of maintenance are covered.

Further rights and protection measures for victims of crime are provided in Sec. 43 et seq. of the Code of Criminal Procedure<sup>45</sup>.

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<sup>44</sup> Act no. 209/1997 Coll., on Provision of Financial Aid to Victims of Crimes and on Amendments of Some Other Related Acts.

<sup>45</sup> Act no. 141/1961 Coll., on Proceedings in Courts of Justice, as amended.

In terms of victim support associations, a partner organization of the "*Weisser Ring*", named *Bily Kruh Bezpeci*, operates nationwide.

### 3.11 Denmark

Denmark has not enacted specific legislation as regards compensation of victims of terrorist acts. Denmark, however, has a crime victim compensation program to provide financial compensation to victims of violent crime. Eligible for compensation are victims of crime themselves, dependents of homicide victims, foreign citizens victimized in Denmark and Danish citizens victimized abroad. There is no maximum award limit for compensation which covers medical expenses (including mental health and rehabilitation costs) or income losses due to disability resulting from the crime. Other damage may be compensated but is restricted to some 1000 Danish Kroner. Advance payments are not available. The program is funded through the state budget. Decisions on applications are taken by a special compensation board which is chaired by a judge.

The National Association for the Support of Victims of Violence (LHV) offers assistance and support throughout the country.

### 3.12 Estonia

Estonia has no specific legislation related to victims of terrorism. On 1 February 2004, a (general) Victim Support Act (VSA) was enacted in Estonia which provides for state compensation for victims of crime. According to art. 8 of the VSA, victims of terrorism and their dependants are entitled to protection, assistance and compensation, as are any victim of a violent crime. According to art. 7 of the VSA, compensation shall be paid to Estonian citizens and citizens of the EU or a state which is a party to the European Convention on Compensation of Victims of Violent Crimes, or to a refugee. Compensation under the VSA is restricted to violent acts being committed within the territory of Estonia. It covers expenses for medical treatment, damage arising from incapacity for work, all medical expenses and funeral costs. Furthermore, up to ten sessions of psychological counselling and up to fifteen sessions of psychotherapy are paid.

The amount of compensation shall be 70% of the material damage and shall not exceed a total of 50,000 kroons (ca. 3,200 EUR). The compensation for dependents of a victim who dies as a result of a crime of violence shall receive compensation based on the victim's previous income: 75% of the income in the case of one dependent; 85% in the case of two dependents; 100 % in the case of three or more dependents.

According to the §3 of the VSA, the aim of the public victim support service is to maintain or enhance the coping ability of persons who have fallen victim to negligence, mistreatment or physical, mental or sexual abuse. Victim support services consist of providing counselling and assistance to victims (including indirect victims), aiding communication with state and local government authorities and legal persons, and providing information and necessary aid (e.g., taking the person to psychologist). A network of victim support services was created at the beginning of 2005. Currently, 35 specially trained officials hired in senior police ranks are providing help and information to victims of crime. In addition to this function, the victim support services seek to develop the network to include rescue officials, social and health care workers, child care workers, volunteers etc. The victim support services shall be regional-based. The Ministry of Social Affairs, in co-operation with state and local government authorities and legal persons, is in charge of providing victim support services and supervision of the victim support volunteers as well as providing for the organization of training for such volunteers.

### **3.13 Finland**

Finland has not enacted victim of terrorism compensation legislation. Finland operates a crime victim compensation program which responds to victims of violent crime. Terrorist offences and victimization due to terrorism thus fall under the rule of the Finnish compensation program. Those eligible encompass crime victims, descendents/dependents of deceased victims of violence, foreign nationals victimized in Finland and Finnish citizens victimized abroad.

The program is administered by the Treasury and Social Insurance organizations. There are limits to the amounts awarded under the program. Compensation covers medical expenses, income loss due to disability, maintenance for dependents, items destroyed by the crime itself and legal aid costs (arising out of the attempt to sue the offender). Advance payments can be made under restrictive conditions. The program is funded by tax money.

### **3.14 France**

France has created specific legislation as regards compensation of victims of terrorism. It is justified by a need for “national solidarity” as well as the needs of victims to experience moral support and material compensation. Besides that France has also established a crime victim compensation program to provide financial compensation to victims of general crimes.

For victims of terrorism the 1990 amendment of the terrorism act of 1986 assigns victims of terrorism the status of victims of war, thereby drawing conclusions about the character of national (and international) terrorism<sup>46</sup>. In 1986 the FGTI (*indemnisation intégrale des victimes du terrorisme par un "Fonds de Garantie"*<sup>47</sup>) was founded which allows for compensation of victims of terrorism on the basis of funds collected through property insurance taxes. The Fund succeeds in enforcing the rights of the victim against the perpetrator with compensation awarded to the victim.

Through enactment of a law of 30 December 1986 terrorist acts from 1 January 1985 are also covered by this type of compensation. With the amendment of 23 January 1990 all victims of terrorism are assigned the status of civil war victims (Art. 26). The status is assigned retroactively to all victims of terrorism since 1 January 1982.

Full compensation is awarded in cases of personal injury or death caused by an act of terrorism which occurred either on French territory or, in the case of French nationals, outside France. Victims of crime, dependents of victims, foreign citizens (when the violence occurred in France and the foreigner was legally in France) are eligible for compensation. Compensation (which is not statutorily limited) covers medical expenses, pain and suffering, income losses, rehabilitation, maintenance, vocational training and rehabilitation. Advance payments are possible.

The procedure is dependent on whether the case involves a victim of terrorism or a victim of other crimes.

In the case of a victim of terrorism, the "*Fond de Garantie*" is the addressee of an application which will be handled by way of amicable proceedings. The assignment of a civil victim of war status results in some privileges that are also available for descendents of deceased victims and their partners (Widows of war).

In the case of a victim of ordinary crime, a formal (judicial) procedure is to be followed starting with an application for compensation to the Commission for Compensation of Crime Victims. Almost all crimes may be compensated, however, acts of terrorism, acts committed during hunting and traffic accidents are excluded from this type of procedure. The applicant has to provide evidence of the act itself. The conditions under which property crime can be compensated are restrictive (requiring, e.g. low monthly income etc.).

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<sup>46</sup> Art. 13, art. 14 and art. 18 of Loi n° 90-589 du 6 juillet 1990, Journal Officiel du 11 juillet 1990, in force since January 1<sup>st</sup> 1991.

<sup>47</sup> Loi du 9 septembre 1986.

In 2004, the *Fond de Garantie* had paid approximately €200 million in compensation to victims of crime and terrorism and had recovered some €32 million from perpetrators.

There are NGOs which deal with crime victims. It is in particular *S.O.S. Attentats* which plays an important role. This organization has also the right to participate in trials against terrorists as a civil party (*partie civile*) alongside the victim (art. 2-9 of the Criminal Procedural Code). *S.O.S Attentats* lobbies for an International Compensation Fund for Victims of Terrorism.

### 3.15 Georgia

The national law has no specific provisions, neither in relation to victims of terrorism nor regarding victims in general. Decisions on possible assistance and compensation are made on the merits of each particular case according to the available means.

### 3.16 Germany

Germany has not enacted special legislation on compensation for victims of terrorism. However, a crime victim compensation program providing financial compensation to victims of violent crime exists which also covers victims of violent terrorist offences. The Crime Victims Compensation Act (*Opferentschädigungsgesetz*)<sup>48</sup> was enacted in 1976 and is restricted to crimes of violence. Beneficiaries are victims of violent crime (in case of foreign nationals who have no legal status of residence in Germany, reciprocal agreements or laws are required) and – if victims are deceased – dependent family members. No maximum award limits are established by the Compensation Law which allows for medical expenses, vocational rehabilitation, and loss of income or maintenance. The Compensation Act makes reference to the Federal Maintenance Law (*Bundesversorgungsgesetz*)<sup>49</sup> which has been created to accommodate victims of war (and their dependents). Compensation of victims of violent crime is state funded; advance payments are not available.

There is one serious practical problem which may arise when a compensation claim is filed: the allocation of evidence. Following a general principle within

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<sup>48</sup> *Opferentschädigungsgesetz (OEG)* of 15 May 1976 (BGBl. I [official journal, part I], p. 1181) as amended by the first Amendment Act of 7 January 1985 (BGBl. I, p. 2), the second Amendment Act of 21 July 1993 (BGBl. I, p. 1262) and the Immigrations Act of 30 July 2004 (BGBl. I, p. 1950).

<sup>49</sup> *Bundesversorgungsgesetz* of 20 December 1950, BGBl. I, p.791.

social law, the claimant has to provide all necessary evidence supporting all facts that found the claim. This includes the precondition that the crime has to be committed intentionally. Court practise has shown a certain restrictive tendency to affirm this fact in cases where an offender remained unknown<sup>50</sup>. However, as regards at least terrorist attack cases, it is hardly imaginable that authorities or courts would deny a claim for compensation based on the reason that the intentional character of such a crime cannot be established – even if no particular offender(s) responsible for that crime has been identified.

In principle, state compensation under the Crime Victim Compensation Act is limited to violent offences committed within the German territory (including ships and aircrafts). Damages resulting from a terrorist attack abroad are, therefore, not covered. Following the *Djerba* attack of 2002 which killed and seriously wounded some 20 German citizens, the Federal Government provided support and compensation for the damages sustained by victims and their families, despite there being no statutory duty to do so. The generous intervention of the government may be explained by the publicity such acts of compensation attract and the potential for criticism due to unequal treatment. .

Recent amendments of the criminal procedural code introduced the anonymous witness, protection of vulnerable witnesses (in particular victims of sexual crimes and children) as well as a witness protection program (as part of action taken against transnational organized crime).

A range of some 400-500 NGOs dealing with crime victims operate, most of them small groups of volunteers operating on the regional or local level. The most important nationwide association is the so-called “*Weisser Ring*” which has acquired partner organizations in several other EU countries.

### 3.17 Greece

A general crime victim compensation program does not exist in Greece. Although the country has signed the respective European Convention on the Compensation of Victims of Violent Crimes it has not yet been ratified. Currently, new legislation on the establishment of a general victim compensation program is in the process of being prepared. In deviance of this general situation, victims of terrorism enjoy significant legal protection. Law no. 2928/2001 provides extraordinary measures to keep such victims appearing as witnesses in order to prevent

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<sup>50</sup> For further details on this problem, compare Kilchling, M. & Kaiser, M.: Germany, in: D. Greer (ed.), *Compensating Crime Victims. A European Survey*, Freiburg i. Br. 1996, pp. 255-297.

revenge or intimidation by terrorists. Furthermore, in terms of state compensation, several laws offer a great variety of avenues to support victims. A state fund for victims of terrorism was established as well as a special victim support service for victims of terrorism.

In material terms, Law no. 1897/1990 provides that public officials and employees within the public service are granted a full pension to the extent that they have become completely or partially incapacitated for work due to a terrorist attack (article 1). In the case of resulting death, the entitlement to a pension is transferred to the widow and the children (article 2). Furthermore, other forms of financial support for the victim are guaranteed as well as for the spouse and the children. The state also covers the costs for medical treatment and care. Finally, Article 10 grants certain preferences and privileges for children whose parents have died or have become 100% disabled as a result of a terrorist attack; these include, in particular, registration at a university near their place of residence, and the option to enter the public service as an employee. These options are unique and unparalleled among all Council of Europe member states; they were made retrospectively applicable for all terrorist events following 24 July 1974<sup>51</sup>.

In the subsequent years, the option to join the public service has been further extended. Spouses and children of a Greek citizen who has died or become unable to work due to a terrorist attack have to be employed in the public service should they wish to take up this option. The only precondition is that they have to pass a written test. Access is, in principle, independent from the budgeted and available number of jobs. If no vacant position is available, a suitable position is either to be created<sup>52</sup> or the candidates are to be ranked according to a priority-scale which determines who on the waiting list is to be employed next<sup>53</sup>.

By way of several amendments, the rules concerning pensions were further improved for victims of terrorism. The pension of persons incapable of working is calculated at a base wage of 35 years of employment<sup>54</sup>. Moreover, since 1993, family members who receive a survivors' pension must no longer be financially dependent on the deceased victim of terrorism in order to receive such a pension<sup>55</sup>. Aside from these payments, the state provides compensation for a variety of other types of material damage<sup>56</sup>. Yet, compensation is not limited to material

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<sup>51</sup> Compare art. 32 of Law no. 1968/1991, through which Law no. 1897/1990 was extended accordingly.

<sup>52</sup> Art. 20 s. 21 of Law no. 27/1999.

<sup>53</sup> Art. 9 s. 2 of Law no. 3189/2003.

<sup>54</sup> Law no. 1977/1991.

<sup>55</sup> Art. 10 of Law no. 2163/1993.

<sup>56</sup> Art. 18 of Law 2093/1992.

loss, rather also covers any kind of medical treatment and health care costs. Self-employed and entrepreneur victims of a terrorist crime enjoy social assurance premiums<sup>57</sup> and better conditions if they need credit for the loss caused by the terrorist crime<sup>58</sup>.

General legal protection for witnesses or victims has not been enacted yet. However, some conventional instruments such as, e.g., the option of the victim to participate in criminal proceedings as a civil party, are available. Furthermore, despite there being no operating nationwide victim support services, local initiatives see to victims of domestic violence and victims of terrorism and torture. In addition to these groups, a private association of victims of terrorism named *Thanos Axarlian* exists.

### 3.18 Hungary

To date, Hungary has not enacted formal legislation on the compensation of victims of crime. However, victims of violent crime — including terrorist acts — can apply for compensation granted through a governmental ordinance<sup>59</sup>. It provides for compensation in the case of death or grave injuries. Eligible applicants include the victims themselves as well as relatives in the direct line (plus foster children and foster parents as well as life partners) who have been living in the victim's household. Compensation will be granted to Hungarian citizens as well as EU citizens, immigrants and refugees with a legal status. The compensation, however, is restricted to offences that have been committed later than 7 July 1999 on Hungarian territory. Not enough, the compensation under the present rules underlies the principle of social need support that is granted to persons with low income and minimal assets only. The application has to be filed with the National Fund for Victims of Crime.

The present system facilitating victim compensation is deemed insufficient. In order to improve the legal options for compensation and to comply with the Council of Europe and EU standards, a proposed general victim protection act is under parliamentary scrutiny. Currently, a dispute is taking place between the Minister of Justice of the Minister of Home Affairs concerning the political and legislative responsibility.

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<sup>57</sup> E.g., through art. 15 of Law no. 2042/1992.

<sup>58</sup> Ministerial decision no. 2042120/7361/0025 (1991) of the Ministry of Economics.

<sup>59</sup> Governmental ordinance no. 209/2001 (X.31).

Unlike the field of compensation, protection of victims of crime has been comprehensively regulated in the criminal procedural code<sup>60</sup>, in a special ordinance on witness protection<sup>61</sup> and in an additional law on the participation in criminal proceedings<sup>62</sup>. By this so-called 'triad' of regulation, a complex system of regulations has been enacted which provides for an effective protection of victims and indirect victims during their role as witnesses.

Furthermore, in terms of victim support associations, Hungary has quite a number of NGOs who are providing help for victims of crime. Most of these work on the local level. There is also a nationwide acting national branch of the "*Weisser Ring*" which is named *Fehér Gyűrű* in Hungary.

### 3.19 Iceland

Iceland establish a statutory compensation program for victims of violent crime in 1995, but has no legislation covering victims of terrorism. According to the former program, compensation claims are dealt with by a "Committee on Criminal Damages" (whose members are appointed by the Minister of Justice). The statute restricts compensation to damages suffered from violent crime (including immaterial damage and — to a limited extent — property damage resulting from the offence). Damage to property is compensated if the perpetrator was under the care or supervision of the state at the time when the offence was committed. All types of compensation are capped.

There are no NGOs which provide support for all types of crime victims. Instead, there are specialized services for victims of sexual crimes.

The crime victim can join criminal proceedings as a civil party. Victims of sexual crimes and violent crimes have the right to free legal assistance. However, there are no rules in place providing for general duties to inform, advise etc. victims of crime nor do rules exist that provide for protection of witnesses or victims.

### 3.20 Ireland

Ireland has no specific legislation or programs for victims of terrorism, rather deals with such victims by way of a general compensation scheme for victims of violent crimes. The scheme is not based on a statute and is administered by the

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<sup>60</sup> Art. 81 – 82 and 95-98 of the Code of Criminal Procedure: Be. 1998. évi XIX. törvény.

<sup>61</sup> Governmental ordinance no. 34/1999 (II.26).

<sup>62</sup> Law no. 2001. évi LXXXV. Törvény.

Criminal Injuries Compensation Tribunal (which deals also with compensation of police and prison officers who had been victimized in the line of duty). Victims of violent crime (including foreign nationals) or, — in case of a deceased victim — the dependents, may apply for state compensation. No compensation is paid for pain and suffering. Compensation covers medical expenses, loss of income, loss of maintenance (for dependents), and rehabilitation in case of disability. No maximum limit applies. Advance payments are not available.

Ireland has adopted a (non-statutory) Charter for Victims of Crime which contains standards for the treatment of victims in legal proceedings and crime investigation. In addition, several pieces of legislation introduced protective devices such as CCTV transmission of interrogations of vulnerable witnesses.

### 3.21 Italy

Italy has had special provisions for the compensation of victims of terrorism for several decades. In 1990, a special compensation program for victims of terrorism and organized crime was established by Act no. 302 (*“Norme a favore della vittime del terrorismo e della criminalità organizzata”*)<sup>63</sup> through which earlier decrees and laws issued in the 1970s and 1980s were amended and partly replaced. In 1998<sup>64</sup> and 2000<sup>65</sup>, further provisions were introduced. Compensation covered personal injuries leading to disability that reduce the capacity to work by at least 25% and support for dependents if the act has resulted in the death of the victim.

In 2004, state compensation practice was significantly extended with special regard given to victims of terrorism and related assassinating acts by Act no. 206 (*“Nuove norme in favore della vittime del terrorismo e delle stragi di tale matrice”*)<sup>66</sup>. Nowadays, any degree of disability whatsoever is sufficient for the award of a disability pension. Based on the principle according to which an annual pension of €2,000 is granted per 1% of disability, victims can receive a maximum pension of €200,000 per year<sup>67</sup>; if the victim is disabled by 80% or more, and the victim dies, the pension is transferred to the relatives without reduction. The relatives of the victim receive an additional personal subsidy of €1,033 per month each<sup>68</sup>. Should the victim die, the spouse and any descendent

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<sup>63</sup> Act no. 302 of 20 October 1990, Gazzetta Ufficiale of 25 October, no. 250.

<sup>64</sup> Act no. 407 of 23 November 1998, Gazzetta Ufficiale of 26 November, no. 277.

<sup>65</sup> Art. 82 of Act no. 388 of 23 December 2000, Gazzetta Ufficiale of 29 December, no. 302.

<sup>66</sup> Act no. 206 of 3 August 2004, Gazzetta Ufficiale of 11 August, no. 187.

<sup>67</sup> Art. 5-1 of Act no. 206.

<sup>68</sup> Art. 5-3 of Act no. 206.

who has been living in the victim's household get their additional subsidies for another 2 years<sup>69</sup>. It has to be noted in this context that, according to the general principles, an additional 13<sup>th</sup> regular installment is being remitted per year. Furthermore, the pension is income tax-free for the victim, and the pensions of the relatives are 'tax-neutral', i.e., it is not counted in the calculation of the individual tax rate according to the progressive income tax table.

According to the same underlying principle, victims of terrorism and their relatives are exempt from all major types of further taxes and fees<sup>70</sup>; this includes all taxes for administrative acts (such as stamp duty and transaction tax) and fees for civil, administrative and criminal trials in connection with matters resulting from the original injury. Moreover, medical care (including psychotherapy), medicine and other medical aid and instruments are free of charge.

The decision whether or not to provide compensation is prepared by a medical and a compensation committee; the final decision is made by the Ministry of the Interior. The decision has to be issued no later than 4 months after the application was made<sup>71</sup>. Advance payments can be granted by the Compensation Committee. Such advance payments must not be paid back even if compensation is ultimately not awarded. Foreign nationals are eligible in the case that the crime occurred on Italian territory. Italian nationals may be compensated for terrorist or organized crime that occurred outside the territory. The extended provisions for victims of terrorism introduced by the 2004 Act, however, retrospectively apply only for those terrorist events abroad that took place after 1 January 2003 (which, incidentally, renders improvements non-applicable to victims of the 9/11 attacks of 2001); terrorist events inside Italy are retrospectively included in the extended state compensation from 1961 onwards<sup>72</sup>. Accordingly, earlier determined cases coming under this retrospective scope of application are subject to adjustment according to the new rules.

Italy also provides for particular protection in cases of organized crime. Such measures amount to full blown witness protection programs.

General victim support organizations do not exist on a national level. However, a range of local and regional organizations provide for support and help for victims. A special association named "*Associazione vittime del terrorismo*" caters especially to caring for the interests of victims of terrorism. Apart from their

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<sup>69</sup> Art. 5-4 of Act no. 206.

<sup>70</sup> Art. 8 to 10 of Act no. 206.

<sup>71</sup> Art. 14 of Act no. 206.

<sup>72</sup> Art. 15-1 of Act no. 206.

role as political interest groups, such NGOs may join criminal proceedings in specific cases as civil parties or as simple participants.

### 3.22 Liechtenstein

Liechtenstein has not yet implemented explicit legislation that provides for support, protection or compensation, either for victims of terrorism or for victims of ordinary crime.

Currently, a general victim compensation act is working its way through parliament<sup>73</sup>. It aims at granting, on a subsidiary basis, state compensation to all victims of intentionally committed violent crimes. This would also encompass victims of terrorist acts. The principles of compensation as well as the procedural rules according to which compensation claims shall be handled in the future are rather similar to the system enacted in Switzerland.

NGOs in the area of victim support are restricted to specific victims groups such as victims of domestic violence.

### 3.23 Lithuania

Lithuania has not enacted specific provisions related to victims of terrorism. However, several national laws determine rights and grounds for relief to victims in general. Victims of terrorism have the same legal status as for victims of crime as provided for in the code of criminal procedure. Additionally, article 107 allows for voluntary compensation at any stage of prosecution by the offender (suspect or accused) for any loss of the victim. If the damage is not voluntarily compensated, article 110 provides that the victim can charge the offender with a civil suit for material and non-material harm, be it a direct or an indirect consequence.

Article 118 stipulates that, if the offender is not able to reimburse the damage suffered by the victim, the state can provide for compensation in advance. This provision does not, however, grant an original claim against the state. A new piece of legislation that will provide for independent state compensation for victims of violent crimes is presently under scrutiny in parliament.

In 1996 the Parliament of the Republic of Lithuania (*Seimas*) adopted a law on the protection of officers of justice and parties to criminal investigations and the penal process. This law is applicable to victims and their close relatives. The law

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<sup>73</sup> Explanatory report for the Parliamentary hearing [*Vernehmlassungsbericht*], issued by the Department of Justice on 15 October 2004.

provides for special measures of protection against criminal detriment, including terrorism.

The “Crime Victim Care Association of Lithuania” offers help to all victims of crime. In addition, manifold organizations exist which assist specific groups of victims such as, e.g., women suffering from violence, victims of human trafficking, disabled persons suffering from violence, children suffering from violence and many other kinds of organizations. However, no NGO has as yet been established that would specifically care for victims of terrorism.

### **3.24 Luxembourg**

Luxembourg has established a crime victim compensation program on the basis of the State Compensation Act (SCA) of 12 March 1984. No special program for victims of terrorist acts is operative. However, victims of terrorist acts come under the general crime victim compensation program if conditions of eligibility are fulfilled. Compensation on the basis of this program is restricted by the application of subsidiarity. Compensation can only be obtained if no other sources of compensation are available to the victim. Victims of Luxembourg nationality are eligible, as are dependents of homicide victims. Luxembourg nationals are also eligible if victimized abroad. Maximum limits apply to compensation covering medical expenses, lost income, maintenance for dependents and home aid for disabled victims. Advance payments are possible on application and proof of urgency.

No particular protective rules have been introduced for the benefit of victims or witnesses. A victim support service<sup>74</sup> was introduced by the Act on the Organisation of the Judiciary of June 1994. It has been organised as part of the criminal justice system.

There are several NGOs which support victims of crime, the most important among them the “*Weisser Ring*”.

### **3.25 Macedonia, Former Yugoslav Republic of**

As of summer, 2005, the Former Yugoslav Republic of Macedonia has not enacted specific legislation. A future regulation of the compensation of victims of terrorism will be part of a new law on the prevention of and the fight against terrorism. The draft bill has not yet been filed to parliament.

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<sup>74</sup> Service d'aide aux victimes (SAV).

### 3.26 Malta

Malta has adopted legislation aimed at protecting crime victims. However, there is no specific legislation which deals with victims of terrorism nor is there legislation which allows for state compensation of crime victims<sup>75</sup>. In 1987 a non-statutory crime victim compensation program was introduced in order to provide for assistance to selected groups of victims of violent crime. Eligibility is dependent upon violence resulting from a breakdown of law and order. Illegal force by police and violence suffered in the line of duty constitute other situations which may result in compensation. This evidently does not amount to a full victim compensation program.

There are no national NGOs or NGOs that deal with victims of crime in general. Victim needs are partially addressed by probation services when investigating a case in order to write a pre-sentence report or social inquiry reports. Pre-sentence reports may include a recommendation for court ordered compensation to the crime victim. Specific victim support is delivered by women associations.

Policy debates relate in particular to domestic violence and violence against women. Recently, the problem of victims of trafficking (of women and children) has been the subject of attention.

Sec. 75 – 80 of the Police Act provides for protection of vulnerable or intimidated victims and witnesses through establishing a witness protection program and allowing, under certain conditions, the giving of testimony through a live video link.

### 3.27 Moldova

Moldova has not yet enacted explicit legal provisions that would formally grant assistance or compensation to victims of crime in general or to victims of terrorism in particular. In 2002, however, the parliament passed a resolution that envisages measures concerning the social rehabilitation of victims of terrorist acts<sup>76</sup>. The social rehabilitation comprises judicial assistance, medical and psychological help and assistance with employment and accommodation.

The costs for social rehabilitation of these persons are recovered from the budget of the local authorities or from the federal budget of the Republic.

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<sup>75</sup> Caruana, E.: Compensation and restitution to victims of crime. Unpublished thesis, University of Malta 1989; Saliba, E.: Victims' rights: contemporary approach to criminal justice. Unpublished Thesis, University of Malta 2001.

<sup>76</sup> Resolution on assistance for victims of terrorist acts of 8.7.2002.

### 3.28 Netherlands

There are no specific provisions relating to victims of terrorism in Dutch law. Victims of terrorism, like other victims of crime, are able to take advantage of general victim-oriented provisions that have been implemented in the Penal Code, the Code of Criminal Procedure and a few other laws implemented since the mid-1990s. Most important are the so-called Victim Act *Terwee*<sup>77</sup>, the Legal Aid Act and the State Fund for Victims of Violent Crime, and the Witness Protection Act. Further safeguards for the rights of victims are found under victim guidelines and directives which have a legally binding character, making them not only internally enforceable but also externally enforceable for prosecution authorities. Furthermore, the Legal Aid Act offers victims with limited resources state subsidized legal aid, provided either by so-called legal aid centers or by legal practitioners who are subsidized by contractual agreements with the Ministry of Justice. All these regulations provide a comprehensive system of protection and assistance to all victims of crime. In practice, the compliance of the official institutions with these series of rules and regulations falls under the monitoring power of the National Ombudsman<sup>78</sup>; victims have the option to complain to the Ombudsman if they think that a victim-related rule was not correctly complied with.

Apart from several avenues to obtain compensation directly from an offender through a civil action attached to a criminal trial or by means of a compensation order — these possibilities having also been improved by the aforementioned Act *Terwee* — the Netherlands also operate a scheme for state compensation (*Schadefonds Geweldsmisdrijven*) which was institutionalized as early as in 1975<sup>79</sup>. It offers a 'one-off' payment to everyone who has suffered injuries or serious material and immaterial losses due to an intentional violent crime committed on Dutch territory. Compensation for such a crime committed on Dutch ships or aircrafts is restricted to EU citizens only. Surviving relatives can also apply. The compensation is determined by the Committee of the State Fund according to the principles of reasonableness and fairness. Maximum limits apply; they are set at €22,700 for material loss (including costs caused by injuries such as, e.g.,

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<sup>77</sup> Victim Act *Terwee* of 1 April 1995 (Act to amend the Penal Code, the Code of Criminal Procedure, the Act on the State fund for victims of violent crime and other acts containing provisions for the benefit of victims), accompanied by the so-called Guideline *Terwee* of 22 March 1995.

<sup>78</sup> Compare the Act on the National Ombudsman of 4 February 1981.

<sup>79</sup> Criminal Injuries Compensation Fund Act of 26 June 1975, as amended by the Parliament Act of 24 December 1997, and Decree on the Criminal Injuries Compensation Fund of 3 September 1975, as amended by Decree of 18 April 1994.

medical care, loss of income, household aid, etc., and costs caused by a victim's death) and €9,100 for immaterial damages, e.g. emotional damage such as sorrow, pain and loss of pleasure in life. Provisional payments can be granted. The State Fund pursues the rights of the victim against the offender by way of subrogation.

There are numerous NGOs in the Netherlands that care for particular groups of victims or victims in general. Most of them operate on a local level. Additionally, a nationwide agency specializes in giving aid to victims of crime, '*Slachtofferhulp*'. This agency is partly funded by the government and provides emotional support as well as practical advice and may even provide legal advice.

### 3.29 Norway

Norway has a crime victim compensation program to provide financial compensation to victims of violent or personal crime. The Crime Victim Compensation Act 2001 determines the conditions under which compensation is to be awarded. There are no special rules dealing with victims of terrorist crime. However, the general victim compensation rules also cover victims of terrorism. Persons victimized by violent crime in Norway (and in selected other cases, Norwegian citizens victimized abroad) are to be compensated for medical expenses, income loss and other material damage (including compensation for persistent disability in cases where disability is above 15%). Compensation also includes awards for pain and suffering as well as maintenance for dependents of homicide victims. Compensation is limited to a sum calculated on the basis of the National Insurance Law and furthermore subject to the principle of subsidiarity. The application is made to the county governor whose decision may be appealed at the Compensation Board for Victims of Violent Crime. Advance payments are possible. The program is funded by the State and tax money.

NGOs catering to victims needs are operative in Norway. Although there is as yet no well-established, national victim support movement in Norway, there have been several individual enterprises aiming to help victims cope with their situation. Most of these cater for victims of sexual offences and/or violence. There are 19 Support Centres against Incest (*Støttecenter mot incest*). These centres are self-help groups offering support to women who are victims of incest or who are mother to a child who is a victim of incest, with the exception of one centre which deals exclusively with male victims. In addition to the Support Centres against Incest, there are approximately 50 Crisis Centres (*Krise Senter*) around the country offering support to battered and raped women. The Crisis Centres of-

fer victims and their children temporary housing, counselling and help in contacting the police, legal aid, social welfare, medical services, and so on.

The State Recovery Agency is responsible for collecting any compensation that the injured person has been awarded during a criminal trial.

The Criminal Procedural Act gives the victim (of sexual crimes) the right to have legal counsel (remunerated by the state). When interviewing the victim for the first time, investigating authorities ask whether the victim wishes to claim compensation from the perpetrator and advise the criminal justice system accordingly. Section 456 of the Criminal Procedure Act states that a compensation claim ordered to be paid to a victim takes priority over a criminal fine. The victim may be given protection against intimidation and retaliation by the offender through a protection order or by giving testimony through a video link.

### **3.30 Poland**

The Polish legal system has no specific regulations relating to victims of terrorism, their assistance (including in the judicial procedure) or compensation. There are also no national victim support associations or services (public or NGO), concentrating exclusively on victims of terrorist acts. This may be mainly due to the fact that Poland has practically no experience with the phenomenon of terrorism, neither historically nor presently. Terrorism still remains something quite foreign.

However, there are several associations, mainly of non-governmental character, active in the general area of victim support and victims' rights, independent of the character and type of victimization. It seems that the only type of non-governmental associations and organizations concentrating on specific type of victimization are the various organizations dealing with issues and consequences of domestic violence, sexual exploitation of women and sexual abuse of children. Other victim organizations do not narrow the scope of their activities in any way. These NGOs started to develop during the 1990s as a result of growing dissatisfaction with the position of the victim in criminal procedure, and the way victims are handled by criminal justice agencies. The NGOs concentrate on two main types of activities. Firstly, they lobby for victims rights in the legislative process and promote victims' rights (also through the media); secondly, they engage routinely in counselling and offer help in material cases.

Protection and assistance to victims of crime in Poland takes place primarily within the framework of criminal procedure and the activities of institutions involved in the criminal justice system (police, public prosecution system, courts).

In criminal procedure an injured person<sup>80</sup> enjoys several rights. Firstly, they enjoy the right to participate in proceedings as a party. In this way, an injured person may influence the course of proceedings and attempt to guarantee a satisfactory final outcome from the point of view of the victim's interests. The same applies to court proceedings. The criminal procedural code provides for protection in cases of vulnerable witnesses through a live video link and the anonymous witness. Moreover, during this phase an injured person may participate as a party to the proceeding either as the so called subsidiary prosecutor, or as civil plaintiff, or both. The code of criminal procedure regulates in a detailed way the rights of both subsidiary prosecutor and civil plaintiff, and the extent to which they may influence the course of proceedings. There is, however, no special state system of assistance and support to victims of crime. All state agencies, chiefly all police and prosecutors but also courts, only have the duty to inform victims of all their rights and to assist them in eventual implementation of those rights.

Moreover, there is no state system or fund for compensating victims of crime in Poland. Rather, victims have the possibility to obtain compensation in a criminal process. The first possibility, used rather rarely, is to participate in court proceedings as a civil plaintiff<sup>81</sup>. In such cases, the victim demands the decision on compensation (damages) be made by the court according to the rules of civil responsibility, in its decision of the issue of criminal responsibility. Due to a variety of limitations and evidentiary problems, criminal courts in Poland are never eager to decide issues of civil damages resulting from an offence. They always prefer to leave it to the victims to initiate civil litigation to satisfy their eventual demands. The other possibility to obtain compensation by the victim is provided by art. 46 of the criminal code of 1997. Under this provision, the criminal court, on the motion of the injured person or public prosecutor, may impose on the perpetrator the duty to restore in part or in the whole the damage caused by the offence (which is quite different from a formal civil law claim as civil plaintiff). This provision is applicable only in cases of certain offences stipulated by this provision, primarily offences resulting in death or bodily injury, including road traffic offences. This provision was intended to introduce elements of restorative justice into Polish criminal law. This form of compensation should make it easier for the victim to obtain compensation in criminal process, as certain rules and limitations applicable in case of suing for civil damages do not ap-

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<sup>80</sup> Under article 49 § 1 of the Code of Criminal Procedure of the year 1997 an injured person is a natural or legal person; this goes beyond the traditional victimological definition of a victim which usually is limited to natural persons.

<sup>81</sup> Art 62 - 70 of the Code of Criminal Procedure.

ply here. The measure may be imposed in two forms. It may either accompany penalties and other penal measures, or it may be imposed as a sole penal measure of restorative character. Recent changes in criminal procedure were intended to clarify certain problems regarding application of these measures and to make it easier to use them.

From the point of view of compensating victims, including victims of terrorism, the main issue lies in all these measures only being accessible by way of a criminal procedure. This means that for the victim to enjoy their benefits, the case must be clear (i.e. the perpetrator must be identified), and he/she/they have to be brought to trial and convicted. Without a criminal conviction, it is impossible to issue a decision on victim compensation, neither in form of civil damages nor in form of restoration. Due to the absence of a state system or any other fund for compensating victims, all victims of offences which were not cleared or perpetrators of which were not brought to justice cannot profit from the existing options for compensation. In such cases, the general rules of civil law, insurance law and various disability schemes may apply. However, in this case all regular preconditions must be fulfilled.

Further limitation is created by the definition of an “injured person” in Polish law, meaning that as such, their enforceable rights depend on them being a person whose legal rights were *directly* violated or threatened by an offence. This excludes from making eventual use of these rights those who were only indirectly injured or threatened by an offence. They are not considered as victims according the formal meaning of the term. The only exception applies in case of a victim’s death, after which his/her rights may be enjoyed by close relatives.

All rights of the victims of crime in Poland are to a certain extent codified in a document called “Polish Charter of Victims Rights” (*Polska Karta Praw Ofiar*). This document was created in 1999 and signed by the Minister of Justice. However, it does not per se constitute a source of law in the formal meaning, as it does not have legislative character. It merely gathers in one document all provisions and regulations of the Polish (and international) legal system relevant from the point of view of victim rights. It refers to provisions of both international and domestic law, in the latter case focussing mainly on the applicable penal and civil law. It is relevant predominantly from the point of view of providing information to victims on their rights.

### **3.31 Portugal**

The Portuguese legal system does not provide specific legislation on victims of terrorism. Such victims come under the general rules applicable to victims of all

other types of crimes<sup>82</sup>. These rules include special measures of victim protection<sup>83</sup> which supplement the general standards as provided in most other EU member states. Victims of terrorism may apply through the general crime victim compensation procedures, which in general require applications to be made by way of a civil claim within the criminal proceedings; in some exceptional cases, the claim may be lodged separately, i.e., without an individual offender being prosecuted. In any case, however, it is a pure civil liability claim, which can only be enforced against the respective defendant and his or her assets.

Of greater relevance for victims of terrorism is state compensation which is provided for victims of violent crimes<sup>84</sup>. Under this statute, victims of “violent crimes”, as defined by law, who have failed to enforce their civil compensation award against the respective defendant, may be, under certain criteria, entitled to receive compensation from the Portuguese state. If an individual offender cannot be identified or an identified offender cannot be sued — a situation that is of high relevance, in particular in cases of attacks in the context of international terrorism — state compensation is available as well. The same principle applies if an individual offender has been killed in the course of a crime (i.e. a suicide attack) or subsequently. Only material damages, including income, maintenance or alimony, are covered by the state compensation scheme whereas psychological damages are not awarded. Payments are granted to direct and indirect victims of any nationality if they were victimized on Portuguese territory (including aircrafts and ships); compensation for victimizations abroad can be applied for by Portuguese nationals only. Article 113<sup>o</sup> provides a definition of the different classes of eligible persons and legal criteria concerning indirect victims. Maximum limits apply. The application is to be made to the State Compensation Committee which can also award advance payments. Civil pensions are granted based on civil law principles only. To be eligible for such pensions, permanent or temporary yet incapacitating disability which prevents work for at least 30 days or the death of the victim is required; in the latter case, indirect victims are also eligible.

In addition, victims of terrorism have access to the general benefits conferred by the Portuguese social security system, which provides benefits in cases of,

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<sup>82</sup> See the Portuguese Criminal Code: Decree Law no. 400/82 of 23.09.1982, the Portuguese Criminal Procedure Code: Law no. 5/98 of 25.08.1998.

<sup>83</sup> Witness protection is regulated through Law no. 93/99 of 14.07.1999, Decree Law no. 190/2003 of 22.08.2003.

<sup>84</sup> State compensation for victims of violent crimes: Decree Law no. 423/91 of 30.10.1991, modified through Law no. 136/99 of 28.08.1999 and Decree Law no. 62/2004 of 22.03.2004.

e.g., extreme poverty, homelessness, physical or psychological injuries. In case of emergency, the so-called “Emergency Social Network” provides further help. It has, however, only a limited scope of application. It is further noteworthy that non-Portuguese victims of terrorism, if the general legal criteria are fulfilled, are entitled to seek asylum in Portugal.

An integrated victim protection scheme is available through the nationwide NGO called APAV (“*Associação de Apoio à Vítima*”). The scope of activity of this victim support association is to provide emotional, psychological and legal support to victims of all types of crime, including terrorist victimizations. This entity, although well acknowledged as a public interest prosecution association and with good relations with key institutional players, has no public powers of intervention. Its intervention is limited to consultation, advice and logistical assistance to victims, including indirect victims.

### **3.32 Romania**

Similarly to many other countries, Romania has enacted special legislation on the prevention and combat of terrorism<sup>85</sup>. It provides, however, no specific victim-related matters. Victims of terrorism can benefit from the general rules enacted for the protection, assistance and compensation of victims of serious crime. The relevant provisions are codified in the Witness Protection Act of 2002<sup>86</sup> and in the Victim Protection and Compensation Act of 2004<sup>87</sup>. After having enacted these two pieces of legislation, Romania also signed the European Convention on Compensation of Victims of Violent Crimes in April, 2005.

Under the regime of the Victim Protection and Compensation Act which came into force on 1 January, 2005, victims of terrorism, like victims of other types of serious crimes, can take advantage of the new rules providing for information, psychological counselling, free legal assistance and state compensation<sup>88</sup>.

Protection and assistance are provided on request, but only in connect with some judicial procedure. Psychological counselling is provided through the court services of probation and victim protection for a maximum period of three months for adult victims and up to six months for juvenile victims. Psychological counselling is free of charge to the victims of a itemized catalogue of crimes

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<sup>85</sup> Law no. 535/2004 of 25 November 2004 on the prevention and combat of terrorism, Official Journal no. 1161 of 8 December 2004.

<sup>86</sup> Law no. 682/2002 on witness protection, Official Journal of 28 December 2002.

<sup>87</sup> Law no. 211/2004 of 27 May 2004 on certain measures to ensure the protection of victims of crime, Official Journal no. 505 of 4 June 2004.

<sup>88</sup> Art. 1 of Law 21/2004.

causing serious harm and to the family members of victims of murder<sup>89</sup>. Legal assistance is provided to persons who have been victims of similar crimes and to some indirect victims (spouse, children and dependents who had been supported and cared for by the direct victim) in cases of murder or other offences that resulted in the death of the direct victim<sup>90</sup>.

Financial compensation is granted under the same preconditions as the free legal assistance. It covers only crimes committed in Romanian territory. Eligible to apply are Romanian nationals, foreigners with a legal status and foreigners on the grounds of international conventions.

The Romanian State grants compensation for hospitalisation costs and all other medical expenses, material damage and loss of income. For family members, funeral expenses as well as maintenance and alimony are covered. The compensation of material damage is capped at the value of 10 minimum gross salaries. Advance payments can be granted under certain circumstances; applications have to be rendered within 30 days. The state compensation is, in principle, not subsidiary. It does not depend on the existence of an identified perpetrator. The state is subrogated to probable victim claims against the perpetrator. Furthermore, payments to the victim arising from civil damages by the perpetrator or insurance payments shall be deducted.

All requests have to be addressed to the competent tribunal of second instance of the victim's legal domicile. At each such tribunal, a Service for Probation and Victim Protection has been established which is in charge of all matters regarding information, protection, assistance and counselling. Compensation is awarded and managed by the Crime Victims Financial Compensation Board which also operates within each tribunal.

### **3.33 Russian Federation**

Russia provides for a general system of crime victim compensation through the Law on Property of 1990. Compensation for victims of terrorism is specifically addressed in the Anti-Terrorism Act of 1998<sup>91</sup> which created general rules on compensation but evidently also came under heavy criticism when implemented. According to the 1998 law, the duty to compensate victims of terrorist acts lies with the federal districts where the terrorist act occurred. Security forces responding to terrorist acts and damages resulting from such responses to bystanders or

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<sup>89</sup> Art. 8 of Law 21/2004.

<sup>90</sup> Art. 14 of Law 21/2004.

<sup>91</sup> Law against Terrorism of 25.07.1998.

third parties are exempt from compensation. A demand for compensation has to be filed in the local court which then has to determinate the amount of compensation to be paid. Article 18 of the Anti-Terrorism Act provides for measures for the social rehabilitation of victims of terrorist acts. These measures include judicial assistance, medical and psychological rehabilitation, as well as assistance in (re-) gaining employment and accommodation. The costs for social rehabilitation of these persons are recovered from the federal budget of the Russian Federation or the budget of the regional or local authorities, on which territory the terrorist act took place. In addition, a number of parliamentary resolutions focus on assistance for victims of particular terrorist acts; such resolutions were passed, e.g., with regard to the attacks in Budenovsk (19 June 1995), Dagestan (23 January 1996) and Vladikavkas (22 March 1999).

Court decisions following law suits after the siege of the Moscow musical theatre 'NORTH-EAST' in 2002 held that the city of Moscow was not liable to pay for moral damages (pain and suffering) because solely terrorists themselves could be made liable for such damages and that the compensation offered by the Moscow administration was sufficient. The local courts' decisions were upheld by the Russian Supreme Court in 2004 and ultimately by the Russian Constitutional Court in 2005 which argued that a new law against terrorism currently under review by the *Duma* will change the compensation scheme profoundly in relation to terrorist acts. Claims for compensation (in addition to the compensation sums determined by the Moscow city administration) of foreign nationals were thrown out by local courts.

As a general rule, state compensation is granted in case of death or injury of victims or indirect victims of terrorist acts on a 'one-off' basis only. Cases are decided according to a fix tariff system by which the relatives of a victim who died receive an amount of 500 minimum salaries, persons who become disabled receive compensation equating to 100 minimal salaries (disability of first and second degree) or 50 minimal salaries (disability of the third degree). Victims who suffered serious injuries are compensated by an amount of 30 minimal salaries, and those who were slightly injured, an amount of 15 minimal salaries. Regular pensions solely based on the fact of a terrorist victimization, are not available.

Definite figures can be collated from several cases that came to public attention in recent years. Families of the victims of the two passenger jet crashes of 2004 receive 100,000 Rubles (ca. €2,800) from the federal government. Additional compensation was provided by other federal districts. Seriously and non-seriously injured victims of a terrorist bombing in Moscow in 2004 received 50,000 and 3,000 Rubles respectively on the basis of a decree signed by the Moscow mayor. Survivors of the North-East theatre siege received some US\$2,700 while families or relatives of those who died received approximately

US\$9,500. The state compensation practice according to decisions made over the few last years means that families of deceased victims will receive some 100,000 Rubles (in addition to limited compensation for burial costs and sometimes maintenance payments: a local Moscow court in 2004 awarded a widow of a victim of the theatre siege some 5,700 Rubles in monthly payments; this equates to approximately €160) and those seriously injured some 50,000 Rubles.

There is no nationwide association for victims of crime in general. However, the Ombudsman for Human Rights of the Russian Federation also deals with victim issues. In March, 2003, his office published the first report on the situation of and the protection measures for victims of terrorism and other violent crimes.<sup>92</sup>

There are also several NGOs who focus on special victim groups such as, e.g., female victims of violence or trafficking, for which there are regional centers. In the aftermath of terrorist attacks, loosely organized associations of victims of terrorism emerged which lobbied for fair compensation and for thorough investigation into the state's responsibilities for the damage linked to rescue operations. One of these associations who specifically represent the interests of victims of terrorism is called "NORTH EAST"; it was founded by victims of the fatal terrorist massacre in the musical theatre North East in 2002. A further one was initiated by victims of the *Beslan* school siege of 2004.

### 3.34 Serbia and Montenegro

In the Federal Republic of Serbia and Montenegro, no specific legislation has been enacted so far as providing support, protection or compensation for victims of terrorism. There is also no special legislation in force that deals with victims of crime in general.

However, many victims can profit from a general rule for state compensation that is part of the so-called 'Code of Obligations'<sup>93</sup>. This special type of law which exists similarly in other states which were formerly part of the Yugoslav Federation (compare, e.g., the situation in Croatia or Slovenia) regulates all kinds of public obligations and liabilities. Art. 180 of the Code of Obligations provides that the state is liable for all damage resulting from death, bodily harm or material loss suffered as a consequence of a violent or terrorist act (or any other act in the course of public demonstrations or manifestations). It is a general avenue for state compensation, based on the assumption that the state failed in preventing

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<sup>92</sup> See [www.ombudsmanrf.ru/doc/spdoc.shtml](http://www.ombudsmanrf.ru/doc/spdoc.shtml).

<sup>93</sup> Federal Law Journal SFRJ 29/78, 39/85, 57/89 and SFRJ 31/93; see also the decision of the Constitutional Court of Yugoslavia no. 363/86, published in the Federal Law Journal SFRJ 45/89.

the criminal act. As a consequence of this underlying principle of liability, this type of compensation is limited to damages resulting from events in the respective territories only. Criminal acts outside Serbia and Montenegro are not covered.

### **3.35 Slovak Republic**

A state compensation program does not exist nor does legislation which would grant crime victims the right to state compensation. Specific legislation for victims of terrorist violence is also non-existent. Crime victims who have suffered damage may (under certain circumstances) join criminal proceedings (adhesion trial) and pursue their civil claims.

In 1998 a law on the protection of witnesses<sup>94</sup> came into force which establishes a witness protection program and which foresees testimony during trial given through a closed circuit television link.

A national crime victim association operates. Moreover, local crime victim support groups have been founded which provide advice, assistance and support. Victim Support Slovakia is a national non-governmental organization which supports and assists victims of crime.

### **3.36 Slovenia**

Slovenia has not enacted legislation which would enable crime victims to seek state compensation. Neither do specific legislation or programs for victims of terrorism operate. There are also no general public funds available for compensation of victims of crime.

However, there is a relevant specific provision in the Code of Obligations (*Obligacijski zakonik*), namely, article 156. This provision provides that in the case of damage resulting from death or bodily harm as a consequence of a terrorist act or other act in the course of public demonstrations or manifestations, the liability for that damage lies upon the state or upon other organizations that should have prevented such act from occurring. This only covers crimes committed within the territory of Slovenia.

NGOs that provide services to victims of crime on a general basis have not as yet been established in Slovenia. There exists, however, a Crime Victim Assis-

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<sup>94</sup> Act no. 256 of 8 July 1998 on the protection of the witness and on the modification and amendment of certain laws.

tance Service (*Zavod za vzpodbujanje in razvijanje kvalitete življenja*) named PAPILOT which provides crisis intervention in Ljubljana and other mayor cities.

### 3.37 Spain

In 1995 a law was enacted assigning victims of violence the possibility to apply for state compensation in cases of serious violent offences. Victims of crime are eligible as are dependents of homicide victims and foreign nationals (if reciprocity is guaranteed).

With regard to the threat of terrorism by ETA, victims of terrorism enjoy special attention of the Spanish legislators. As early as in 1979, a state compensation scheme for victims of terrorist crimes was established; compensation is to be awarded for physical and psychological injuries as well as property damage that is the result of crimes committed by an armed gang or terrorist organization. Eligible applicants are direct victims and, in the case of the victim's death, the legal successor(s) or the spouse or life partner and descendents. Second degree successors can be eligible as well. Compensation covers medical expenses and mental health expenses of the victim; psychological and psycho-therapeutic expenses and cost for funerals are covered for indirect victims (family members). Advance payments are able to be made. In addition, financial support is granted for income loss of disabled victims and maintenance for dependents of homicide victims. The payments are based on a fixed tariff system<sup>95</sup>. In case of death, €138,232.78 is granted to the successor(s), the victim him/herself receives €390,657.87 in cases of total invalidity, €96,161.94 in cases of total incapacity to work, €48,080.97 for partial incapacity or €36,060.73 for temporary incapacity. These are so-called 'solidarity' payments which are granted in one lump sum. Pensions based on the ground of permanent invalidity are paid additionally according to the regular pension legislation. Furthermore, for terrorist crimes that occurred after 1 January 1987, extraordinary pensions are being granted that differ from the regular pensions<sup>96</sup>.

Victims of kidnapping or hijacking receive extra support which is granted according to a fixed tariff system as well<sup>97</sup>. The State grants a basic compensation of €12,020.24 for the victimization itself plus an extra €180.30 per day of duration of the crime. The maximum amount is set at €36,060.73. This support pay-

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<sup>95</sup> See the appendix to Law no. 32/1999.

<sup>96</sup> Improvements introduced by Royal Decree no. 1576/1990 of 7 December 1990.

<sup>97</sup> See also the appendix to Law no. 32/1999.

ment is also payable in addition to the other types of compensation or financial support.

All victims of terrorism, their spouses and children are exempt from any administration fees charged by the educational system, including universities. And, similar to the situation in Italy, all payments of compensation and financial support are tax-free.

In principle, state compensation and financial support is granted only for terrorist crimes within the Spanish territory. With regard to the 9/11 attacks in the US, Law no. 32/1999 was amended. It provides that the compensation and support provided by that law can be retrospectively granted to victims of extraterritorial events occurring later than 1 September 2001<sup>98</sup>.

This comprehensive set of national regulations in favour for victims of terrorism is further supplemented by additional regulation enacted by the regional entities<sup>99</sup>.

Along with the 1979 law, a National Commission on Aid and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom was established. Applications for assistance are to be filed with the Ministry of Economy and Finance. The decision on compensation is made after a hearing and the presentation of the report of the governmental Legal Services. The decision of the Ministry of Economics may be appealed at the National Commission for Assistance to Victims (*Comisión Nacional de Ayuda y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual*). In 2004, the position of a High Commissioner for Victims of Terrorism (*Alto Comisionado par alas Víctimas del Terrorismo*) was established; the Commissioner has the duty to coordinate all national, regional and local political and administrative initiatives for victims of terrorism.

In terms of NGOs, several associations for assistance and support of victims and victims of terrorism exist. They are supported by the State Office for Victim Support (*Oficina de Atención a las Víctimas*). The so-called Association of the Victims of Terrorism (*Asociación Víctimas del Terrorismo - AVT*) cares for the interests of these victims. And by the end of 2004, the Association of the Victims of 11 March 2004, (*Asociación Víctimas del 11m*) was established in order to ameliorate the assistance to victims of terrorism. This move was a response to critics who argued that the governmental response was not coordinated and in some aspects also dysfunctional.

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<sup>98</sup> Amendment introduced by Law no. 2/2003 of 12 March 2003.

<sup>99</sup> For more details, see CODEXTER report no. (2004) 15 on the protection and compensation of victims of terrorism, submitted by the Managing Director of the Spanish Foundation for Victims of Terrorism.

### 3.38 Sweden

Sweden has a crime victim compensation program to provide financial compensation to victims of violent or personal crime. State compensation was made available with the Criminal Injuries Compensation Act (*Brottskadslag*) 1978. Victims of crime, dependents of homicide victims, foreign nationals and Swedish nationals victimized abroad may apply for compensation that covers medical expenses (including psychotherapy) and property damages, pain and suffering, lost income in cases of disability, lost maintenance for dependents, rehabilitation measures and other incidental expenses. Compensation for losses due to property crime is limited to offences that are committed by prisoners or other (selected) institutionalized persons. An application is to be sent to the Criminal Victim Compensation and Support Authority which is a central agency. Advance payments are available. The program is funded by tax money.

Selected crime victims have a right to legal counsel. A victim protection order exists as does a victim protection program, however, no special rules have been introduced that would protect victim witnesses in cases of organized or terrorist crime proceedings except conventional rules that, for example, allow for the accused to be ordered out of the courtroom while the witness is interrogated.

A national victim support organization exists in Sweden. The National Victim Support Organization (*Brottsofferjourernas Riksförbund*) was founded in 1988. Other NGOs such as the National Association of Relatives of Homicide Victims care for special victim groups.

### 3.39 Switzerland

Article 124 of the Swiss Federal Constitution demands that victims of violence and sexual crimes must be compensated fairly if such compensation is required. In October 1991, the Federal Law on Crime Victims Assistance was enacted. The law was implemented at the Cantonal (State) level and amended in 2002<sup>100</sup>. Victims of terrorism are not specifically addressed; they are, however, covered by the rules of compensation. The federal law contains general guidelines for crime victim assistance (in terms of counselling, protection during criminal proceedings, and compensation) and requires the establishment of local counselling centers. Crime victims (including dependents of crime victims) may seek compensation and assistance through the counselling center in the canton (state) where the

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<sup>100</sup> Kunz, K.-L., Keller, P.: Die Rechtsprechung zum Opferhilfegesetz in den Jahren 1993 bis 1998. Eine Studie im Auftrag des Bundesamtes für Justiz. Bern 1999.

crime has been committed. Swiss nationals may also apply in cases where they have been victimized abroad and did not receive adequate compensation there. Each state then established guidelines as to the amount and kind of compensation to be made available to victims of crime. According to the law, victims of violence (including sexual offences) may apply for state compensation which covers material damages and, in most serious cases, pain and suffering. Compensation and the amount of compensation for material damages is dependent on the victim's income and subject to the principle of subsidiarity; compensation for pain and suffering is awarded independent of the victim's financial situation.

The Federal Law on Crime Victims Assistance also regulates the protection of victims and witnesses during criminal proceedings. It contains rules that oblige police and prosecution services to inform the victim properly and rules that provide protection for vulnerable victims, in particular child victims, by way of allowing testimony through video links.

The draft Federal Procedural Law contains comprehensive regulations that provide for protection of vulnerable and intimidated witnesses.

Besides a national victim assistance organization with branches in all cantons, there are also NGOs that deal with crime victims on a regional and local level. The most important one is called "*Weisser Ring*" which was founded subsequent to the foundation of the German "*Weisser Ring*".

### **3.40 Turkey**

In the absence of a general scheme for victim compensation, the Turkish Parliament passed a special compensation act for victims of terrorism in 2004<sup>101</sup>. In the course of the same year, the government issued further guidelines which regulate the procedural details<sup>102</sup>. In each of the 81 provinces, a victim compensation committee has been established which is responsible for the compensation procedure. The committee is headed by the Deputy Governor; one of the five additional members is an elected member of the local bar association. Eligible for application are victims or, in case of death, relatives who are inherited. In the latter case, the committee has to meet and to initiate the case within ten days. The nationality of the victim does not play a role. Legal entities are eligible as well.

Based on the information filed by the applicant, it has to determine the material amount of the damage and to make a tangible proposal on the amount of

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<sup>101</sup> Law no. 5233 of 17 July 2004.

<sup>102</sup> Ordinance no. 7955 of 4 October 2004.

compensation. Compensable are any kind of material damage, loss of income and maintenance, loss of use of real estate and farmland, bodily injury, temporal and permanent disability, medical care and funeral costs. In legal terms, the final proposal of the committee has the character of a settlement offer. If the applicant does not agree he can file a complaint to court.

The funds for this new compensation program are borne by the Federal Ministry of the Interior which provides a special budget for this purpose. If the expenses exceed the budget the additional means are recovered by the general budget of the federal government.

### **3.41 Ukraine**

There are no general provisions available that provide for protection or compensation of victims of crime in general.

In 2003, the Ukraine enacted a law against terrorism which also provides measures concerning the social rehabilitation of victims of terrorist acts<sup>103</sup>. According to article 20 of that law, social rehabilitation comprises judicial assistance, medical and psychological help and assistance with employment and accommodation. The costs for social rehabilitation of these persons are recovered from the federal budget of the Ukraine.

### **3.42 United Kingdom**

#### **3.42.1 England/Wales**

In England/Wales the Criminal Injuries Compensation Authority has jurisdiction over compensation for victimization by violent crime. Compensation is footed on a statute that was amended in 2001 and provides for a tariff like system of compensation for criminal injuries. Victims of terrorism are not covered explicitly but they come under, when falling prey to terrorist violence, the compensation law. The state compensation system goes back to the 1960s.

All persons who are victims of a violent crime in England/Wales are eligible. There are restrictions that give discretionary power for excluding for example persons with a criminal record or members of criminal or terrorist organizations.

After the Criminal Injuries Compensation Act went into force in 1995, awards for criminal violence have been based on a system of tariffs. Compensation covers pain and suffering, loss of income (after a period of 28 weeks), costs of care

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<sup>103</sup> Law Against Terrorism of 20 March 2003.

and reasonable funeral expenses. A dependency award, a loss of parental service award or a “fatal injury” award (max. 11,000 GBP) may be claimed by (dependent) relatives of a victim killed in a violent crime. Foreign nationals are to be compensated as are British nationals; however, the latter are not compensated when victimized abroad. Minimum and maximum limits apply to awards as well as tariffs; the minimum is 1,000 the maximum for the same injury is 500,000 GBP. With respect to compensation for injuries, 25 tariff levels are assigned to various types of injuries from a minimum of 1,000 GBP up to 250,000 GBP<sup>104</sup>.

Any compensation paid for the same injury will be deducted from sum awardable according to the Compensation Act.

The Criminal Injuries Compensation Authority will decide on the application. The decision may be reviewed by the Authority and — if reviewing does not lead to the expected result — may be appealed at the Criminal Injuries Compensation Appeals Panel. The compensation scheme has developed in an important field of law suits. In 2004, 4,434 appeal cases were received by the Appeals Panel while approximately 5,000 appeal cases were pending<sup>105</sup>. Specialized law services have emerged with a focus on compensation<sup>106</sup>. Total compensation paid per year goes beyond 200 million GBP.

In 2004, the Domestic Violence Crime and Victims Act went into force. According to that new law, the Secretary of State must appoint a Commissioner for Victims and Witnesses whose task is to promote the interests of victims and witnesses. The Secretary of State must also appoint members to a Victims’ Advisory Panel. The law then provides for the creation of a Victims’ Code of Practice<sup>107</sup>, which currently is in a consultation process and will describe precisely the services which victims must receive from each criminal justice organization.

As regards compensation for damage that results from other crime, there are no other compensation schemes. However, in the UK a well established system of compensation orders (which is an element within the system of criminal sanctions) exists which is used extensively and provides for compensation for all types of crime by the perpetrator of the offence.

English procedural law provides for protection of witnesses (and victims). Interrogation by way of CCTV and other protective devices is available as is the anonymous witness (restricted to cases of threats to the life of the witness).

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<sup>104</sup> The Criminal Injuries Compensation Scheme 2001.

<sup>105</sup> Criminal injuries compensation appeals panel eighth annual report and accounts for the year ended 31 March 2004.

<sup>106</sup> See, e.g., [www.criminal-injuries.co.uk](http://www.criminal-injuries.co.uk).

<sup>107</sup> Minister of State for the Criminal Justice System: Victims’ Code of Practice. Consultation. London, March 2005.

Various NGOs exist that cater to crime victims at large or specific groups of victims. Support offered ranges from lobbying, initiating new programs, giving advice and accompanying victims or witnesses during the trial.

### 3.42.2 Northern Ireland

For Northern Ireland, a system of compensation was established with the Criminal Injuries Compensation Act 1995. However, the system differs in some aspects from the one established in England/Wales and Scotland. The Criminal Injuries (Compensation) (NI) Order 1988, for example, excludes those who had been at any stage "engaged in the commission, preparation or instigation of acts of terrorism at any time whatsoever". In 2001, a commission presented a report on the criminal injury compensation scheme<sup>108</sup>. The commission advised to introduce into the Northern Ireland compensation system a "bereavement support payment" and wider recognition of psychological injuries. Furthermore it recommended to exclude considering a criminal record of the victim when deciding on an application and to abolish total exclusion of victims that had been involved in acts of terrorism<sup>109</sup>.

A Compensation Statute went into force in 2002 (No. 796 (NI.1)) which established the Northern Ireland Criminal Injuries Compensation Scheme. It provides for a standard amount of compensation, determined by reference to the nature of the injury and covers also loss of earnings; a bereavement support payment can be awarded to survivors of homicide victims. Excluded remain those who are, or were, members of unlawful associations or those who were at some stage involved in acts of terrorism<sup>110</sup>.

For Northern Ireland specific victims of terrorism compensation legislation was introduced with the Terrorism Act 2000 which reformed and extended existing legislation to counter terrorism in the United Kingdom. Part VII and Schedules 10-13 of the Act relate specifically to Northern Ireland. Schedule 12 allows for compensation for damage to property to be claimed from the Secretary of State in cases where counter terrorism activities have led to property damage. The 2000 Terrorism Act covers property which was taken, occupied, destroyed, or damaged, or any other private property rights which are interfered with as a

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<sup>108</sup> Ad Hoc Committee: Report on the Proposal for a Draft Criminal Injuries Compensation (NI) Order 2001.

<sup>109</sup> Ad Hoc Committee: Report on the Proposal for a Draft Criminal Injuries Compensation (NI) Order 2001.

<sup>110</sup> For details see The Compensation Agency: Annual Report and Accounts 2001-2002.

consequence of action taken under Part VII of the Act. However, restrictions apply which include those established for criminal injury compensation.

The Northern Ireland Peace Agreement reached in the multi-party negotiations mentions victims of violence explicitly and stresses the importance to provide support for victims of (terrorist) violence. The Peace Agreement states that: “The provision of services that are supportive and sensitive to the needs of victims will also be a critical element and that support will need to be channelled through both statutory and community-based voluntary organizations facilitating locally-based self-help and support networks. This will require the allocation of sufficient resources, including statutory funding as necessary, to meet the needs of victims and to provide for community-based support programmes”<sup>111</sup>.

NGOs exist that tend to crime victims’ needs, among them those with a focus to victims of terrorism.

### **3.42.3 Scotland**

Scotland has adopted legislation, covering also England/Wales, that allows for compensation of crime victims; yet, terrorist violence and victims of terrorism are not dealt with separately in Scotland. Victims of terrorism fall, however, under the general compensation scheme. The Criminal Injuries Compensation Act 1995 was passed on 12 November 1995. State compensation for victims of violent crime is arranged on the level of the United Kingdom. From 1964 until 1990, compensation was awarded by the Criminal Injuries Compensation Board on an *ex gratia* basis and on the basis of common law tort principles. Under the new Compensation Act, a victim of a violent crime — as was elaborated earlier — can be compensated for personal pain and suffering, loss of earnings, and costs of care. Injuries and losses resulting from domestic violence are covered. However, restrictions do apply. Claims amounting to less than 1,000 GBP are not accepted. The tariff scheme sets a maximum of 500,000 GBP.

Scottish criminal law allows for a compensation order to the benefit of the victim of crime.

Scottish criminal procedural law allows for the protection of vulnerable witnesses, in particular child victims by way of introducing testimony through a closed circuit television link. Police operate a witness protection program.

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<sup>111</sup> For a report on victims of terrorism needs see also Bloomfield, K.: Report of the Northern Ireland Victims Commissioner. April 1998.

As regards the victim and mass media, a statutory offence is established with the publicizing of the name of a victim of a sexual offence.

Recent law amendments to the advantage of victims concern the Criminal Justice (Scotland) Act 2003 which improved the anonymity of children in Children's Hearings; the Vulnerable Witnesses (Scotland) Act 2004 which allows child and adult vulnerable witnesses to benefit from a number of special measures; and the Criminal Procedure (Amendment) (Scotland) Act 2004 which gives witness more certainty about when they will need to give evidence in court.

The Scottish Strategy for Victims, launched in January 2001, set out in clear terms the action needed to fulfil that promise. A progress report of 2004 provides for detailed insight into Scottish policies of victim support<sup>112</sup>.

There are several NGOs that provide support to victims of crime. Victim Support Scotland is a national organization.

## **4. Summary and Conclusions**

### **4.1 What is Particular in the Compensation of Victims of Terrorism?**

Large scale terrorist violence and its consequences for victims in the last decades make for some lessons about the particulars that must be considered when discussing whether victims of terrorist violence should be dealt with separately and how compensation of victims of terrorism should be regulated.

Research has shown that victims of violent crime experience a wide range of needs – physical, financial, emotional, and legal – which include also long-term mental health services for posttraumatic responses to the criminal event. Yet, in general, victims of terrorism are not different as regards the impact of violence and the needs following the victimizing event when comparing them to victims of serious (individual) violence. The impact of terrorist acts creates a sense of vulnerability, trauma, disruption of everyday life, destruction of the future and financial problems that come with losing parents, being disabled etc. This kind of impact is comparable to that of ordinary violence. It is arguable whether compensation of victims of terrorism is needed to prevent a lack of compensation leading to a growth of fear of terrorist violence thereby contributing significantly to the achievement of terrorist goals<sup>113</sup>. There are differences; yet, such differ-

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<sup>112</sup> Scottish Executive: Scottish Strategy for Victims. Progress Report 2004.

<sup>113</sup> Sommer, H.: Providing Compensation for Harm Caused by Terrorism: Lessons Learned in the Israeli Experience. *Indiana Law Review* 335 (2003), pp. 335-365, p. 364.

ences are located in the areas of planning, organization and co-ordination of the response to victimization as the US experiences demonstrate<sup>114</sup>. Such differences will also depend on the type of administrative system that is in place to respond in particular to situations of mass victimization. The preference of terrorists for soft and symbolic targets and the aim to provoke maximum public attention will most likely lead to many casualties (caused by only a small number of violent acts) and will also result in the need to accommodate more victims of foreign nationalities (as became visible in the 9/11 attacks or in the Moscow musical theatre siege). This calls for systems that are capable of delivering a maximum of integrated assistance in a short period of time and avoiding problems of delivering support and assistance across national borders, regulated by differing systems of support and compensation<sup>115</sup>.

The victim related responses to the 9/11 attacks have been summarized as indicating that it is of utmost importance to provide for emergency training for staff involved in victim support and assistance, to integrate compensation and assistance personnel in emergency centers, to integrate compensation and mental health with legal assistance and support with financial and daily concerns of victims and to prepare for a high volume of claimants to be dealt with within a short period of time<sup>116</sup>.

What is creating differences between victims of ordinary violence and victims of terrorism concerns the particular attention terrorist acts draw upon themselves in the media and in the political system. This, of course is feeding the perception that there is inequality in the response to ordinary violence when comparing such approaches to the attention received by victims of terrorist violence. Another outcome could be symbolic (and sometimes pathetic) legislation which has as its main goal the expression of the state's capacity to act in the face of dramatic threats to the safety of its citizens.

When looking at the reasons given for compensation of victims of ordinary violence and victims of terrorist violence we find the same type of legitimation. The basic ground supporting the provision of state compensation and assistance to victims of violence and victims of terrorism is seen in the need to express social solidarity and to compensate for risks the state could not prevent from turning into damage and injury. But, there are competing models of victim compensation as the survey has shown.

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<sup>114</sup> U.S. Department of Justice Office of Justice Programs: Responding to Terrorism Victims: Oklahoma City and Beyond. Washington, October 2000.

<sup>115</sup> US Department of Justice: New Directions from the Field: Victims Rights and Services for the 21<sup>st</sup> Century. Washington 1998.

<sup>116</sup> Gonzales, A.R., Henke, T.A., Gillis, J.W.: Responding to September 11 Victims: Lessons Learned from the States; [www.ovcttac.org](http://www.ovcttac.org).

## 4.2 Varying Models and Practices of Compensation of Victims of Violence and Victims of Terrorism

Member States of the Council of Europe legislation in the area of victim of violence compensation can be roughly divided into three groups:

- States that have enacted specific victim of terrorism legislation and specific programs. Such specific legislation is modelled on the precursor of compensating military and civil victims of war. The German law on compensating victims of violence continuously refers to a structure of compensation which is derived from a statute that organizes support for losses caused by war. With the reference to war, an analogy is created between victimization through terrorist acts and victimization through war. This becomes evident, for example, when civil victims of terrorist violence are conceptualized as “soldiers” drawn involuntarily into a violent conflict between terrorist groups and the state<sup>117</sup>. The analogy is also driven by the understanding of modern terrorism as small or private wars (and of course by declaring war on terrorism). Specific victims of terrorism legislation was found in France, Italy, Greece, Spain, Turkey and Russia. The outcomes of the systems are evidently quite different. While, e.g., France and Spain have set up separate administrative bodies of victim of terrorism support, Russia responds through ordinary courts assessing applications on the basis of rules that obviously leave much discretion in deciding on whom and what to compensate. Most of the countries that have created specific victims of terrorism legislation have suffered under extended periods of terrorist attacks during the last forty years, attacks which had or have either separatist or ideologist, but mostly local, roots.
- States that have elaborated crime victim compensation and protection programs which also cover victims of terrorism, but do not mention victims of terrorism specifically.
- And finally, states that have, until now, no or only very limited legislation in the area of compensation of victims of crime and/or have, due to various reasons, not implemented compensation laws or victim assistance and support schemes. These reasons are found in restricted public funds that can be made available for victim compensation and/or the adop-

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<sup>117</sup> Sommer, H.: Providing Compensation for Harm Caused by Terrorism: Lessons Learned in the Israeli Experience. *Indiana Law Review* 335 (2003), pp. 335-365.

tion of the view that other areas of social policy require a higher priority when deciding on where public investments should be made.

The compensation legislation States can then be subdivided into models that;-

- tend to provide full compensation (in particular for pain and suffering and with that adopt tort law as a basic approach),
- find a basic legitimation in a social welfare approach which responds to a financial crisis and special psychological and other support needs as a consequence of violence (or other damaging behaviour), is subject fully to the principle of subsidiarity and prevents the state and society from stepping in to replace an offender who is either not identified, dead or financially not capable to compensate fully the victim, i.e., situations that are very likely in particular in cases of international terrorism.

Further differences can be identified with regard to the extent to which, and the circumstances under which, victims are being subsidized. On the one hand, there are states which grant compensation on the basis of '*one-off*' payments which more or less are of a symbolic character only, whereas some states, on the other hand, provide for regular monthly or annual payments. The most significant example for a well endowed regular subsidy system can be found in Italy, where victims and their relatives receive the highest payments in terms of pensions and further additional subsidies. Greece provides for another remarkable particularity: although the level of direct financial payments granted is much lower there, family members, in particular descendants of victims who were a member of the public service receive a kind of 'remuneration in kind' in terms of priority access to the public service. With regard to the widespread public service in the country, such an effective guarantee for employment in this sector is of high value, both in practical and financial terms. Further added value comes from the fact that in countries such as Italy, Greece and Spain the beneficiaries of compensation enjoy partial reduction or even total exemption from income tax and/or other administrative fees.

When adopting a principled approach it seems clear that a full compensation model (following civil tort law) cannot be justified. The full compensation model, developed in the US and finding some support in Europe, is based on the concept of punitive damages and with that, on blame. Such an approach puts pressure on social solidarity because of evident problems of unequal treatment rather than adding to social integration, as the US example today demonstrates clearly. The Moscow law suits following the theater siege and the (unsuccessful) claims for millions of US dollars in compensation in a country where the average

monthly income does not exceed US\$200 demonstrate the type of problems that come with expectations and promises of broad and full compensation.

Convincing arguments speak in favour of adopting a statutory basis for a general compensation system for victims of violence instead of adopting an event-based compensation model that responds to specific acts of terrorism (or mass violence). Although event-based compensation is flexible, it is at the same time generating inequality and tends to be influenced by varying political and economic objectives.

Variation can be observed in the extent to which NGOs have been established for tending to the needs of victims. This is, however, not surprising because such variation evidently follows differences in the status of private participation in community related tasks.

Protection of victims and witnesses during criminal proceedings and during trial was put rather high on legislators' agendas when transnational, organized crime emerged as an eminent criminal problem in the 1990s and sexual abuse, in particular child victims of sexual abuse, fuelled demands to reduce secondary traumatization by way of providing for introduction of evidence through video tapes or live video links. In many European countries it is now victims of human trafficking that receive attention in this regard<sup>118</sup>. Victims of terrorism, however, fall under the rules that have been enacted to protect intimidated victims or victims under the threat of violent revenge. Witness protection schemes vary also, in particular as regards the type of crime victims that are eligible for protective measures.

### 4.3 Conclusions

Issues to be considered when trying to elaborate on a legitimate and just scheme of compensating victims of terrorism certainly include the problem of rare events. It is clear that full blown terrorist attacks with scores of victims will remain rare events in the core of Europe in the future. An exception is the Russian Federation where the pace of terrorist attacks will continue to be determined by the armed conflict in Chechenia.

In addition to this exceptional character of terrorist acts in Europe, it has to be taken into consideration that a criminal trial against individual offenders who are responsible for a certain terrorist attack will remain the exception rather than the rule. As a consequence, an effective compensation system that allows for a

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<sup>118</sup> See, e.g., Council of Europe, Commissioner for Human Rights, Berlin Declaration as of November 2004.

timely response must be implemented outside the criminal justice system. Those systems in which victims are being obliged to seek restitution from individual offenders in a criminal trial — which is the only option that is available in quite a number of countries surveyed — can therefore not be deemed appropriate for the special situation victims of terrorism are confronted with.

Furthermore, it seems reasonable to suggest to make compensation of victims of terrorism part of general victim compensation legislation and to abstain from developing a support and compensation scheme exclusively for terrorist victimization.

The comparison with the system implemented in Israel has shown that a relaxation in evidence requirements can bring significant improvement for victims of terrorism in a procedural perspective. In clear deviation from the regular standards as currently provided in most European jurisdictions, victims of terrorism should be relieved from providing evidence for the offence-related factual preconditions required for claiming state compensation. It should, in particular, not be upon the victim to prove the intentional character of a terrorist attack.

As regards emergency relief and general support and assistance, it seems preferable to make coordination of support and assistance, emergency relief etc. part of general civil and public disaster response schemes that are in place in most of European countries.

Next, indirect victimization in terms of minority communities that are at risk of falling prey to a backlash after a terrorist attack should be made part of response plans. A significant backlash against minority communities is clearly part of terrorist strategies devised to destroy social solidarity and establish a climate of fear, ethnic and religious hate favorable to the spread of violence.

The compensation of victims of violence should have a statutory basis. Event based compensation and ad hoc distribution of compensation and assistance does not meet the requirements set by principles of predictability and equal treatment.

Compensation of victims of violent crime is justified by reasons of social solidarity which in turn justifies a social welfare approach which makes the type and the amount of compensation dependent on the financial needs that are caused by the violence.

What can be learned from the US model is the general idea to link asset confiscation policies and victim compensation by allotting confiscated assets from terrorists and terrorist groups for the subsidy of NGOs and for public funds designated for the support or financial compensation of victims of violence in general and/or victims of terrorism in particular. The UN is a regular promoter of this idea as well.

Variation in legislation and practices in the area of victim compensation is extensive in Europe. Possible improvements would include the development of good practices in both victim compensation, NGO based victim support and witness (victim) protection based on evaluation of systems.