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International Summaries

A Series of Selected Translations in Law Enforcement and Criminal Justice

National Institute of Justice /NCJRS
NCJ 116754

From Finland

Role of the Victim of Crime in European Criminal Justice Systems: A Cross-National Study

Although not binding on participating states, United Nations and Council of Europe declarations help clarify role of Europe's crime victims

By Matti Joutsen

This study focused on the status of the crime victim in 15 representative European countries, primarily from the viewpoint of criminal law and policy.

Issues examined included (1) how citizen crime prevention can be encouraged, (2) definition of "crime victim," (3) victim rights and responsibilities, (4) victims' chance of obtaining compensation, (5) victim alternatives to the criminal justice system, and (6) significance of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power as well as the Council of Europe Recommendation No. R(85) 11.

Framework for the study was the flow of a case through the criminal justice system—starting with efforts to avoid or prevent crime, the crime itself and its entry into the system, and criminal proceedings—in which a victim may play either an active or passive role. Further, criminal justice systems may encourage victim activity or passivity at different stages of case processing.

Summarized from *The Role of the Victim of Crime in European Criminal Justice Systems: A Cross-National Study of the Role of the Victim* (in English), by Matti Joutsen, with permission of the Helsinki Institute for Crime Prevention and Control, Affiliated with the United Nations (HEUNI), Helsinki, Finland, 1987. 368 pp. NCJ 105139. Summary published May 1989.

History and ideology

The development of criminal law and the victim's role can be traced in the evolution from community law to state law. In community law, the victim was the central actor in seeking redress for harm from an offender. Under state law, however, the offense is considered an injury to society as a whole, and the state is responsible for prosecution, court action, and sanctions.

In Europe, the growing role of the state and the diminishing role of the crime victim in having grievances redressed had become evident in criminal proceedings by the 1500's. Informal restitution proceedings replaced violent retaliation by victims; later, the proceeding became more formal and punishment replaced restitution as a primary goal. The church further encouraged the state role in crime control, emphasizing institutionalized mechanisms of conflict resolution.

Significant vestiges of community law remain. The victim still has some state support in seeking compensation, though usually through civil process. Some countries permit victims to initiate proceedings in certain cases, and because state authorities in most cases rely on victims to report crime, victims control what cases enter the system.

Victimology emerged gradually as a science beginning with scattered articles and papers in the 1940's, and as the interests of researchers, activists, and public officials converged in the 1960's and 1970's. As a result of different ideologies, the victim movement has taken varied directions in European countries. These systems' differing treatments of victims spring from four contrasting beliefs:

Caring, the idea that the community should help ease the victim's psychological trauma and financial need;

Rehabilitation, that the offender may be reintegrated into society through restitution and mediation;

Retribution, calling for punishment in proportion to the harm suffered; and

Minimalist theory, which calls for the victim to take a larger role in redressing his or her harm and the criminal justice system a correspondingly lesser role.

In none of these countries has the victim movement in Europe significantly supplanted the policymakers' emphasis on the offender: that the victim's role must not jeopardize the offender's due process rights.

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Starting with Marvin Wolfgang's (1967) reference to "victim precipitation" in regard to Philadelphia homicides, both researchers and lawmakers have differentiated between the possible wide range of degrees of victim involvement in a crime, but all existing state compensation schemes for European crime victims provide that compensation or restitution may be reduced if it is found that the victim in any way contributed to the crime—even by contributory negligence.

Similarly, victim involvement can result in the lessening of charges or penalty against the perpetrator of a crime. Such provisions exist, for example, in the homicide laws of both East and West Germany, Hungary, Poland, the U.S.S.R., and the United Kingdom.

International policy and crime victims

The United Nations in 1985 drafted and adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The declaration provides guidelines to ensure victim access to justice and fair treatment, restitution, compensation, and social assistance.

The 21-nation Council of Europe has had considerable theoretical and practical importance in the development of criminal policy in Western Europe. Similarly to the U.N. Declaration, the Council adopted, also in 1985, its Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure. The Council set forth 16 guidelines covering the police, prosecution, questioning of victims, court proceedings, protection of privacy, and special protections for victims. The guidelines overlap those of the U.N., but are more specific.

The victim's role in Eastern bloc

In the present study, no significant differences were noted among the socialist countries—East Germany, Hungary, Poland, and the Soviet Union—regarding the victim's role. These governments generally have emphasized victimological research aimed at crime prevention. All have experimented with "social courts"—lay courts that deal informally

with minor offenses—where victims are encouraged to participate.

Although no socialist countries have victim compensation schemes, the social insurance coverage is highly developed, particularly in personal injury and liability. Not all crime victims are covered, however.

In common-law countries—England, Wales, and Scotland—the victim's role is largely limited to testifying for the prosecution. Victims can only present their concerns to the prosecutor, not directly to the court. Although state compensation exists, it is more restrictive even than that on the Continent, with the ideal "innocent" victim the only beneficiary envisioned.

The Romano-Germanic countries differ significantly one from another in the roles and services accorded victims. In West Germany and The Netherlands, the victim's role in criminal processing is quite limited. In the other Germanic countries—Austria, Luxembourg, Switzerland, and the four Scandinavian states—and in France and Italy, the victim enjoys a major role in the criminal process both as a civil claimant and as a witness for the prosecution.

In the German and Scandinavian states and in France, state compensation schemes help pay for criminal injuries. The countries *without* such schemes are also largely lacking in comprehensive social insurance systems, although Belgium and Switzerland are exceptions.

Criminal justice encouragement of citizen crime prevention

In a number of cases the state decides that the victim's lifestyle was a factor in the victimization. Among the thresholds beyond which a victim is considered blameworthy are simulation of a crime, its instigation, consent to it, precipitation of it, invitation to it, and its facilitation. Among measures adopted to diminish victims' roles in their own victimizations are persuasion, withholding of benefits, reduction in the amount of restitution or compensation, reduction in charges or sanctions against the defendant, release

of the defendant from liability, and punishment of the alleged victim.

Factors in definition of victims of crime

The most important theoretical differences between the various countries and the role they assign victims is in the prosecutorial principle.

Although the socialist countries have a principle of strict legality—following the letter of the law—the *concept* of a particular offense may produce a tendency toward practical discretion. The theoretical distinction between the legality and discretionary principles is more one of degree than an absolute difference. Under the socialist legal concept of the "material concept of a crime," an act that in all other respects meets the definition of an offense is not considered to be one unless it presents a danger to society.

Because the criminal justice system is largely dependent on the willingness of victims and bystanders to report offenses, victims and bystanders have a major role in determining whether the criminal justice system will process a case. The victim's decision whether to seek prosecution of his or her case often depends in turn on the victim's attitude toward the system, notably the police.

Legal mechanisms—e.g., making it mandatory to report an offense, or expanding or contracting the scope of *complainant* offenses—influence victims' decisions, less than their initial contact with those who provide support and assistance. Such support is required in the socialist countries.

Crime victims' rights and responsibilities

The various systems differ little on how victims enter them, but victim involvement in case processing differs significantly.

In most socialist countries, *legislation* requires that victims be provided with case information, whereas in Western countries victims receive case information according to administrative regulations or guidelines. The Scandinavian countries

provide a state-appointed victim contact person in certain cases.

Victims may present sentencing recommendations in the socialist countries and in Finland, but only in certain petty cases in most of the rest of Europe. Throughout the Continent, victims can present civil claims in the criminal process, but in the common-law countries (the United Kingdom) the victim's role is limited to that of witness. An award of restitution in common-law countries is part of the offender's sentence, its redress to the victim being incidental, and the occasional award of state compensation to a British victim is not considered a part of the criminal trial process.

Once a case enters the justice system, the initiative for promoting victim involvement generally lies with the authorities, rarely with the victim. The greater the use of guidelines, the more victims' views and concerns will be taken into account.

Legal assistance

Apart from whatever assistance is rendered in the criminal justice process, the victim may also need legal assistance in pressing civil action against the offender. Just as criminal justice agencies in socialist countries are required to keep the victim informed about the progress of a case, they generally are charged with giving legal assistance as required.

In Western states, the victim can demand that the offender pay the victim's attorney fees, but the offender may be unable to pay even for damages, much less the cost of counsel. Few Western countries have provision for state-paid counsel, although the Scandinavian countries and Finland usually arrange for the prosecutor to represent the victim if the case is not without merit or is unusually inconvenient.

Inconvenience and delay

Both the U.N. declaration and the Council of Europe recommendation call for the victim to be provided protection against inconvenience, invasion of privacy, and intimidation. "Inconvenience" would occur when court hearings are scheduled without consideration for the victim's

schedule or child care needs, or when a victim's property is held as evidence for long periods before its return. The latter can be avoided by judicious use of statements by the investigating officer, perhaps accompanied by photographs.

Privacy rights may come into conflict with the principle of a public trial. However, most nations have some provision either for in camera (nonpublic) trials or suppression of publication in such cases as sexual offenses. Such laws prevail in Hungary and Poland, both Germanys, the Scandinavian countries, The Netherlands, France, and Italy. Publication of rape victims' names can be prohibited in England and Wales, and a slightly broader law applies in Scotland.

Measures to protect the safety of the victim range from provision of police protection or relocation, to making bail available only on condition the suspect stay away from the victim (an order possible though rare in England), to special criminal penalties for interference with the victim.

Unnecessary delay similarly is often prohibited, although this may sometimes conflict with the rights of the accused. Norwegian law simply provides that "an attempt shall be made to avoid unnecessary waste of time or inconvenience to witnesses."

Compensation options open to crime victims

All the countries make some reference to restitution in sentencing. In many, it may be a civil claim or part of the criminal punishment. All the countries have some mechanism for joining restitution and sentencing. While restitution is available in many cases, there is reluctance to use it as a sole sanction in more serious cases.

In addition to restitution from the offender, most countries offer the victim at least a limited possibility of compensation from state funds. The socialist countries have no general state compensation specifically for crime victims, but victims' needs are largely met through general social insurance provisions.

The words are easy to confuse. In England, "compensation" is usually understood to mean *financial* reparation by the offender to the victim. "Reparation" also is sometimes understood to include the return of property (to which some limit the term "restitution") or repaying the victim with labor.

The Council of Europe refers to "compensation from the offender" (which the United Nations and U.S. usage call "restitution") and to "compensation by the state" (which the U.N. and United States call simply "compensation").

However, Cyprus, Greece, Iceland, Italy, Malta, Portugal, Spain, and Turkey have no victim compensation. Austria, Denmark, West Germany, Finland, France, Ireland, Luxembourg, The Netherlands, Norway, Sweden, and the United Kingdom do have state compensation for victims of violent offenses, and Belgium and Switzerland are planning similar schemes.

Many critics say the state compensation schemes are so limited as to be more symbolic than beneficial.

Victim alternatives to justice system

The U.N.'s Declaration of Basic Principles of Justice for Victims of Crime indicates that both formal and informal means outside the criminal justice system can address victim needs. Alternatives spring either from an increased interest in diversion from formal justice or from a minimalist approach to it. The minimalists seek to return criminal conflicts to the status of private matters between victims and offenders.

Mediation of petty conflicts has its problems in Northern Europe. Although mediation can make the victim's position appear stronger, an articulate, influential victim can as a result often obtain an *unjust* outcome against a young, uneducated, and publicly stigmatized defendant.

To ensure that both victims' and defendants' rights are protected and encouraged, formal and informal case processing should be integrated. The criminal

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justice system has a central role in authoritative intervention when society's core values have been violated, but the criminal justice system must guard against becoming a faceless bureaucracy lacking regard for victims' needs.

At the same time, the trend toward considering minor conflicts as private matters only seems likely to continue. However, a concern too trivial for state intervention may still be a major concern to the victim, and community mechanisms should remain available for its redress.

Significance of declarations by U.N., Council of Europe

The U.N. declaration and the Council of Europe recommendation, although neither is binding on adhering states, set

standards for assessing how well a country meets crime victims' needs. The impact of these instruments in a given country will therefore depend on that country's willingness to assess its victim standards.

These instruments' guidelines address five broad sectors: the drafting of new laws, the more effective application of existing law, training, research, and the exchange of information. The countries reviewed in this study adhered to these guidelines in varying degrees.

Among the recommendations of the Council of Europe is that prosecuting authorities give the court full information on the interests of the victim and the extent of the victim's need for compensation.

Not only among the Council's member countries but in Europe generally, the victim's wishes are considered on matters of arrest, bail, and sentencing, even if the victim has no decisionmaking role as such. Some countries afford the victim similar consideration on the question of the offender's eligibility for parole.

The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.