

PEOPIL's 2nd RESPONSE
TO THE GREEN PAPER BY THE EUROPEAN COMMISSION ON
COMPENSATION TO CRIME VICTIMS COM (2001) 536 FINAL

This paper follows the hearing that took place on the 21st of March 2002, which was highly stimulating.

In this second response, PEOPIL will try to give brief answers to questions listed in the *Discussion Document*.

1. Preliminary remarks: objectives (Question 1)

PEOPIL agrees that a Community initiative on State compensation should pursue the three objectives listed in chapter 4.2.

Furthermore, as PEOPIL pointed out during the discussion and in the previous response, it is important that a future European Directive on State compensation to Crime Victims should have another basic objective: the protection of victims of crimes who suffer a permanent injury. This is also true for their dependants in case of fatal accident or cases in which the primary victim sustained serious injuries. In particular, those victims shall be entitled to receive full compensation from the State (in the same form they would get it through civil proceedings), when the offender

- a) remains unknown, or
- b) cannot be successfully prosecuted, or
- c) lacks the means to fully and fairly compensate the victim.

2. Types of crime and types of injury (Question 2)

It is obvious that State compensation can't cover every kind of crime and every type of loss.

Nevertheless, the criteria of «intentional» crime is too narrow, and leaves out from protection several important categories of victims, who suffer relevant bodily injury. Likewise, other impairments of health would be left out (for example psychiatric damages) as a result of crimes, which are not intentional, or are not committed intentionally against the person who sustained the injury. These categories of victims are, for example, citizens accidentally wounded by bullets fired by persons who remain unknown (for example, during terrorists attacks, or, more frequently, during brawls, or at football competitions). Similar are cases where the offender is not able to provide compensation. For example, one of PEOPIL's members dealt with a case where an Italian young woman who was accidentally wounded by a bullet fired during a brawl between two Albanians in an Italian square. The offender was arrested however, the girl could not obtain

any form of compensation for the serious bodily injuries sustained as result of the “accident” since the crime was not intentional.

This also includes citizens involved in accidents occurring during sport and leisure activities (for example, a skier who dies as a consequence of the negligence of the owner of a ski piste), victims in railway accidents, product liability cases, environmental disasters, medical negligence cases, including blood transfusion. All those victims need a redress protection. They often cannot obtain compensation from the offender or they are not compensated within reasonable time because of prolonged tort lawsuits, especially in those cases where cross-border litigation is involved. Expanding the protection of victims to those above-mentioned categories of crimes (non-intentional, but relevant first of all for society) would be a significant step forward for all European countries.

The European Commission should take these considerations into account regarding the current project, especially if new legislative initiative aims to go further the *European Convention on the Compensation of Victims of Violent Crimes of 1983*.

On the other hand of course the criteria of «violent» crime can be interpreted in different ways, and can be restricted to intentional crime.

It is the believe of PEOPIIL that one should focus more on the effects the crime has on the victim’s physical and/or mental integrity or life.

In other words, the legislative initiative should refer to all offences against life, physical and mental integrity, and health.

The European Commission’s initiative should also leave open to each State member to include crimes which also have effect on a persons’ personality or other personal goods and property rights, including intellectual property (for example, racist crimes).

Regarding the limitation on injuries covered a possible solution could be that mental injury should amount to a medically recognised psychiatric or psychological illness. This rule should include exceptions for cases like non-pecuniary losses of dependants (in many cases dependants don’t suffer a medical recognised illness, but they suffer the loss of bereavement). Also, sexual abuse and assault cases should be included since an abused woman or child suffers a moral damage and other injuries are secondary.

PEOPIL agrees that all permanent residents in the European Union should be covered, however it is important to provide a proper definition of “permanent residents”. As already pointed out in our previous response, it would be appropriate to extend the coverage to all legal residents (by virtue of Community law or national law) of a Member State of the EU. This solution would include all those who are nationals of a third country and who fall victim of a crime within the territory of a EU Member State.

3. Degree of proof (Question 3)

PEOPIL agrees that the degree of proof should be included in a minimum standard, but eventual criteria should be *flexible* and *reasonable*. The victims shall provide the Compensation Board with all information (and “*evidence in his or her hands*”) about factual circumstances of the case, and has to fully cooperate with the Compensation Board. A full investigation by the Compensation Board has to follow in order to avoid fraudulent applications. However, we don't think that proceedings for obtaining State compensation should involve such a degree of investigation or a burden of proof as it is common in criminal proceedings. The Compensation Board will need to have a panel of medical experts in order to verify causation. Investigations regarding the link between the crime and injuries sustained as a result of the crime are crucial within the scheme of State compensation.

Furthermore, as already stated in our previous report, we do not think that the requirement that the crime victim must have reported the crime to the police should be included in a common minimum standard. We consider it as sufficient if the victim has taken all reasonable steps to bring offender to justice. However, there are crimes, which the victim is able to report only after a longer period of time from the date on which the crime was committed. This is for example true for crimes connected with blood transfusion, certain types of illness at workplace, crimes connected with sexual offences, or violence at home.

4. Immaterial damages and compensation for permanent disability (Question 4 and Question 5)

In our previous response we already pointed out the risks of a detailed European legislation on compensation of non-pecuniary losses at this stage. PEOPIL would prefer that a future directive on State compensation for crime victims would only refer to damages for non-pecuniary losses, without any definitions. This also applies to the definition of permanent disability. It is not so easy to give a proper definition of permanent disability, especially in the case of psychiatric illness and other kinds of diseases.

It should be made clear that if the offender remains unknown or cannot be successfully prosecuted or the offender lacks the means to compensate the victim, the victim should be entitled to receive full and fair compensation from the State. This should also be the case for non-pecuniary losses in the same way non-pecuniary losses would be awarded under the tort system of the Member State concerned.

5. The financial position of the victim (Question 6)

We strongly believe that State compensation of crime victims should be fully independent from considerations regarding financial position of the victim, both on the side of the eligibility criteria and on the side of the assessment criteria of state compensation.

Eventually, the financial position of the victim could be taken into account in the case of advance payments, or if there are fast track proceedings.

6. Subsidiarity character of State compensation (Question 7 and Question 8)

PEOPIL agrees on the subsidiarity of State compensation (see also our previous response). Nevertheless, subsidiarity should not to be interpreted as against the possibility of advance payments.

7. Advance payments (Question 9)

There should be the possibility of applying for *advance payments* for loss of earnings, loss of maintenance, medical and hospitalisation expenses through fast track proceedings. PEOPIL believes that advance payments should be included in minimum standards, at least for those cases in which the victim loses his/her job, or has to make relevant expenses as a consequence of the crime.

8. Victim's behaviour (Question 10)

PEOPIL agrees that the behaviour of the victim in relation to the crime should be included in a minimum standard, though only in general and flexible terms. A condition should be that an appeal can be launched by the applicant against a non-favourable decision (compensation is reduced or refused) of the Compensation Board. We also agree that compensation may also be reduced or refused on account of the victim's or the applicant's involvement in organised crime or his/her membership of an organisation that engages in crimes of violence.

9. Procedural issues & applicant's rights (Question 10)

In addition to our previous statement on limitation time, we would like to point out that we strongly believe that procedural issues should be included in minimum standards. This would help unifying the service provided to all European citizens. A model that can be used in formulating articles regarding procedures can be found in the provisions of the United Kingdom's *Criminal Injuries Compensation Scheme* (in particular Articles 56-82).

In this context it is important to include the following rights for applicants: The right to hearings, the right to appeal, the right to have access to all documents concerning his/her case, and the right to be assisted by a lawyer or a medical expert.

It would also be a good idea to include forms of monetary punishment in cases of fraudulent applications, leaving to each State to set the sanctions.

10. European Network for the compensation of cross-border crime victims (Question 12, 13, 14)

PEOPIL believes that in order to develop a harmonised system and to facilitate compensation for victims of crimes in cross-border situations there should be a two-tier organisation.

a) European level

At the European level, there should be a Board (the *European Board for State Compensation to Crime Victims*) which would be able

- To give general guidelines to National Boards also in connection with medical evidence.
- To harmonise and approve procedural issues and application forms.
- To decide on disputes between National Boards.
- To decide on appeals from victims on issues concerning legal interpretation of eligibility criteria or procedural rules
- To monitor the efficiency of national schemes.
- To draft an annual report on the situation of state compensation of criminal victims
- To study and propose new legislation in order to improve service to citizens.
- To study social marketing of services given to European citizens through the compensation scheme
- To organise specialised and professional courses for lawyers specialising in assisting citizens who are applying for State compensation

b) National Level

In each Member State there should be a National Board heading the scheme and also several local boards. Every National Board should have a medical commission to evaluate causation and damages suffered by the victim. As we already pointed out in our previous response, crime victims should deal only with their National board (or local boards). Particularly regarding cases involving cross-border situations.

The victim should obtain from its national board, or, at his/her choice, from the national board where the crime was committed the following services:

- Assistance in filling in the application form to be sent to the Member State which will have to provide the payment (the drafting of the application for the National board can also be assisted by lawyers who belong to a specialist panel)
- Declaration of causation
- Medical description and declaration of the injuries
- Calculation and declaration of the following pecuniary losses:
 - loss of earnings, apart from losses of this kind sustained in the Member state in which the crime was committed
 - Future loss of earnings
 - Loss of maintenance
 - Medical and hospitalisation expenses, including mental health counselling, psychiatric therapy or similar that may be needed as a cause of the crime, apart from those which were or will be sustained in the country in which the crime occurred
 - Funeral expenses. In cases in which the Member State in which the crime was committed has to pay for damages then the costs of the incurred in the home state of the victim should be taken as measurement (apart from verifying the existence of the crime and victim's behaviour). The National Board should calculate all other losses, including non-pecuniary losses. In such a system the Member State where the crime was committed would receive a sort of a bill, and would have to carry out further analysis only with respect to further investigations on the crime.

11. Harmonised forms (Question 15)

Harmonised forms should be included in the minimum standards, even if the duty to draft and adjourn the forms could be left to the *European Board for State Compensation to Crime Victims* (see paragraph 10).

Northampton (U.K.) – Torino (IT), June 2002