



Max-Planck-Institut  
für ausländisches und  
internationales Strafrecht

# Victims of Terrorism

An Overview on International Legislation on the Support and  
Compensation for Victims of Terrorist Threats

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*"The Member States of the Council of Europe  
and the other Signatories hereto, [...] aware of the precarious situation faced by those who suffer from terrorism, and [...] reaffirming their profound solidarity with the victims of terrorism and their families."*

(Preamble, Council of Europe Convention on the Prevention of Terrorism)



# Patterns of Terrorist Victimization

- High number of victims per event
- Individual and collective victims
- Symbolic victims
- High number of indirect victims
- Increased risk of secondary victimizations
- Increased risk of victimization for – non involved – members/representants of minority groups through acts of revenge



# Patterns of Terrorist Victimization

- Many casualties and high damages (physical, psychological, material) per event
- High number of victims of foreign nationality
- Legislation on and level of victim compensation in many countries which are in risk of becoming a target for terrorist acts are often rather poor (if not even non-existent at all)
- Probability of identification and prosecution of perpetrators directly responsible for a particular terrorist act is rather low
- Probability to receive restitution or compensation payments from those perpetrators in the context of criminal prosecution tends to zero

# Legal Provisions for Victims/Victims of Terrorism (Europe)



## 1. Council of Europe

- European Convention On Compensation for Victims of Violent Acts (1983)
  - Minimum standards for State compensation schemes
  - Compensation independent of arrest of an individual perpetrator
  - Dependants included
  - Territory principle
  - Principle of reciprocity for victims from foreign countries
  - Covers loss of income, medical and hospitalisation expenses, funeral expenses and loss of maintenance for dependants

# Legal Provisions for Victims/Victims of Terrorism (Europe)



## 1. Council of Europe

- *Guidelines on the Protection of Victims of Terrorist Acts (2005)*
  - Compensation independent of identification, arrest, prosecution and conviction of an individual offender
  - Independent of nationality of the victim (exemption from the principle of reciprocity)
  - Fair, appropriate and timely compensation
  - Close family included
  - Compensation covers expenses for direct physical and psychological harm
  - Short and long term medical, psychological, social and material assistance to be provided
  - Legal aid to be provided
  - Protection of privacy of victims and their families

# Legal Provisions for Victims/Victims of Terrorism (Europe)



## 1. Council of Europe

- *Recommendation on Assistance to Crime Victims (2006)*<sup>8</sup>
  - Amending Recommendations R (87) 21 and R (85) 1
  - All serious, intentional, violent crimes
  - Fair and appropriate compensation "without undue delay"
  - Immediate family and dependants
  - Compensation covers expenses for treatment of physical and psychological injuries
  - Compensation for pain and suffering is recommended
  - Protection of physical and psychological integrity of victims
  - Protection of privacy of victims and their families

# Legal Provisions for Victims/Victims of Terrorism (Europe)



## 2. European Union

- Council Framework Decision on the Standing of Victims in Criminal Proceedings (15 March 2001)
  - Victim protection during criminal proceedings
  - Victims entitled to claim for restitution/compensation from the perpetrator in the course of the criminal proceeding
  - Mediation

# Legal Provisions for Victims/Victims of Terrorism (Europe)



## 2. European Union

- Council Framework Decision on Combating Terrorism (13 June 2002)
  - Investigation and prosecution independent of report or accusation of persons affected by the terrorist act
  - All victim-related provisions of the 2001 Framework Decision extended to all family members of the (direct) victim of a terrorist act

# Legal Provisions for Victims/Victims of Terrorism (Europe)



## 2. European Union

- Council Directive Relating to Compensation for Victims of Crime (29 April 2004)
  - State compensation schemes have to be implemented
  - Fair and appropriate compensation
  - General access for all EU citizens to compensation: application can be made at any place, independent of the place of victimization
  - Responsibility remains with the State where the victimizing event took place (territory principle)

# Legal Provisions for Victims of Terrorism Outside Europe



## 3. USA

- Hostage Relief Act (1980)
  - Occasion: Embassy hostage crisis in Teheran
  - State compensation fund
  - Expenses for medical treatment, loss of income, educational expenses for partner and children, tax exemption on compensation
  - State compensation provided in return for blocked jurisdiction for individual victim claims against Iran
- Victims of Terrorism Compensation Act (1986)
  - Scope of compensation extended for government employees; they received an extra US-\$ 50 for each day of captivity

# Legal Provisions for Victims of Terrorism Outside Europe



## 3. USA

- United States Response to Terrorism Affecting Americans Abroad: Title 22, Aviation Security Improvement Act (1990)
  - Occasion: PAN AM flight 103 bombing
  - Support and State compensation for all US citizens victimized by this event
  - Indirect victims (bereaved family members)

# Legal Provisions for Victims of Terrorism Outside Europe



## 3. USA

- Justice for Victims of Terrorism Act, Amending Title 42 of the Antiterrorism and Effective Death Penalty Act (1996)
  - Occasion: Oklahoma City bombing
  - Specific programmes for immediate crisis response
  - State compensation fund for all victims affected by the event
  - Right to participate in criminal trials
  - Right to participate in executions
  - General extension on all US residents who are victims of terrorism while outside the US

# Legal Provisions for Victims of Terrorism Outside Europe



## 3. USA

- Victims of Terrorism Tax Relief Act (2001)
  - Occasion: 9/11
  - General tax reliefs for all relatives of victims of the 9/11 attacks and the anthrax attacks
  - Extended also on Oklahoma City victims
  - Scope: Income tax liability waived for both the year of the attack and the previous year

# Legal Provisions for Victims of Terrorism Outside Europe



## 3. USA

- Air Transportation Safety and System Stabilization Act (2001)
  - Occasion: 9/11
  - State compensation fund covering economic and non-economic losses
  - In return for protection of Airlines against civil litigations
  - Immediate advance payments of US-\$ 50,000 in case of death or US-\$ 25,000 in case of serious injury
  - Lump sum payments of US-\$ 100,000 for spouses and each dependant and US-\$ 250,000 for the collective of descendants as compensation for non-economic losses (harm)

# Legal Provisions for Victims of Terrorism Outside Europe



## 3. USA

- Summary
  - Individualized approach focusing on specific terrorist attacks
  - Flexible
  - Possibility to consider various and differing political and economic goals when implementing such *ad hoc* laws
  - General design oriented on tort law principles
  - Problem: equal treatment of victims
  - Problem: political discretion, arbitrariness

# Legal Provisions for Victims of Terrorism Outside Europe



## 4. Israel

- Property Tax and Compensation Fund Law (1961)
  - State compensation payments for property damage caused by terrorism
- Victim of Hostile Actions (Pensions) Law (1970)
  - State compensation payments for bodily injuries suffered in terrorist attacks
  - State compensation payments for family members of deceased victims

# Legal Provisions for Victims of Terrorism Outside Europe



## 4. Israel

- **General Principles**
  - Permanent system of compensation
  - Public welfare model
  - Leaned on the system of compensation for victims of war
  - Victims of war, terrorism and other forms of collective violence are treated equally, no distinction between civilians harmed by war and civilians harmed by terrorism (hostile acts)
  - Includes also damages and casualties due to 'friendly fire'
  - Victimization of Israeli citizens suffered inside and outside Israeli territory, and of foreigners being legally in Israel
  - Providing evidence is facilitated through a presumption of a hostile act
  - Compensation covers a broad catalogue of types of damages



## Characteristics of European Compensation Systems (EU and CoE Member States)

- 3 Different Models
  - Countries which have enacted specific legislation and implemented specific programmes for victims of terrorism (e.g., ES, F, IT, GR)
  - Countries which have general legislation and programmes for the protection, support and compensation of all victims of (violent) crime which also cover victims of terrorism as a sub-group (all old and most of the new EU Member States)
  - Countries which have no or only very limited legislation on victim compensation and likewise no, or no effective, victim assistance and support schemes (e.g., Central and Eastern Europe, incl. RUS)



## Characteristics of European Compensation Systems (EU and CoE Member States)

- Legislation in favour for victims of crime can be divided into 2 sub-groups
  - Models that tend to provide full compensation, in particular for pain and suffering, and adopt tort law as a basic principle
  - Victim compensation that is based on the social welfare model.  
This type of compensation is mostly provided on the basis of subsidiarity, replacing an offender who is either not identified, dead, or financially not capable to (fully) compensate the victim.  
Furthermore the concrete amount of compensation may be made dependent on the financial needs that have been caused by the violent act.



### Characteristics of European Compensation Systems (EU and CoE Member States)

- Compensation Laws for victims and/or victims of terrorism differ significantly with regard to the scope of benefits covered:
  - One-off payments (often of a symbolic amount, e.g., RUS)
  - Immediate advance payments (e.g., F, IT, ES, S)
  - Regular payments (e.g. pensions)
  - Tax reliefs or exemptions (ES, IT, GR)
  - Pain and suffering not covered in most countries
  - Circle of eligible indirect victims varies
  - Special benefit: priority access to the public service for descendants of a killed victim who was a public employee (GR only)

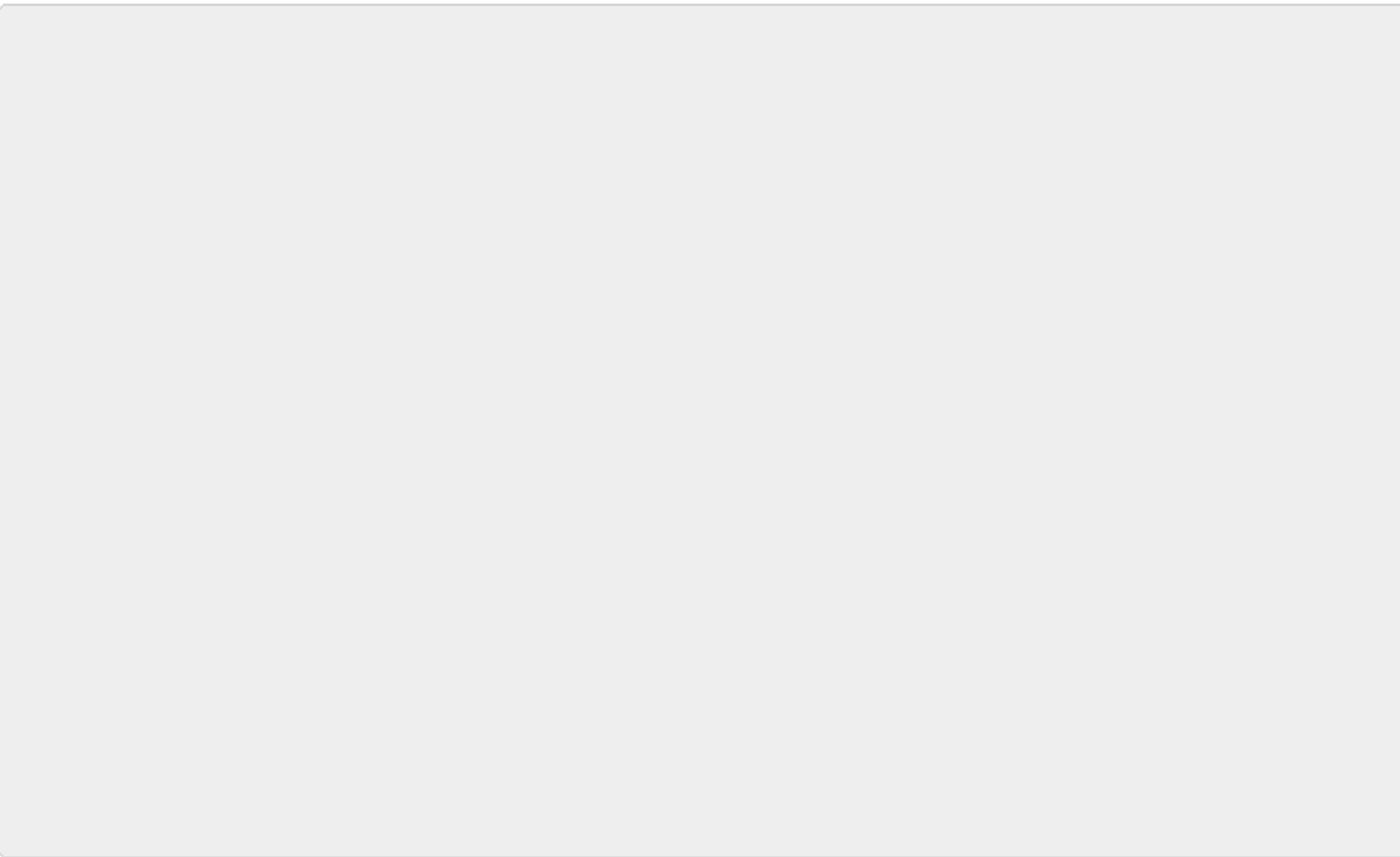


*Discussion:*

*Should states provide for special rules or programmes in favour for victims of terrorism in the context of state compensation (privilege)?*

*Should all victims of (violent) crime, including victims of terrorism, be treated equally (solidarity, non-discrimination)?*

*Thank you!*





*Discussion:*

*Should states provide for special rules or programmes in favour for victims of terrorism in the context of state compensation (privilege)?*

*Should all victims of (violent) crime, including victims of terrorism, be treated equally (solidarity, non-discrimination)?*



*"The Committee of Ministers,  
[...]*

*(c) Recognising the suffering endured by the victims of terrorist acts and their close family and considering that these persons must be shown national and international solidarity and support."*

*Preamble, CoE Guidelines on the  
Protection of Victims of Terrorist Acts  
of 2 March 2005.*



*"Victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them."*

*EU Council Framework Decision on  
Combating terrorism of 13 June 2002,  
Recital no. (8)*



*"Although the crime of terrorism has been prioritised by some countries, [...] the needs of victims of terrorism [are] essentially the same [as] those of victims of other crimes."*

*Explanatory Memorandum to the CoE Recommendation (2006) 8 on Assistance to Crime Victims, para. 21.*