

The Protection of the Rights of Victims of Crime under the European Convention on Human Rights

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Notion of a victim under the Convention

- Victim of a violation of Convention rights → resulting from an act or omission by the state authorities
- Crime victims → status of victim under the Convention in cases where the state authorities fail to discharge their obligations under the Convention relating to effective protection from, or prosecution of, acts of criminal nature



The development of the victims' rights under the Convention

- No specific rights of the victims of crime explicitly guaranteed by the Convention
- Development through the case-law of the European Court of Human Rights
 - Requirement of normative framework and effective implementation mechanisms
 - Procedural rights of victims in criminal proceedings



Positive obligations and horizontal effect of the Convention

- In addition to a duty to abstain from arbitrary interference with the Convention rights (negative obligations), the States also have a positive duty to ensure the respect of these rights and to prevent their violations, regardless of whether interferences occur as a result of state action or the action of private individuals.



The protection of crime victims under Articles 2, 3 and 4 of the Convention

1. *Preventive protection:*

- appropriate regulatory framework
- effective law-enforcement mechanisms
- preventive operational measures in cases of a „real and immediate“ risk to life of which the authorities have or should have knowledge



2. *Procedural obligation to conduct an effective investigation and prosecution of the acts contrary to Articles 2, 3 and 4*

- independence and impartiality of the investigators / prosecutors
- promptness and expedition
- capacity to establish the facts and decide on the case and circumstances of the death or ill-treatment and to impose sanctions, if necessary
- accessibility of the investigation to the victim, the relatives and – depending on the case – the public (information, disclosure of documents, the right to be heard)
- legal aid for the victim's or family's effective participation in the proceedings.

Further developments under Article 8

- Choice of measures required to meet the standards of Article 8 in principle within the discretion of the States
- Recent case-law: extension of the requirement of normative framework and effective implementation mechanisms developed under Articles 2, 3 and 4 to less grave acts interfering with individuals' physical and mental welfare



Victims' procedural rights in criminal proceedings

- Limited applicability of procedural guarantees of Article 6 to victims appearing in criminal proceedings
- The requirement to balance the interests of the defence (protected by Article 6) against the interests of witnesses or victims called upon to testify
- Fair balance between the protective measures aimed at mitigating secondary victimisation in proceedings involving sexual offences and the rights of the defence