



Third Study Commission
Criminal law and procedure

Meeting Sevilla (Spain), 27 September - 1st October 1992

Conclusions

THE PART PLAYED BY THE VICTIM IN THE CRIMINAL PROCESS

The Associations of the following countries were represented: Germany, Australia, Austria, Belgium, Canada, Denmark, Spain, Finland, France, Luxembourg, Greece, Ireland, Iceland, Israel, Italy, Japan, Liechtenstein, Morocco, Norway, The Netherlands, Portugal, United Kingdom, Senegal, Sweden, Switzerland, Tanzania, and Tunisia.

With a few important exceptions, falling into neither category, the members of the Commission fell into two groups: civil law countries, whose procedures permit the victim to play a full role in the criminal process as "*partie civile*", and common law countries, where the victim has no right to participate in the Criminal proceedings, although in some circumstances he is entitled to an award of compensation from the criminal judge after the conviction of a defendant. In discussion three questions were concentrated on and are reflected in these conclusions.

These questions focus on financial compensation. The interests of the victim are far wider, and include obtaining medical attention, legal and other counseling, advice on practical questions arising from the offence, and so on. Many but not all of these needs are met by the social and medical welfare systems and by the activities of voluntary bodies.

Discussion showed that all members were keenly aware not only of the legal aspects of the position of the victim, but also of the victim's wider needs. This concern is reflected in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985.

Does the participation of the *partie civile* help or hinder the criminal process?

The common law countries were firmly of the opinion that to permit the victim to take part in the criminal process would be detrimental to criminal justice. It would add issues irrelevant to the criminal trial, complicate and confuse the procedure and upset the balance achieved by the roles of prosecuting and defense counsels under the adversarial system.

The majority of the civil law countries did not consider that the interventions of the *partie civile* was detrimental to the criminal process. While the presence of the *partie civile* added, to a certain extent, to the complexity of the proceedings, most thought that this was more than balanced by the impact that the victim could often provide on the ascertainment of the truth.

Italy, however, in its recent reforms, has made provision for divorcing the criminal and civil proceedings in the belief that this will be likely to ensure more efficient and expeditious determination of both the civil and the criminal issues. In some civil law jurisdictions the judge has an important discretionary power to order civil issues to be deferred until after the conclusion of the criminal trial, or referred to a civil court.

Does the criminal trial provide a satisfactory alternative to a civil lawsuit as a means of obtaining financial compensation for the victim?

None of the civil law countries, with the exception of the Netherlands, whose laws are shortly to be altered to improve the position of the victim, considered that there was any disadvantage in seeking compensation by intervening in the criminal process rather than starting a civil suit. On the contrary, the former course was thought to have a number of advantages. Taking part in the criminal process was quicker, simpler and did not involve exposure to liability for legal costs. This latter consideration was particularly important as it so often transpires that the criminal does not have the means to pay any damage awarded against him.

Do the individual systems help to satisfy the other needs of the victim?

Victims are not simply concerned to obtain financial compensation. Many have a personal interest in assisting in the due process of criminal justice and most are anxious to be informed of what is happening in the criminal proceedings. This is particularly the case in relation to crimes of violence and sexual offences. The United Nations Declaration of 1985 recognizes the legitimacy of the victims' interests. The right of the *partie civile* to take part in the criminal process caters for these needs.

In Norway, where there is no general right for the victim to take part in the criminal process, legislation has given the victims of sexual and some other serious offenses the right to be assisted by a lawyer paid for by the state before and during the criminal trial. This lawyer cannot, however, play an active role in the criminal proceedings.

Under the common law systems these needs of the victim are not catered for by the legal process and have, until recently been largely ignored. The tendency now is to cater for these needs through the agency of the social services or voluntary bodies outside the framework of the legal process.

The difference of approach and of opinion of the two major groups involved in the discussion is indicative of the radical procedural differences between the accusatorial system used in the civil law countries and the adversarial system of the common law countries.