

CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

CCPE Opinion No. 12 (2017)

on “The role of prosecutors in relation to the rights of victims and witnesses in criminal proceedings”

1. Introduction: purpose and area of application of the Opinion

1. The Consultative Council of European Prosecutors (CCPE) was established by the Committee of Ministers of the Council of Europe in 2005 with the task of formulating inter alia Opinions on questions relating to the application of Recommendation Rec(2000)19 of the Committee of Ministers to member States on the role of public prosecution in the criminal justice system.

2. The Committee of Ministers instructed the CCPE to prepare and adopt, in 2017, an opinion for its attention on the role of prosecutors in relation to the rights of victims and witnesses in criminal proceedings. The CCPE drafted this Opinion on the basis of responses of 31 member States to the questionnaire[1].

3. The purpose of this Opinion is to determine how prosecutors can fulfil their mission with the highest quality and efficiency as regards their role in protecting the rights of victims and witnesses affected by crime. The Opinion highlights, particularly, the role of prosecutors in protecting these persons when they are deemed to be vulnerable, during the different stages

of criminal proceedings as well as during the execution of court verdicts, since victims and witnesses can also be vulnerable during the execution phase and even thereafter.

4. The CCPE notes that in member States, where prosecutors perform functions outside the criminal justice field, the principles and recommendations of this Opinion also apply, *mutatis mutandis*, to these functions.

5. Member States of the Council of Europe have diverse legal and organisational frameworks for prosecution services, as well as common features. For instance, not all prosecution services have a function of criminal investigation. Therefore, not all the elements discussed in this Opinion will apply to all member States. However, prosecutors in all member States should pay particular attention to protecting the rights of victims and witnesses in criminal proceedings and they should act with strict respect for the law and human rights.

6. This Opinion acknowledges the importance of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as the “ECHR”), as well as of the relevant case law of the European Court of Human Rights (hereafter referred to as the “ECtHR”). It has also taken into account several Council of Europe conventions^[2] and other instruments of criminal law including Resolution (77) 27 on the compensation of victims of crime, Recommendation R (85)11 on the victim’s position in the framework of criminal law and procedure, Recommendation R(87)21 on assistance to victims and the prevention of victimization, Recommendation Rec(2005)9 on the protection of witnesses and collaborators of justice, Guidelines on the Protection of Victims of Terrorist Acts (2005), Recommendation Rec(2006)8 on assistance to crime victims and Recommendation Rec(2012)11 of the Committee of Ministers on the role of public prosecutors outside the criminal justice system. This Opinion is also based on most previous CCPE Opinions^[3].

7. The CCPE has also taken into consideration relevant United Nations documents^[4] as well as the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the International Association of Prosecutors (IAP) in 1999.

2. Definitions

8. For the purposes of this Opinion, victims are persons who have directly or indirectly suffered any physical, emotional, social, economic or any other harm as a result of a criminal offence. This definition does not exclude legal persons who may avail themselves of the applicable provisions of this Opinion. A “witness” means a person who, notwithstanding his/her status towards the procedural law, is in possession of information relevant to the disclosure, apprehension, determination and evaluation of facts subject to investigation and court proceedings.

9. Although a victim of a crime may not necessarily be a party in criminal proceedings, he/she plays an essential role in the criminal justice process. Victims may also act as witnesses and should thus be treated as such, if the national law does not provide for a specific procedural regime for victims.

10. For the purpose of this Opinion, vulnerable persons, whether victims or witnesses, are those who, due to their age (children, the elderly), situation, maturity or disability (physical or mental), are at a higher risk of harm (physical or emotional) than others. Victims of torture and other forms of inhuman and degrading treatment are particularly vulnerable, and special regard should be had by prosecutors in this respect.

11. When this Opinion makes reference to law enforcement agencies, these may be deemed to include, in member States, the police, investigation agencies, security forces, prosecutors or prosecution services, within the framework of their respective competence.

3. The rights of victims and witnesses and protective measures

12. Anyone, who is a victim and/or a witness of a crime, may suffer damages of a physical, emotional, social, economic or other nature, from which some may never fully recover. These damages can also, directly or indirectly, affect persons closely related to them.

13. In order to respect their human dignity and to guarantee their security, criminal justice systems should include a set of rights and protective measures for victims and witnesses which should be respected by all actors in the criminal process.

14. Such provisions can also contribute to ensure better cooperation by victims and witnesses who feel duly protected. It is, moreover, essential to ensure that victims and witnesses, particularly when they are vulnerable, receive appropriate care, counselling and support.

15. Victims should be informed of all their representative and participatory rights and duties and have a rapid and effective response to their needs, for example by having access to measures aiming to protect them and to adequate compensation for damages suffered. It is also important that the criminal justice system provides adequate responses to prevent secondary victimisation (see paragraphs 32-38 below).

16. There are particular protection regimes that may be needed by especially vulnerable persons. This notwithstanding, in general, victims and witnesses should be treated fairly and according to the principle of equal treatment for all.

17. Victims' and witnesses' rights may vary according to the stage of the criminal proceedings in which they participate. Concerning the reporting of a crime, a victim has the right^[5] to bring the crime to the attention of the relevant authorities and to be informed – from the initial contact with the police or any prosecuting authority and in a language he/she can understand:

- of the procedures whereby a complaint may be lodged;
- of his/her rights during the procedure and the trial;
- of the availability of legal aid, advice and assistance;
- of the possibility, where appropriate, to claim damages (emotional and/or economic);
- of the possibility, where appropriate, of reimbursement for trial and other related costs and expenses.

18. The victim is also entitled to request and receive, in accordance with the law, information:

- about the progress of the proceedings, the evidence taking and the prosecutor's decision to prosecute (and for what offenses) or not to prosecute, or to propose alternative dispute resolution and the reasons supporting these decisions;
- about the venue and date of the trial, his/her right to be present and to be heard in court proceedings, as well as, where provided by law, to be legally represented, to have access to files and records and to lodge appeals;

- about any protection measures that might be ordered on his/her behalf, namely aiming at preserving his/her anonymity, personal data and safety in accordance with the nature of the crime and the circumstances of the case;
- about available social, medical and other help (for instance, victims' support services, health facilities, anti-violence centres and shelter houses), which he/she may benefit from;
- about changes regarding the prison sentence imposed upon the convicted person, and the date of his/her possible release;
- about regional and international individual/collective complaints mechanisms and how to access them.

19. In this context, there may be:

- participation of experts in the hearing, such as of psychologists or medical and other experts, to assist prosecutors, law enforcement agencies or courts (for instance in cases of sexual offences, domestic violence, human trafficking or child pornography),
- the intervention of specialised units and competent well-trained officers to participate in the interrogation or examination;
- the use of officers of the same gender as the victim if appropriate, especially for certain kinds of crimes (e.g. in cases of sexual crimes or crimes against sexual freedom, domestic violence) to participate in the interrogation or examination;
- specific state programmes for the protection of witnesses;
- the need to avoid contacts with the offender, and to avoid victims repeatedly giving evidence, if not strictly necessary, in order to prevent secondary victimisation;

- the use of special conditions for giving evidence (e.g. special premises fitted for children, safe waiting rooms, special rooms within the courts or even outside courts' premises, interrogations taking place during out of office hours, use of two-way mirrors, of video and audio recording, closed-circuit television or live television links for victim's testimony, if necessary with face and voice distortion by technical means).

20. Victims and, where appropriate, witnesses should also be informed, at least in particularly serious circumstances, of the defendant's and/or offender's arrest, release or evasion.

4. Role of prosecutors in protecting the rights of victims and witnesses

Role and duties of the prosecutor towards victims and witnesses

21. The role of prosecutors with regard to protecting the rights of victims and witnesses are in many member States provided for by law, but may also stem from legal traditions, prosecution policies or ethical rules[6]. It is the duty of prosecutors to be guided by the standards of professional conduct as defined therein.

22. Prosecutors should always treat victims and witnesses in a respectful, non-discriminatory and impartial manner with due regard to the personal circumstances of these individuals.

23. Prosecutors should exercise sound judgment in the performance of their duties, including when dealing with victims and witnesses, particularly when vulnerable.

24. Prosecutors should take proper account of the lawful interests of witnesses and of the views and concerns of victims when their personal interests are affected, and promote or take actions to ensure that victims and witnesses are informed of both their rights and duties, and of developments in the criminal proceedings.

25. At all stages of the proceedings, prosecutors should aim to protect the dignity, private and family life and personal security of victims and witnesses, as well as to secure their procedural rights, including the right to information, and, where appropriate, the victims' right to receive legal aid and compensation.

26. The role of protecting the rights of victims and witnesses may, depending on the national legal system, be carried out in cooperation with, or resorting to, the law enforcement agencies and the courts.

27. Prosecutors should require victims and witnesses to attend judicial proceedings whenever their testimony is essential to the prosecution and the defence or is required by law. Moreover, given the importance of victim/witness testimony, member states should establish both legislative and institutional mechanisms for victim/witness interrogation so that they can testify freely and in safety.

28. According to the ECtHR, in criminal proceedings, the rights of defence may be balanced for the purpose of protecting the witness/victim, in particular the respect for their private life. Thus, certain measures may be taken for the particular purpose of protecting the witness/victim[7].

29. Special protective measures are the mechanisms that guarantee the physical and psychological integrity of victims/witnesses, as well as, where appropriate, of members of their families, and the inviolability of their property.

30. In this respect, special protective measures should, where appropriate, be provided for victims/witnesses before, during and after they testify, in order to respond to the possible concern they may have for their lives, health and property or for those of their family members.

31. Prosecutors, police and other law enforcement officers should be able to apply special protective measures according to the circumstances of the criminal case and the extent to which the life, health and property of victims/witnesses or their family members are at stake.

Avoiding secondary victimisation

32. Secondary victimisation is a harm which is not caused directly by an offender, but originates as a consequence of actions of prosecutors, law enforcement agencies or judicial authorities having an impact on the victim. Prosecutors should seek to avoid secondary victimisation being caused by their actions.

33. Certain types of victims, especially of domestic violence, sexual abuse, trafficking in human beings, terrorism and illegal migration may meet conditions for a special status – the status of an especially vulnerable victim – due to violence or the threat of violence they may be subject to, as well as to the risk of secondary victimisation.

34. An unprofessional approach by prosecutors, police, other law enforcement or judicial authorities, may also lead to secondary victimisation. Lack of understanding of the particular situation of victims may give rise to feelings of isolation, uncertainty and loss of faith in the criminal justice system on the part of the victims.

35. Unprofessional, lengthy or late investigation and prosecution can lead to an irreparable loss of evidence, or contravene the requirement for the case to be completed within a reasonable period of time or relevant statutory limitation period.

36. For certain types of criminal activities (e.g. domestic violence, sexual abuse, trafficking in human beings, terrorism, illegal immigration), prosecutors should be able to specialise, gain knowledge of judicial psychology and benefit from relevant professional training, to enable them to deal with these types of cases expeditiously and competently.

37. Where a second interrogation of vulnerable victims is not possible, convenient or essential, use should be made of audio and video recordings, although with due respect for the adversarial principle.

38. In order to avoid secondary victimisation, interrogation of young children and other vulnerable persons should be carried out without the offender being present, in special interrogation rooms and using audio and video recordings, or through video-conference equipment. While respecting the adversarial principle, these records should be usable within criminal proceedings as evidence[8], to avoid unnecessary repetition.

Special concern about particular groups of victims (for example of terrorism, trafficking in human beings, domestic violence, sexual abuse)

39. While all victims of criminal offences deserve the attention of the police and law enforcement and judicial authorities, some must benefit from a special regime because of the specific nature of the trauma they have suffered or the seriousness of the crime they have been subject to.

40. Prosecutors, where it is within their competence, should aim at early detection of these cases and pay attention, in particular, to:

- securing early testimony so that this may later be used as evidence in court proceedings;
- early initiation of criminal investigation and prosecution and adequate supervision of their outcome;
- prevention of unnecessary repeated victim testimony;
- appointment, where appropriate, of a guardian to a child participating in the proceedings;
- requesting expert advice and formulating the questions for the experts with precision.

Domestic violence and sexual abuse

41. Domestic violence is frequently characterised by a significant period of time of repetitive attacks, aggravating aggressiveness of the offender, emotional interdependence between the offender and the victim and by secrecy (taking place most of the time in private). Very often, a victim does not wish to cooperate with law enforcement authorities, due to

material and psychological dependence on the offender, shyness and an assumption that the offender's behaviour will improve. Victims may sometimes wish to play down the seriousness of the offender's actions, refuse to testify, change their testimony or assume some guilt themselves. If a victim is willing to testify, he/she normally provides maximum information immediately after an incident (very often it is the last and the most serious attack; sometimes, however, it may be after the first attack, when a child is involved).

42. Prosecutors, where it is within their competence[9], should aim at early detection of these cases and pay attention, in particular, to:

- differentiation of events falling under the concept of domestic violence;

- the need for the proper legal qualification of an act leading to domestic violence; in this respect, they should not focus only on the most recent attack which led a victim to file a criminal complaint but also look for previous criminal incidents (there is a risk of the qualification of previous attacks as another or less serious crime);

43. Intra-family violence, a criminal phenomenon which is often practically invisible, requires investigators and prosecutors to listen carefully to victims in order to detect, as soon as possible, violations and to put an end to violent behaviour. Interrogations should be carried out with all necessary legal guarantees. It is also important to cooperate with agencies and public and private institutions that may provide assistance to victims of domestic violence.

44. To avoid harmful consequences for a victim in his/her daily life, it should be ensured, inter alia, where appropriate, that the violent spouse rather than the victim leaves the home of the family or is subject to a restraint order and prohibited from approaching it, and that the victim can benefit from the use of modern technologies, such as to have a telephone to warn the competent authorities in case of imminent danger.

45. It is essential for prosecutors, police and other law enforcement authorities to pay particular attention to receiving, and listening to victims of sexual abuse, especially if the victim is a child or a person with mental disabilities.

Trafficking in human beings

46. Trafficking in human beings is a criminal phenomenon with different forms, such as: trafficking in migrants, sexual exploitation or forced labour[10]. Victims are often vulnerable persons concerned about the aftermath of the offense and avoiding retaliation by the offenders. It is therefore important that prosecutors, police or other law enforcement and judicial authorities help them to receive the necessary support to ensure their protection and to get them out of their criminal environment.

47. The authority concerned should pay attention in particular to:

- the effective investigation of a case;
- the early identification of a victim or potential victim of trafficking in human beings;
- the proper legal qualification of an act as a crime of trafficking in human beings and not as another, especially less serious, crime;
- the concrete and effective protection of the rights of a victim or potential victim of trafficking in human beings;
- considering new forms of trafficking in human beings, e. g. early and/or forced marriages and marriages of convenience, forcing victims, mainly children, to beg and commit crimes;

- the possible links of trafficking in human beings with any criminal activity related to illegal migration;

- the application, where possible, of the non-punishment principle towards victims of trafficking in human beings[11].

48. Within the framework of illegal migration, where the lives and health of migrants are very often endangered, prosecutors, police and other law enforcement authorities should pay attention in particular to:

- possible links between illegal migration and trafficking in human beings and the possible growth in the number of cases of trafficking in human beings in connection with immigrants;

- the identification of smugglers and criminal smuggling networks;

- the identification of crimes related to illegal migration, e.g. falsification of documents (ID cards, visa, residence permit, registration of asylum seekers) and links of smugglers to other criminal activities (trafficking in human beings, drug abuse, criminal activity affecting property);

- monitoring social media (advertisement of services, driver recruitment, information on migratory route development, the situation in destination countries, advertisements such as “looking for a passenger”);

- focusing on unaccompanied child migrants or other isolated persons – they are more likely to be potential victims of trafficking in human beings because of their vulnerable position;

- the contexts of illegal migration and terrorism and their possible interconnection.

Terrorism

49. Acts of terrorism often leave victims seriously traumatised and isolated after the events. It is thus important that prosecutors, according to their legal competence and as soon as the facts are known, pay attention to the fate of victims during investigations and throughout the whole duration of the proceedings[12].

50. It is particularly essential for families and relatives of the victims, to be informed as soon as possible of their fate. The announcement of the victims' condition, whether injured, deceased or missing, should be made in a humane manner. They should also receive adequate and free emergency assistance while ensuring strict respect for their privacy.

51. Every precaution should be taken when returning bodies and objects belonging to victims of acts of terrorism.

52. Prosecutors should also seek to transmit to victims, where appropriate, reliable information on the facts and progress of investigations, paying particular attention to informing victims before information is shared with or reported by the media.

53. Victims of acts of terrorism are often seriously affected in their physical and psychological integrity but also in their financial situation. Prosecutors should ensure, as far as possible, a rapid processing of cases allowing for prompt and adequate compensation for any harm suffered.

Use of special measures or procedures to protect and to rehabilitate victims/witnesses

Support and assistance

54. Sufficient material, human and financial resources are needed in order to provide appropriate protection and assistance to victims and witnesses. Human resources should involve not only trained prosecutors, but also psychologists, pedagogues and other competent experts.

55. As public institutions and NGOs often play an important role in the fulfilment of programmes and projects on victim and witness assistance, effective cooperation should be organised with them.

Testimony of victims and witnesses especially when they are vulnerable: ability to provide sworn testimony, assessment of risk, and other protective measures

56. To avoid secondary victimisation, prosecutors should assess whether, by interviewing victims and witnesses, especially when vulnerable, they are likely to provide relevant information for the case.

57. Vulnerable victims and witnesses should be fully informed in advance of the consequences and the scope of their interrogation.

58. Prosecutors should respect the right of children to have appropriate representatives in the proceedings.

59. Where a sworn testimony is necessary, the victim or witness should be warned about the consequences of such testimony.

60. In those legal systems, where a victim/witness can be asked to take an oath, when there is an objection to being sworn either because he/she has no religious belief or it is contrary to his/her religious belief, he/she should be allowed to make his/her solemn affirmation (statement) and this should be recognised as having the same force and effect as if he/she had taken the oath.

61. Participation of particularly vulnerable victims and witnesses in criminal proceedings should be subjected to risk management analysis mechanisms, revealing possible threats to these persons, in order to provide for proper and proportional protective measures and to monitor the effectiveness of their application.

The effect of a refusal or an inability of children, persons with mental disabilities or other vulnerable persons to provide evidence

62. Subject to law, any person can be interrogated regardless of his/her age if he/she is aware of circumstances relevant for the criminal case. If prior to the child interrogation an issue arises as to whether the child is able to correctly understand and frame the circumstances of the criminal case, or whether conducting procedural activities may have adverse psychological impact on the child, the procedural activity should be conducted based on the assessment by an expert.

63. It is up to the court's discretion to decide, with the help of experts, whether a person with mental disabilities is able to give evidence, based on the ability of the person to understand and properly express the circumstances of the case, and that doing so will not impair his/her health.

Assistance of experts to victims and witnesses

64. Victims and witnesses who have difficulties in understanding the questions and producing evidence may testify with the help of appropriate experts both at pre-trial and trial stages so as to ensure coherent communication.

65. An expert may explain questions to the person testifying, as well as his/her answers, to ensure adequate communication with the prosecutor and the court. The participation of an expert should not reduce the duty of the prosecutor to make sure that the questions put to the victim and the witness are relevant and correspond to his/her level of intellectual maturity. Domestic legislation and/or other instruments should envisage rules for the appropriate behaviour of experts in this respect.

Special measures regarding admissibility of evidence

66. Domestic legislation should envisage special mechanisms to ensure admissibility of evidence obtained using special means. Video-recording of interrogations, questioning in another location via video conference/live TV link, or showing previously video-recorded testimony may be used in this context. These mechanisms should provide appropriate guarantees aimed at ensuring a fair trial, respect the guarantees of the adversarial principle set forth for the accused under Article 6.3 (d) of the ECHR, ensure the reliability of the evidence, and protect the rights of the persons against whom the testimony is made.

Avoiding examination of victims and witnesses several times and cross-examination about their personal lives

67. Where within the scope of their supervisory functions, prosecutors should take measures to reduce the number of interrogations of children, persons with mental disabilities and vulnerable persons in general. These persons should be questioned, if possible, once and only when strictly necessary. The interrogation should be as comprehensive as possible, in order to avoid repetition. When a psychologist or other relevant expert finds that direct interrogation may harm a child or person with mental disabilities, consideration should be given to the interrogation being conducted via adequate technical means.

68. Direct communication between the vulnerable victim/witness and the alleged offender should be as limited as possible, especially in cases of sexual exploitation, sexual abuse and sexual violence, and only when strictly necessary to ensure a fair trial. This may include permitting a victim/witness to give evidence from behind a screen or other similar device so as to prevent the victim/witness seeing the accused.

Possibility to exclude the public from trials

69. Trials should normally take place in public. In very limited circumstances, however, domestic legislation should envisage the possibility of closed hearings (in camera) (for instance where the presence of the public may violate the right of the victim or witness to private life or may cause mental or other harm to a child). In any event, it should be a matter for the court to decide, always ensuring that the requirements of fair trial and transparency are duly observed.

The role of prosecutors and other actors in the enforcement of these rights and in case of their violation

70. Prosecutors, where appropriate, should co-operate, with police and other law enforcement and judicial authorities, victim support institutions, mediation and reconciliation advisory units and NGOs. The prosecutor, as appropriate, should co-operate with institutions (social service centres, community centres, hospitals, educational institutions, witness protection and victim rights protection units) or direct victims to such institutions to have them benefit from support and assistance (legal, psychological, financial in matters of housing, education and employment) in order to facilitate post-violence recovery.

71. The victim should be informed of available options, such as mediation, reconciliation and restorative justice in the matter of access to justice[13]. Taking into account his/her age, maturity and mental capacity, the victim should be informed, in this respect, about the risks and benefits of the choices available.

72. The prosecutor, as appropriate, should take necessary measures for the provision of sufficient and timely information to victims about available support services and legal measures, in a language they can understand[14].

73. The prosecutor should, where appropriate, use all legal remedies against ungrounded decisions of the police and other law enforcement authorities taken to the detriment of victims and witnesses.

5. Training

74. Professional training, which is a right and a duty for prosecutors in general, is crucial in a field with possible social, medical and psychological implications, like the relations with

victims and witnesses of crimes and vulnerable persons involved in criminal proceedings. Training programmes should include exchange of information and experiences on good practices and operational models at national, regional and international level.

75. Protection of rights of victims and witnesses should be recognised as essential for the due process of law and for the fairness of trials. Therefore, this topic should be included in prosecutors' training programmes, both in initial and in-service training, in order for it to become a significant component of their professional knowledge and culture.

76. Certain types of crimes present particular challenges as far as victims/witnesses are concerned. For instance, in cases of organised crime, terrorism or cybercrime, witnesses can feel exposed to impending threats; in sexual or domestic violence or stalking, vulnerable victims/witnesses are exposed to specific constraints; in crimes committed via the internet, a victim can feel helpless to oppose aggressions, identity thefts, etc.

77. Each of these challenges can be better faced by prosecutors who are well aware of possible psychological effects on the persons involved and of appropriate techniques to relate to vulnerable persons. Specialised training is therefore recommended, with the involvement not only of investigators and members of other legal professions, but also of experts of relevant different disciplines and NGOs.

78. Training programmes should refer to the adequate approach to various types of victims/witnesses, to their respect and protection and to the effectiveness of their rights within the framework of criminal proceedings. Appropriate techniques of examination and interrogation should be considered, to obtain truthful and comprehensive testimony, while avoiding any negative impact on the person involved.

79. Skilled and trained prosecutors may contribute to train prosecutorial staff, police and other law enforcement agencies, so that the area of law enforcement as a whole may be

permeated by the same professional knowledge and culture and have the same appropriate operational tools.

6. International cooperation

80. Due to the widespread internationalisation of various aspects of social life, international cooperation against crime, including judicial and police cooperation as well as technical assistance, is of growing importance to the protection of the rights of victims/witnesses in criminal proceedings, in particular in cases of terrorism and transnational crime, e.g. trafficking in human beings and in human organs, sexual exploitation and sexual abuse of children and cybercrime.

81. The role of prosecutors in relation to international cooperation in combating crime and, thus, in the protection of witnesses and the rights of victims is of great importance, especially concerning formal and informal exchange of expertise and information both on request or spontaneously (e.g. sharing fingerprints and DNA data), extradition[15], mutual legal assistance[16], transfer of proceedings in criminal matters[17], and seizure, confiscation and recovery from abroad of the proceeds from crime[18]. Efforts to update and increase the existing legal basis for such co-operation should continue with the active participation of all prosecution services in Europe.

82. International cooperation for the confiscation of assets abroad and their recovery is of the utmost importance to victims[19]. The CCPE encourages therefore member States to develop and enhance common legal grounds for recovery of confiscated assets in the course of international cooperation.

83. Prosecutors should be familiar with and use relevant international instruments in the context of the protection of victims and witnesses, particularly the European Convention on the Compensation of Victims of Violent Crimes (1983, CETS No. 116)[20] and recent Council of Europe's criminal law conventions with provisions relating to the protection of the rights of victims and witnesses and members of their families[21].

84. Prosecutors should also use in international co-operation, to their full extent, new technologies in order to ensure the legitimate rights of victims and witnesses (e.g. possibility to give testimony from abroad without travelling, in particular by video conference and to take electronic evidence from abroad).

85. Prosecutors should effectively use and support existing international co-operation bodies such as Eurojust and judicial networks (like the European Judicial Network). Wide use should be also made of such modern tools of co-operation as controlled delivery, covert investigations, and joint investigation teams.

86. Taking into account the White Paper on Transnational Organised Crime (2014), in particular its provisions related to the strengthening of international judicial co-operation and witness protection, the CCPE sees an interest in the implementation of the measures provided for in the Council of Europe Action Plan on Combating Transnational Organised Crime (2016-2020)[22], which includes, inter alia, the co-ordination of international witness protection programmes with the allocation of appropriate budgets, developing guidelines on protected witnesses' rights and duties, and updating relevant Council of Europe's instruments and publications[23].

87. International co-operation in cases of witness protection should be developed further, while taking into account national and international good practices in this domain[24].

RECOMMENDATIONS

1. Prosecutors must perform their duties with utmost quality and efficiency, in protecting the rights of victims and witnesses, during the various stages of criminal proceedings, including during the execution of court verdicts.

2. Criminal justice systems should include a comprehensive set of rights and protective measures for victims and witnesses which should be respected by all actors in the criminal process. Particularly when they are vulnerable, victims and witnesses should receive appropriate care, counselling and support.

3. Victims and witnesses should receive fair and dignified treatment by prosecution services and should be informed of all their rights, including representation and participation, and their needs should promptly be responded to (by ensuring protective measures, compensation for damages, etc.).

4. At all stages of the proceedings, prosecutors should aim to protect the dignity, private and family life and personal security of victims and witnesses and to secure their procedural rights, including the right to information on the progress of the procedure and, where appropriate, the right of victims to receive legal aid and compensation.

5. Prosecutors, police and other law enforcement officers engaged in criminal proceedings should be able to apply special protective measures according to the circumstances of the criminal case and the extent to which the life, health and property of victims/witnesses or their family members are at stake.

6. Prosecutors should have the necessary skills to prosecute particularly sensitive cases such as terrorism, human trafficking, domestic violence and sexual assault and should cooperate with all relevant actors, either public or private, to handle such cases more effectively and in order to avoid secondary victimisation. Specially trained prosecution units may be established in that regard, where necessary.

7. Sufficient material, human and financial resources should be made available to prosecutors for providing appropriate protection and assistance to victims and witnesses. Victims should also be informed about regional and international individual/collective complaints mechanisms and how to access them.

8. Victims should be informed of available options for access to justice such as mediation, reconciliation or restorative justice.

9. Protection of rights of victims and witnesses, particularly when vulnerable, as well as an adequate approach to various types of victims/witnesses, should be part of the initial and in-service training programmes of prosecutors, in order to become a significant component of their professional knowledge and culture.

10. In the interests of victims and justice, prosecutors should use and support existing international cooperation bodies and promote the development of existing and new instruments of international cooperation. Particular attention should be paid, in this regard, to the confiscation of proceeds of crime and the recovery of confiscated assets.

[1] See the document CCPE(2017)1 or http://www.coe.int/t/dghl/cooperation/ccpe/opinions/Travaux/Compilation_CCPE_avis%2012.pdf

[2] See the list of such CoE Conventions in footnotes 20 and 21.

[3] See in particular Opinion No. 1 (2007) on "Ways to improve international co-operation in the criminal justice field", Opinion No. 5(2010) on public prosecution and juvenile justice, Opinion No. 8(2013) on relations between prosecutors and the media, Opinion No. 9(2014) on European norms and principles concerning prosecutors, including the "Rome Charter", Opinion No. 10(2015) on the role of prosecutors in criminal investigations, Opinion No. 11(2016) on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime.

[4] See in particular the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power, approved by the UN General Assembly in 1985, the Guidelines on the Role of Prosecutors (1990), the United Nations Convention on Transnational Organized Crime (2000) and the 2003 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide (2014).

[5] In some legal systems, this reporting may be seen as a duty.

[6] See also Recommendation Rec (2000)19, paragraphs 32 and 33:

32. Public prosecutors should take proper account of the interests of the witnesses, especially take or promote measures to protect their life, safety and privacy, or see to it that such measures have been taken.

33. Public prosecutors should take proper account of the views and concerns of victims when their personal interests are affected and take or promote actions to ensure that victims are informed of both their rights and developments in the procedure.

[7] See the judgment of the ECtHR in the case of *S. N. v. Sweden*, 2 July 2002.

[8] See Art. 23 and 24 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime - right to protection of victims with specific protection needs during criminal proceedings. See also Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010).

[9] See in particular the Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence.

[10] Some terms - slavery, servitude, and forced labour can be found in the ECtHR case law related to Art. 4 of the Convention. The definition of these terms should be precise but flexible and capable of being adapted to differing circumstances. Procedural aspects of Art. 4 include positive obligations by Contracting States to effectively prosecute and punish any crime the aim of which is to keep a person in slavery, servitude, or forced labour – i.e. a procedural obligation to investigate effectively offences committed within the state's jurisdiction. Effective investigation has to be impartial, independent, thorough and sufficient, prompt and subjected to public scrutiny, and it is not a priori a question of result but of the means used.

[11] The non-punishment principle is not contrary to human rights. See the ECtHR in the case of *Rantsev v. Cyprus and Russia* and in the case of *Siliadin v. France* – a part of Art. 4 of the Convention. See also Council of Europe Convention on Action against Trafficking in Human Beings (Art. 26).

[12] See also the Guidelines on the Protection of Victims of Terrorist Acts adopted by the Committee of Ministers on 2 March 2005.

[13] This approach is also a requirement of the UN Basic Principles on the use of restorative justice programmes in criminal matters (2002) and Council of Europe Recommendation No. R (99)19 on mediation in criminal matters.

[14] See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011).

[15] See, first of all, the European Convention on Extradition (1957, ETS №24) and 4 additional protocols thereto (1975, ETS № 086; 1978, ETS № 098; 2010, CETS № 209; 212, CETS № 212).

[16] See, first of all, the European Convention on Mutual Assistance in Criminal Matters (1959, ETS No. 30) and 2 additional protocols thereto (1978, ETS № 099; 2001, ETS № 182).

[17] See the European Convention on the Transfer of Proceedings in Criminal Matters (1972, ETS № 073).

[18] See, e.g., the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, ETS №141) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005, CETS №198).

[19] As a novelty to the recent system, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) imposes an obligation on the Parties to give priority consideration to returning the confiscated property to the requesting Party, to the extent permitted by domestic law and if so requested, to ensure that victims are compensated or that the confiscated property is returned to their legitimate owners (Art. 25, para 2).

[20] This Convention entered into force on 1 February 1988 and has so far received 26 ratifications/accessions and eight signatures not followed by ratification, and is the first international treaty specially devoted to the protection of the right of victims to compensation concluded within the framework of the Council of Europe.

[21] See, e.g. the Council of Europe Convention on the Prevention of Terrorism (2005, CETS № 196), Art. 13; the Council of Europe Convention on Action against Trafficking in Human Beings (2005, CETS № 197), Chapter III; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007, CETS № 201), Chapter IV; the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011, CETS № 210), Chapter IV; the Council of Europe Convention on counterfeiting of medical products and similar crimes involving threats to public health (2011, CETS № 211), Chapter IV; the Council of Europe Convention on the Manipulation of Sports Competitions (2014, CETS № 215), Art. 21; the Council of Europe Convention against Trafficking in Human Organs (2015, № 216), Chapter IV.

[22] Doc. CDPC (2015) 17 Fin, 2 March 2016.

[23] In particular, Recommendation Rec(2005)9 on the protection of witnesses and collaborators, "Protecting witnesses of serious crime -Training manual for law enforcement and judiciary" (2006), "Terrorism: Protection of witnesses and collaborators of justice" (2006).

[24] See, e.g. UNDCP Model Witness Protection Bill (2000) and the Agreement on Protection of Participants of Criminal Proceedings, signed in the framework of the Commonwealth of Independent States on 28 November 2006 and entered into force on 13 April 2009.