

*Conflicts of
Victims' Interests
and Offenders'
Rights in the
Criminal Justice
System ³/₄ a
European
Perspective*

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Up until some years ago, the criminal justice system used to be depicted as a battle between a suspected criminal on the one hand and the government—representing respectable society—on the other. It is now accepted that criminal law and criminal procedure could never really lead to *justice* being administered unless and until the system pays respect to the interests of victims of crime. This means that the victim should not just be viewed as an instrument enabling the prosecutor to procure convictions. Rather than dealing with the victim as a tool, which can be used in the process of reporting the crime and later on as a witness, he or she should be considered as the injured party, as a human being with rights of their own that should be structurally taken into account at all stages of the criminal investigation and eventual trial. The general direction of victims' reforms means that the victim has a right to be treated fairly, respectfully, and will have to be paid compensation or restitution for the damages incurred by the criminal offence.

It is much less clear, however, in what ways the efforts to emancipate the victim in the criminal process relate to the legal status of the offender, or, during the course of the proceedings, to the position of the person who is accused of having committed a crime. I contend that two sorts of 'easy answers' to this question have surfaced.

The first one is that too much attention has been paid to the legal rights of defendants. To restore an equitable balance, it is asserted we need to divert our basic concern away from the offender and shift it in the direction of the victim.

The other clear solution has often been offered by representatives of some European victim support organisations. Their fundamental argument holds that they are in favour of victims rights but not at all against offenders rights. They fight the idea that victim emancipation is a zero-sum game. They emphasise the areas where victims and offenders interests coincide. For instance, where reparation by the offender to the victim is taken as an argument for a more lenient sentence by the criminal court. In the same vein, the constitution of the Dutch Association for Victim Assistance states as the objective of the Association to promote the interests of victims while at the same time contributing to the further humanisation of the criminal justice system, that is a lessening of its retributive elements.

This paper purports to take this issue one step further. The question is too complicated to allow a straightforward either/or answer. We need differentiation. Yes, there are areas of common interest. We have to define them very carefully—and subsequently take the utmost advantage of them. But we also have to face the fact there are elements of antagonism which can neither be denied nor resolved easily.

The Falkirk Conference

The Paper by the English Language Group

The Annual Conference of the European Forum for Victims Services held in Falkirk, Scotland, in May 1994, debated the conflict between victims and offenders rights in the criminal justice system. A discussion paper was prepared by representatives of England, Scotland, Northern Ireland and Ireland. Acknowledging important contributions made by all participants in finalising the paper, special credit should be awarded to Helen Reeves (director of Victim Support England) for producing the first drafts and inserting the hard core of ideas.

The purpose of the exercise is defined as to explore the long-term goals in the development of victims' rights, and whether or not the rights of victims should be limited in relation to the rights enjoyed by all other citizens, or the rights traditionally given to offenders or alleged offenders. After a sketchy section on the historical background, the paper goes on to analyse the problem in three different categories. The first one is: where victims' and offenders' rights are the same. The second one is labelled: where offenders' rights exceed the rights of victims. And finally: where victims' and offenders' rights conflict.

The first compartment is relatively small, and comparatively easy to deal with. The right to better facilities for witnesses at court and the right to simplified court procedures are presented as examples in the UK. Better legal representation is mentioned as an option for other jurisdictions. The straightforward conclusion reads that 'where injustice exists for both parties, Victim Supporters could join with offenders' representatives to press for improvements'.

More trouble is to be expected in the second area, about ‘inequalities of rights between the parties’, also introduced as ‘dramatic imbalances between the rights of offenders and those of victims’. Examples are:

- discrepancies in legal advice and legal aid;
- the requirement to give evidence in court for victims versus the right to silence of offenders;
- the right to cross-examination by the defendant which does not have an equivalent on the part of the victim;
- mitigation: the accused may say whatever he wishes in an attempt to get a lenient sentence, whereas the victim does not have a right to dispute or to answer; and
- the right to appeal against the sentence, awarded to the convicted person but not to the victim.

These disparities cannot be denied. The question, of course, is: are they justified? Two quotations from the paper make clear that its authors approach the matter in a very prudent way: ‘Where an imbalance of rights has been found, victims organisations will need to demonstrate that victims have a right to expect equal treatment’. And: ‘However much rights may be needed or deserved, there are many rights which cannot be regarded as “absolute”. The resources may not be available to provide for everything which should be due and other priorities may have to be considered. Where two parties are involved in any form of dispute, the rights of one may be in conflict with the rights of the other, so that complete satisfaction by both parties cannot be achieved’.

This observation leads automatically to the third compartment, where victims’ and offenders’ rights conflict. Here again an enumerative list of examples:

- DNA tests, dental imprints and other intimate samples to be used as forensic evidence;
- AIDS tests in sexual complaints;
- special provisions for vulnerable witnesses (children, victims of sexual assault, organised crime);
- should the means of the victim be taken into account in determining the amount of a compensation order?;
- should prisoners’ letters be censored on behalf of victims’ interests?

- do victims have a right to be informed about prisoners' release plans and have the right to require that the offender must live or work elsewhere to avoid a meeting? The paper concludes with a restatement of the basic questions instead of a definitive answer: 'In all of these situations, whose rights should prevail? Should it be those of the victim, on the grounds that they were not responsible for the crime occurring, or the alleged offender, who is in danger of imprisonment, or the convicted offender who will need all the support and encouragement possible if he is to avoid committing further crimes?'

The Workshop in Falkirk

The 1994 conference of the European Forum devoted a full day of deliberations to this subject. Two sessions were scheduled. The first one was intended to draw up a list of fundamental rights of victims within the framework of the criminal justice system. To that end, small working groups were created, along language lines, in order to promote widespread participation and highlight differences between the various legal systems. The ensuing debate was, as might have been expected, probably rather illuminating than conclusive. The rights mentioned by individual contributors varied widely in character and level of abstraction. For instance, it would be hard to place the right to 'decent and respectful treatment' on the same plain as a technical provision like the right to a free copy of the judge's verdict. The right to 'a swift and simple trial' is of a different nature than the right to free legal assistance. This kind of differentiation complicated the debate. It also turned out that some rights which are quite natural or self-evident for some members of the Forum, are unacceptable to others in the same measure of firmness. I mention as examples the right to initiate a criminal prosecution and the right to appeal against the sentence. After the working groups reported back to the plenary, more lively debate resulted in the following tentative list of rights:

1. Protection
 - against intimidation)
 - against physical threat) Examples
 - respect from media)
2. Information
 - about all aspects of criminal justice process
3. Legal help
 - knowledge about their legal situation
 - access to legal support with regard to their case
 - in countries where victims already have a formal role, this should be strengthened
4. Compensation

However, the Forum was fully aware of the contingencies within this catalogue. Designating this product as only the first step in a prolonged effort, it

instructed its Executive Committee to elaborate a more balanced and fine-tuned set of basic minimum rights for victims in the penal process.

The Conference also tackled the question of prioritising conflicting victims' and offenders' rights by having the working groups make up their minds in three real life cases. Each group was asked to:

- come to a decision on whose interests should prevail in each case,
- list the two main reasons why they reached this conclusion, and
- state what other action they might take to remedy the potential harm to the party they did not select. Here are the cases and the responses they provoked from the working groups:

Case 1: Release before trial

- (a) Victim: Eva Schmidt sexually assaulted in her own home by a man she met in the social club where she works. Eva, who lives alone, has informed the police that she has been so badly affected by the assault that she feels unable to leave her home or return to work. She is terrified that her attacker will return.
- (b) Accused: Gerhard Müller accused of sexually assaulting Eva Schmidt in her own home. He has denied the charge. Gerhard is very worried about being absent from work as he has only recently got his current job following a long period of unemployment, and he is worried about losing it.

Question: Should Gerhard Müller be released from custody before his trial?

Results: On the basis of the information supplied, four groups answered yes, the suspect should be released awaiting trial. Some of the groups suspended judgment, because they felt they needed more information before a responsible decision could be taken (for example, details about the amount of evidence, about prior convictions, and so on, which can be very important in some of the European jurisdictions but would hardly matter for this question in others).

The main reason listed for this opinion was the 'presumptio innocentiae', the principle that a person should be treated as innocent until his guilt has been legally proven. As a possible remedy for the victim, it was suggested by some to get a civil court injunction preventing the suspect to show himself in the vicinity of the victim's home and for the social club where the victim is employed. Only one member of one group felt that the accused should remain in pre-trial custody.

Case 2: Compensation

- (a) Victim: John Robertson a single parent living on state benefits, came home one day to find his home had been broken into. His TV and video

were stolen along with Christmas presents bought on credit for his one-year-old son. He has no insurance for the contents of his house.

- (b) Offender: Alison Smith has been convicted of burglary. She ransacked John Robertson's house and stole his TV and video and some Christmas presents. Alison is a single parent who lives on state benefits.

Question: Regardless of any sentence she may be given, should Alison Smith be ordered to pay compensation to John Robertson?

Results: Four groups answered yes, two groups said no. Obviously, what is at stake here is the problem of how to match the interests of two parties who realistically cannot be expected to sustain a substantial financial loss. Main reason for an affirmative answer, then, is justice. The victim is not better off than the offender, so if one of them has to suffer beyond means, the burden has to fall to the latter. Besides, the duty to pay reparation is the logical consequence of crime, it was noted. So, a moral reason, theft is wrong and the offender is responsible. The primary reason for the opposite opinion was of a pragmatic nature: compensation orders which do not take the means of the offender into account, are doomed to be counterproductive. They will more often than not leave the victim with empty hands in the end. In existing victimological literature it has often been explained that raising expectations which can later on not be fulfilled, easily leads to secondary victimisation. So a compensation order which cannot be effected is very harmful. One should bear this in mind when, for instance, looking at the low rate of only 25 per cent of court orders benefiting victims in the French 'partie civile procedure' in the end leading to actual payment by the offender (de Liege 1988). Alternatively, they will add to new victimisation because the offender resorts to repeated crime in order to pay off his debt.

Case 3: Prisoner's Release Plans

- (a) Victim: Annette Laval, 24 years was assaulted by her ex-boyfriend Marcel Dubois over a period of three years. She has since re-built her life and has a new relationship and a young child. She has now been informed that Marcel will shortly be released from prison. She has informed the authorities that she believes her safety will be at risk if Marcel comes back to town. She has already been intimidated by members of his family. Annette has said she will have to move if Marcel is released to his home town.
- (b) Offender: Marcel Dubois, 25 years, has served 4 years of a 6-year prison sentence for violent assault on Annette Laval, his estranged girlfriend, and will shortly be released on supervision. He is hoping to settle in his home town where his mother will accommodate him and where his former employer has guaranteed a job.

Question: Should Marcel Dubois be allowed to settle in his home town?

Results: Yes: five groups; no: one group. Most important reason for the majority is that after completing the sentence set by the court, the case is closed. No further punishment can then be inflicted. Besides this principled argument, some pragmatic reasons were offered, like: an exclusion order would not reduce the risk, since the offender can still return and reoffend, or if exiled, there could even be an increased risk of intimidation by his family. Redress for the victim should be sought by preventing additional harm done to her in the future. This could entail a court order foreclosing seeking personal contact with his former girlfriend, for example.

Discussion

The Inventory of Victims' Rights

As has been shown in the preceding section, the Falkirk conference did not exactly produce a carefully considered definitive catalogue of basic victims' rights in the criminal justice system. Still, the efforts made to that effect have been worthwhile and will contribute to cast a new light on the question of balancing victims' and offenders' (or suspects') interests. When reflecting on the outcome of the debate, four items should be highlighted.

- Victims' and offenders' rights are from a substantive point of view heavily contingent on some of the features of the criminal justice systems involved. Victims issues are part of—and therefore dependent on—a larger design. In my opinion, the following characteristics of any system could never be discarded in determining the scope of rights and obligations. First, the nature of the proceedings. Members of the European Forum comprise nearly the entire range from strictly adversarial systems to fairly inquisitorial ones. The stature of the prosecutor and the role of the judge during proceedings before the bench—either a safekeeper of a fair trial in the former, or the official bearing the chief responsibility for getting to the truth in the latter type of systems—is of pivotal importance vis-a-vis the other major participants in a given case. Just one obvious example: witness preparation and protection. This notion will, to a large extent, be contingent on whether the system employs harsh cross-examination or a practice in which the questioning of informants during trial is primarily left to the judge, so that—as a rule—a more detached and less intimidating conduct may be expected. The same holds true for systems employing a different procedure for trying confessing perpetrators and denying defendants on the one hand and systems which do not make that distinction on the other. And finally, one should always take into account whether a given system is based on the expediency principle rather than the principle of legality.¹ These are

¹ The principle of legality obliges a prosecutor to bring every clear criminal case to court. On the other hand, the expediency principle allows the prosecutor a wide margin of discretion in

some of the key-elements constituting the frame of reference of victims' and offenders' rights in comparative law. They carry quite a few assumptions, implications and prerequisites bordering on the very concept of what can be considered as fundamental rights and obligations.

- In drawing up a list of basic victims' rights, some of the vital issues can easily get confused. During the debate in Falkirk, Helen Reeves emphasised that one should carefully distinguish the question of what rights a victim should have from the question which person or official must be charged with effecting any such right during the course of criminal proceedings. In other terms: some of the basic victims' rights could and should be reformulated into a 'services model', leaving it to the police and the prosecutor to see to it that the victim gets his due. I think that is right on the mark. Applying this kind of analytical distinction could bridge the gap between positions which could otherwise never be reconciled. Taking this argument one step further, I claim it would be wrong to use a 'victims charter' or a 'victims bill of rights' as a first (or as a final) step in the direction of transforming the criminal trial into a three-party process. Awarding the victim the status of a party on the same level as the prosecutor—that is as an *opponent* of the accused—would be a burden instead of a bonus. Instead of being an improvement, it would make the victim vulnerable to attacks from defence counsel. Applying these general observations to some contentious questions of reforming criminal law, I would argue against the right for victims to initiate a criminal prosecution and against the right to appeal a sentence considered to be too lenient. Of course, the victims' view in these matters should always be taken into account—should carry a lot of weight—but this input should be effected by indirect means, that is through the prosecutor's office, and when appropriate subject to judicial supervision.
- Further pursuing the line of specifics, it seems fit to comment on the tricky subject of victim impact statements. Over the past years, a vast bulk of scholarly literature on this topic has amounted. Instead of some form of consensus it shows bitter clashes of opinion, quite often laced with emotional evocations and ideological denunciations of victimologists favouring a dissenting point of view. Against this background, the Falkirk conference was remarkably productive on this issue. First, it was agreed that the information as to the impact of the crime for the victim should not only be supplied at the trial stage of the criminal proceedings. The police and the prosecutor should record data about

deciding to drop the case, to enter a settlement with the offender, or to formally indict the offender. Prosecution will only commence when it is explicitly considered to be serving the public interest. It may be conceded that on an operational level the two systems have converged considerably. However, the difference in perspective still has implications for the way the protection of victims' interests has to be structured.

both the emotional and the financial consequences of the crime for the victim. This type of information must be a firm component of the file in every case. Subsequently, the officials should take this into account whenever taking decisions in processing the case. If the case comes to court, the magistrate can only measure the seriousness of the facts if and when he is informed about the material and emotional loss of the victim. Then it was agreed that a distinction is to be made as to the objective of a statement concerning the effects of the crime. It is one thing to have a statement to support a claim for reparation. But it is quite another matter to deal with a statement formulating a desired charge of the offender, or designating a requested sentence. Members of the European Forum for Victim Services are much more in favour of the former than of the latter.²

And finally, it was suggested to altogether drop the label of ‘victim impact statement’ from policy debate. The term is in itself not clear, and contaminated by ideological battles. So why not abandon the label and restart focusing on the substantive questions underlying it?

- The final question must be: what’s the use of just another inventory of basic rights for victims of crime? We already have the UN Declaration of basic principles of justice for victims of crime and abuse of power (A/res/40/34). We are also familiar with the Council of Europe Recommendation on the position of the victim in the framework of criminal law and procedure (no. R(85)11). What additional value could a similar document, produced by the European Forum for Victim Services, have? I would say that a plain and simple statement of fundamental rights, issued by an international body comprised of national organisations with a huge experience in the hardships of crime victims, would be of great importance. It would not be an end in itself. Rather, it would offer a challenge to legislators in all countries directly involved by membership. It would present a new goal for policy makers. There would be a new yardstick for success in improving the position of victims in the framework of the criminal justice system.

Conflicts of Rights, continued

The session of the Falkirk conference in which the three cases were argued, was revealing in more than one sense. Here we had an assembly of experts at work with a professional duty and personal commitment to protect the interests of crime victims. And yet, the outcome of their deliberations showed unequivocally

² Of course, it is important for the victim to get a chance to express his feelings as to the optimum punishment. But we should be careful in choosing the right forum. Dutch experience has shown that it is very useful in serious cases to have a personal meeting between prosecutor and victim, prior to the trial. The victim is then free to state his opinions without restraint; the prosecutor will show empathy and will explain his own position and the way he is going to handle the upcoming trial.

that they are not prepared to pursue this aim at any cost. They fully accept that other considerations have to be taken into account which might even have to prevail. The votes taken on the three cases prove that there is an overriding feeling that the emancipation of the victim in the criminal justice system does not entail that offenders' rights are taken lightly. So the inevitable question presents itself again: where to strike the balance? What should be the *criterion* to apply when deciding whose interests should prevail?

It is my personal conviction that the basic line of demarcation can be found in article 6 of the European Convention for Human Rights, Rome 1950, guaranteeing everyone charged with a criminal offence the right to a fair trial. Neither legal scholars nor lobbyists for victims' rights could ever pride themselves for advocating changes that would move the system below the qualitative level called for in this Convention. It just would not do to answer an historical injustice to the injured party with intentional and institutional unfairness to the accused. One ought not to try to correct a wrong with a wrong.

Of course, this reference to the Convention of Rome does not provide a panacea. It leaves many tough questions unresolved. Although it carries the advantage of offering a firm sense of direction, it still leaves much room for interpretation and evaluation. I will briefly consider three items which are bound to come up in further discussions about prioritising victims' and offenders' rights.

The first one concerns the literal application of provisions of article 6—or equivalents thereof in domestic law—in each and every instance. Sometimes, exerting procedural rights during the course of the trial can be extremely distressing for a victim, while no legitimate interest of the accused is really served by such a course of action. When there is no sensible purpose to be discerned, the only point in invoking the right could be either trying to sabotage the proceedings or to harass the victim. It conforms to general principles of law—for example the maxim 'point d'intérêt, point d'action'—in circumstances like this to deny the defendant the exercise of his statutory right. The fairness of the trial is clearly not compromised.

The question is more complicated when it cannot be denied there is some reasonable interest at stake for the accused, but one which is matched by an overriding obstacle on the part of the victim. The issue here is whether or not the judge should have the power to make a discretionary decision giving priority to one of the relevant interests with the possible effect of thereby curbing the legal rights of the defendant. I would argue that he should have, provided this power is limited to cases where an extreme disparity is evident between the interests at stake. In cases like that, courts should have the discretionary power to rule that the statutory right is superseded by the interests of the aggrieved party. I mention as an example a recently tried case by the Dutch Supreme Court, about the right of the defendant to have each accusing witness challenged in open court. This right, clearly within the ambit of article 6 and fully sustained by the Dutch Code of Criminal Procedure, was nevertheless slighted—or rather infringed—given the circumstances of the case—*see* Hoge Raad, 1 October 1991, *Nederlandse Jurisprudentie* 1992, no. 197. The case concerned a psychiatrist who had sexually abused a number of pupils who had been entrusted to him in an institution.

These acts left the victims with great psychological damage. After reporting the crime, the victims were questioned by the police and by an examining magistrate. Their statements were later used as evidence in the court. The Supreme Court upheld the decision to refuse the defendant the opportunity to have the victims testify in open court again, because of the emotional strain this would cause to them. The most prominent factors that were taken into consideration by the Supreme Court in balancing the interests at stake were:

- witnesses were questioned by an examining magistrate in the presence of a defence attorney who had the opportunity to ask questions; and
- the statements by the witnesses were supported by independent other pieces of evidence used by the court (*see also* the case Hoge Raad, 22 June 1993, *Nederlandse Jurisprudentie* 1994, no. 498).

Subsequently, the Moons Commission (a commission advising the government on modernisation of criminal procedure) urged the Minister of Justice to alter the Code of Criminal Procedure accordingly, so that the interests of witnesses (victims) shall play a part in deciding who is to appear for questioning in open court (9th Report, *Recht in vorm*, Den Haag, juni 1993).

Obviously the legal system should be very careful and restrained in denying defendants the opportunity to exercise their procedural rights. There are indeed many pitfalls involved in leaving it to the judiciary to determine when the accused is effected severely enough in any legitimate interest when opting for unusual or unsympathetic tactics in litigation. On the other hand, however, it is beyond doubt that honouring the *substantive* interests at stake is the only way to avoid gross injustices in the criminal process. So we should try to develop some additional standards governing this kind of discretionary decision which prioritises rights. I would suggest that some of the unwritten general principles of law, such as the principles of proportionality and subsidiarity, could be applied *per analogiam* in this area.

The second item is about the ways the victims' and offenders' interests are the same. Earlier in this paper I quoted the results yielded by the English language group of the European Forum, identifying several areas where these interests apparently coincide. Examples mentioned are the right to better facilities for witnesses at court and the right to simplify court procedures. These examples give rise to some comments, both on a practical and on a more theoretical level. From a practical point of view, we ought not too easily accept the proposition that procedural interests are identical. For instance, let us for a moment further examine the example of the need for a simplified court procedure. Upon closer inspection, it can be argued convincingly that doing away with all kinds of technicalities is not at all in the interest of the accused. Complicated procedural standards tend to provide loopholes for defendants and can be invoked for claims of a mistrial. They can get guilty people off the hook, no matter the quite different and honourable intentions with which they have initially been designed. Simplification would also lead to speedier trials. Would that be a shared interest of victim and offender alike? At least in one sense it would not. It is well known that the more time elapses between the crime and the

judgment by the court, the milder the sentence is likely to be: hence the notorious attempts at delaying proceedings by many—respectable—defence lawyers. So, in practical terms we should be very sensitive to spot conflicts of interests where some common ground at first sight appears to exist. On a theoretical level, though, I would like to point to a striking similarity in the positions of the victim and the accused in the criminal justice system. Whenever acting within the framework of this system, both victim and offender are always entitled to a state of intellectual autonomy. This means they have a nearly unqualified right to fight for their own interests as they see fit. It further means that they are not bound by the basic premises of the criminal justice system. They cannot be required to subscribe to its underlying values. In this key aspect, the victim and the accused share a position which is fundamentally different from the one taken by all the public officials involved, most notably the prosecutor and the judge (*see Melai 1992*). In operational terms, this state of affairs opens up roads to reform. By following a daring, unconventional strategy in a given trial, a victim may prompt some bending of hitherto constraining rules. The intrinsically dynamic character of procedural law can thus be exploited by victim and offender alike.

But what to do when the wishes of the victim ultimately fall outside the ambit of the criminal law? I can be brief about this question. To my mind, it is perfectly clear that the criminal justice system does not provide the appropriate forum to honour *all* legitimate claims by victims of crime. In the end, it makes sense that a complementary role must be played by the civil courts. The criminal justice system—in all its stages—may be expected to take victims interests fully into account. There are, however, many matters emanating from a crime having occurred, which do not come under the competence of the government in prosecuting the offender. Examples of this we saw in the cases debated at the Falkirk conference, particularly in the pre-trial detention case and in the case of resettlement in a home town after a prison term has expired. Seeking, and finding, redress in civil litigation in cases like this should be considered as an additional protection offered by law, rather than as a demonstration of the fallibility of the criminal justice system.

Concluding Remarks

In this paper, an attempt is made to put the interrelationship between victims' and offenders' rights into perspective; a European perspective, that is. I have endeavoured to explore the middle ground between two very outspoken positions, one holding that victims' and offenders' interests are by definition always at odds, the other claiming that it never is a zero-sum game. The method used to that effect was a narrative of the deliberations within the European Forum for Victim Services about, first, a catalogue of fundamental victims' rights, and second, some cases in which tough decisions were needed in prioritising victims' and offenders' rights. Instead of summarising the contents of the preceding sections, I will now present four conclusions which seem to be inescapable in the light of the foregoing expositions.

The first one is of a conceptual nature. It reads that a *common interest* of victims and offenders should not be equated with an *identical interest*. Likewise,

a *shared interest* is not necessarily the *same interest*. A simple example might illustrate this distinction. Reparation is clearly and obviously one of the major interests of crime victims. On the other hand, in quite a few criminal justice systems it is advantageous for an offender to pay restitution to the victim: police and prosecutors will then be more inclined to drop the case and even when it still is brought to trial, the sentence is likely to be more lenient. So we can say that this type of covering of damages is a common, a shared interest by both parties, while admitting at the same time that the interests involved are absolutely not identical.

The second main conclusion is gained from the debate about the three case studies presented to the Falkirk conference. In my mind, the outcome of these deliberations establish beyond any doubt that the member organisations of the European Forum for Victim Assistance are all for victims but in no way against offenders. Hence, they will not take part in movements striving for a more repressive criminal justice system; they will, for instance, not endorse campaigns for stiffer penalties. Just two brief remarks to underscore the content and wider meaning of this conclusion. Number one: Individual member organisations do not all share the exact reasons why this position should be adopted. Whereas one member might consider further humanisation of the criminal justice system to be an end in itself, another will have a more instrumentalist view, expecting that a less retributive system will lead to lower rates of recidivism and thus less victimisation in the future. What matters most here, though, is the bare fact that all in the end agree that emancipation of the victim is by no means intended as an effort at the expense of the rights of the offender in the penal process. So, the second remark is simply that the victim support movement in Europe could at present not in any way be associated with victimagogic rhetorics which have elsewhere been seriously criticised, and often with justification (*see* Elias 1993; Fattah 1992).

As the next conclusion I reiterate a point made before, that the criminal trial should not be reformed into a three-party affair. The victim will have to be recognised as a partaker in the proceedings, whose interests must be guarded carefully, but he should not be put in the position of an adversary of the defendant. That would make him vulnerable and could easily lead to more secondary victimisation.

And finally, there is the question of a 'victims charter' or a list of basic victims' rights in the criminal justice system. I have argued that it would be worthwhile to have such a document drafted and issued by the European Forum, provided that the inventory of fundamental rights does not overlook certain structural differences in the legal systems involved.

The past decade has in many countries been an era of reform on behalf of victims of crime. This paper aims to show that providing new kinds of justice to victims is not—indeed: may not be—tantamount to a crusade against offenders. On the other hand, it would be foolish to deny that offenders' rights can and will in some aspects be impaired by this process of re-evaluating the basic structure of the criminal justice system. A lot of work remains to be done to explore decent solutions somewhere in between these two antipodal positions.

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