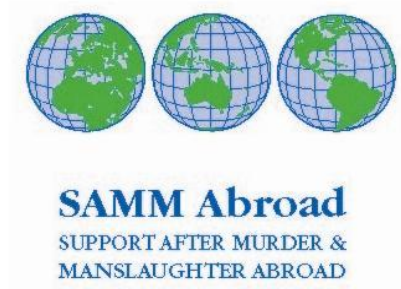


Call for Evidence on the Review of the Balance of Competences between the United Kingdom and the European Union



Joint Response
from
SAMM Abroad (Support After Murder and Manslaughter Abroad)
and
MAMAA (Mothers Against Murder & Aggression)

INTRODUCTION:

SAMM Abroad is a registered charity that provides practical and emotional support, peer support and advice and information to individuals bereaved by murder, manslaughter and suspicious death abroad.

MAMAA is a registered Charity which provides an all inclusive support/peer support and advocacy service to individuals bereaved by homicide.

Overview:

UK nationals bereaved by homicide overseas have identical needs to those bereaved by homicide on home soil. The crime was committed overseas but the victims live here in the UK and need every help and assistance if they are to cope with and recover from the devastating effects of the crime.

We have come a long way in attempting to meet the needs of those bereaved by homicide where the crime is committed in the UK e.g the development of Getting it Right for Victims and Witnesses, the revised Victims Code, but attempting to meet need where the crime has occurred overseas has separate and specific challenges. This is recognised in **The Directive establishing minimum standards on the rights, support and protection of victims of crime** [[Directive 2012/29/EU](#)] and also in the **Review into the Needs of Families Bereaved by Homicide - Louise Casey CB July 2011**

On average 55 - 65 British nationals are murdered overseas each year. The effect on the families and loved ones of those murdered (secondary victims of homicide) will be identical to those bereaved by homicide in the UK with the added complexities and difficulties that dealing with a foreign Criminal Justice System brings.

We do not have specific numbers of homicides of British nationals in Europe (versus the rest of the world) but of the families SAMM Abroad supports, Spain and Greece are heavily represented. SAMM Abroad have requested a breakdown of figures for Europe from the FCO but these have not yet been received.

Co-operation between EU Police forces and Information on Criminal Justice Proceedings:

Most families bereaved by homicide overseas report that there is little to no co-operation between the police force in the member state where the crime was committed and the UK police. This is reported back to the families by the UK police (where the police are pro actively supporting the victims). It is not unknown for UK officers to travel to the country where the crime occurred in an attempt to obtain information only to return to the UK with absolutely no information to report.

It is useful to look at a brief, recent example as to how the UK assists the families of foreign nationals bereaved in the UK:

Following the murder of a Spanish national in the Dorset area, the victims body was repatriated to Spain in as timely a fashion as was possible (weeks). The family was brought over from Spain to visit the scene of the crime. British Detectives, along with translators, visited Spain to update the family on the progress of the investigation. Once the perpetrator had been apprehended, the Spanish family were invited to attend the trial, provided with interpreters, and were given accommodation.

This should be standard treatment of victims and witnesses across Europe. The UK government agrees it should be, but does little to support UK nationals to ensure or encourage reciprocation

What can be done within the European Union to ensure that EU members reciprocate?
What can the UK government do to better support families where this level of care and consideration is not reciprocated?

Legal Advice and Advocacy:

Foreign Office advise to British nationals bereaved by homicide overseas is that they should employ the services of a lawyer in the country where the crime occurred. In member states with judicial secrecy, families require lawyers if they are to gain access to information about the investigation. Adequate legal representation in the relevant foreign jurisdiction is essential to ensure families receive reliable information. If they cannot afford to employ a lawyer they are effectively excluded from proceedings about the death of a family member.

Article 6 of the ECHR sets out the right to a fair hearing for persons accused. SAMM Abroad and MAMAA strongly argue that *all* parties in criminal proceedings should have the absolute right to a fair trial, not just the alleged offender. Without legal representation this can be almost impossible for a victim of crime overseas to achieve.

Legal Advice and Advocacy Case Study 1: Mr & Mrs R's son was fatally stabbed in Greece. In addition four of his friends also suffered stab wounds in the same incident but recovered from their physical injuries. The perpetrator was brought to trial and found guilty. He subsequently appealed and one year later there was a re-trial when the perpetrator had his sentence increased. The four friends were material witnesses but the Greek Courts said they could submit Written Statements. However, the family's Greek lawyer explained to Mr & Mrs R that the witnesses appearing in Court would assist with securing the conviction. Mr & Mrs R could not risk the witnesses not attending the Court in person and were left to fundraise to pay for the first and subsequently the re-trial. £50,000 was raised to pay for the lawyer, family and witnesses to travel and accommodation to attend both trials.

International child custody disputes are granted overseas legal aid. Is there a case for a similar service to be made available for homicide cases?

Financial Impact:

Victims are the only participants of any countries Criminal Justice System (**CJS**) who do not choose to be part of it (excludes those wrongfully charged/convicted). The majority of other participants (police, lawyers, barristers, court staff, judges etc) are paid to take part (excluding the convicted offender who is a participant by choice). It should be understood and acknowledged that becoming a victim has cost implications on the individual crime victim no matter where the crime occurs. Where the crime occurs overseas those cost implications increase significantly.

Where a homicide occurs overseas, additional costs faced by those bereaved include travel and accommodation, costs to visit the scene of the crime and/or attend a trial, repatriation, translation of documents and fees for foreign legal representation.

In a short survey of SAMM Abroad beneficiaries the average cost per family was £59,000.

What more can be done across Europe to ensure that no financial costs are incurred *because* we have become a victim of crime?

CICA

Criminal Injuries Compensation Schemes vary across EU member states. Some countries are willing to compensate citizens who fall victim to crime abroad (or their families in the case of homicide) while others have very narrow criteria for providing financial compensation.

Some European member states apply means testing thus precluding many British families from obtaining compensation from what was intended to be a reciprocal arrangement across Europe.

Although **Council Directive [2004/80/EC](#) of 29 April 2004 relating to compensation to crime victims** was ratified in 2004, Italy and Greece were late in its transposition (2007 and 2012 respectively). At a recent SAMM Abroad meeting with approximately 20 families in attendance, only three had received any compensation following a homicide (all three from France). The UK and the European Commission must do more to ensure that all member states comply with reciprocal agreements and directives. It should not be the victim who carries the burden of attempting to ensure a member state complies to reciprocal agreements.

In 2012 UK CICA changed its rules and now compensates the families of victims of terrorism abroad. Compensation should be fairly available to all secondary victims of homicide. It is extremely difficult for a victim to understand that the wrong flavour of murderer killed their loved one and that therefore they are unlikely to be compensated.

How can the UK government and/or EU commission better support UK citizens to obtain compensation from the member state where the crime occurred?

Coronial System

Following the repatriation of a British national homicide victim there is a mandatory inquest held by a Coroner of England & Wales.

In order to carry out the inquest the coroner relies on information from the bereaved families, the UK police (if an SIO/FLO is appointed, which does not always happen) and/or the Foreign & Commonwealth office.

At a Victims Directive conference in Portugal Europe, MAMAA asked the panel (of various judicial operatives from across EU member states) who was responsible for keeping the UK Coroner informed of the progress of the investigation. A confused panel replied "what is a Coroner?" We are aware that across EU member states there is no equivalent to our Coronial process.

Coronial System Case study:

An account of one family's experience of the Coroner/Inquest system in the UK and following the homicide of their daughter in France:

"As painful as it was to hear following the Home Office post mortem that there were marks on my daughter's wrists where she had been tied up and strangulation marks on her neck, I needed to be sure of the facts. I was hearing it in English, in a British Court and I believed that what I was hearing was the truth about what had happened to her You can handle the facts, it's the unknown which is most painful.

The Coroner returned a verdict of Unlawful Killing. He was critical of the French failure to co-operate and was quoted in the Press as saying, "My hope is that steps can be taken to improve communication and the passage of information between the French and British authorities"

Via his French lawyer, this father had sight of the French file. No one offered to translate this, or any other information, for him and he could only afford to have parts of it translated professionally. The rest he pored over with an English/French dictionary. He felt that, with no experience, he was having to conduct a murder investigation on his own.

What can be done to inform EU member states about Coroners and their role?

How can we better encourage EU member states to share information with our Coroner?

Recommendation:

Recent media reports stated that over the last three years, UK police have spent £82m on interpreters and translators to assist foreign nationals going through the UK Criminal Justice System.

British citizens should be afforded the same courtesy where they become "victims" in an EU member state.

This should either:

- a) be reciprocated by the member state where a British citizen becomes "victim", or
- b) interpretation should be provided by the UK government when a British citizen becomes "victim" in an EU member state.

Repatriation:

Following a homicide, the body is most often returned to the UK within a reasonable timeframe.

However, in a few instances the Spanish judge has refused to repatriate or repatriates with conditions.

Repatriation Case Study 1 - Mr X was murdered in Spain over 5 years ago. His body was repatriated to the UK and lies refrigerated within the Coroner's jurisdiction. Spain returned the body on the understanding that the UK coroner would not release the body for burial/cremation until the trial was over. The trial has recently taken place some 5 years after the murder and the body is still being held at the mortuary. This family has been incredibly distressed and now faces having a funeral some five years after the death.

Repatriation Case Study 2 - The Spanish judge has refused repatriation of Mr Y and the body has been buried in a niche in Spain, leaving the family distraught. They have set up a campaign to have his remains returned to the UK.

Recommendation - Consistency: There must be a consistent experience for all families across Europe and any anomalies within systems should be negotiated out.

The Directive establishing minimum standards on the rights, support and protection of victims of crime [[Directive 2012/29/EU](#)]

The directive has been gratefully received by those who support British nationals who become crime victims overseas and should go some way to eliminating the injustices faced by victims of crime across Europe. However, there are areas of concern.

1. If rights set out under the directive are not achieved how do victims secure redress?
2. How will support organisations based in the UK learn about/navigate the various complaints procedures of the many agencies across Europe guided by the directive?
3. Will the right to translation apply to complaints procedures?
4. How can we ensure victims are aware that they have rights across Europe?

Criminal procedure Road Map

Having read the "Criminal Procedural Law Roadmap" (Chapter 4, page 15 of the Review of Competences) setting out measures which aim to facilitate protection of suspected and accused persons in criminal proceedings, these same measures could and should be applied to victims of crime:

- *Translation and Interpretation
- * Information on Rights and Information about the Charge (substitute investigation)
- * Legal Advice and Legal Aid
- * Communication with relatives, employers and consular authorities
- * Special safeguards for vulnerable victims

Authors

Eve Henderson (SAMM Abroad)

Kate Whaley (MAMAA)