

Victims in Criminal Procedure: A Review of Latvian Criminal Procedure Norms through the Prism of Minimal EU Standards

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The current paper is focused on the legal status of victims in criminal proceedings. The author has reviewed legal norms in Latvia in this regard from the perspective of European Parliament and Council Directive 2012/29/EU (25 October 2012), to establish minimum standards on the rights, support and protection of victims of crime, thus replacing Council Framework Decision 2001/220/JHA. The Directive includes conclusions from a study of the situation in Latvia as a part of the project "Protecting Victims' Rights in the EU: The Theory and Practice of Diversity of Treatment During the Criminal Trial." The project is being implemented by the Centre for European Constitutional Law and the Institute of Advanced Legal Studies at the University of London School of Advanced Study and funded by the European Commission. The author's thesis is that criminal procedure norms in Latvia have already enshrined a fairly high level of rights for victims, as based on the fact that for several decades, victims have been recognised as active participants in criminal proceedings. At the same time, however, several amendments to these norms are needed in order to satisfy the requirements of the Directive. Some would involve more precise or supplemented rules, but in other cases the potential changes can be seen as essential. The greatest changes will relate to the individual evaluation of victims and the individualised procedural processes which are based on the said evaluation.

Keywords: Victims in criminal proceedings, individual evaluation of victims, rights of victims, explanation of rights, protection of victims, legal aid to victims, compensation.

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Introduction

European Parliament and Council Directive 2012/29/EU (25 October 2012) to establish minimum standards on the rights, support and protection of crime victims, thus replacing Council Framework Decision 2001/220/JHA, was approved by the European Council of Ministers on October 4, 2012. The Directive can be seen as a successive step toward norms that are related to the protection of victims. Prior to the implementation of the directive, the most important legal instruments in this regard were:

- Council Framework Decision 2001/220/JHA (15 March 2001) on the standing of victims in criminal proceedings;¹
- Council Framework Decision 2002/629/JHA (19 July 2002) on combating trafficking in human beings;²
- Council Directive 2004/80 EC (2 April 2004) relating to compensation to crime victims;³
- The multi-annual programme 2010-2014 regarding the area of freedom security and justice (Stockholm programme) P7_TA(2009)0090;⁴
- Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Strengthening victims' rights in the EU, COM/2011/0274, final version;⁵
- Council Resolution 2011/C 187/01 (10 June 2011) on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings.⁶

There were several reasons why the author decided to look at how the minimal standards that are enshrined in the Directive are being implemented in Latvia. First of all, this is an important issue. Secondly, there have been no major studies or publications about the issue in Latvia, because the Directive is comparatively new and those who have focused on it have devoted more attention to the protection of victims in order to prevent repeat victimisation, etc.⁷, and procedural issues have been left without sufficient attention. Finally, to a certain degree, the work has already been done in this particular area of study. The author has offered a general look at the topic at the 71st Conference of the University of Latvia, with the paper being published in the summer of 2013.⁸ Because of the limited scope of that paper, however, attention was only focused on a few aspects of the status of victims. More in-depth examination of the way in which the Directive influences Latvia's Criminal Procedure Law involved a study conducted by Kristīne Strada-Rozenberga and the author as a part of the 2013 project "Protecting Victims' Rights in the EU: The Theory and Practice of Diversity of Treatment During the Criminal Trial," which was organised by the Centre for European Constitutional Law and the Institute of Advanced Legal Studies at the University of London School of Advanced Study and funded by the European Commission. The review of the situation in Latvia was provided in that framework. This created a desire to continue to review and publicly evaluate the effects of the Directive on the Latvian law, focusing on the aspects both already studied and those yet unexplored in the past. The author wishes to ensure that a broader range of readers can learn about the previous study in terms of the extent to which the forms of protection set out within Latvia's Criminal Procedure Law is in line with the requirements of the Directive. The author will focus on the criminal procedure aspects of the victim's status, as enshrined in the Directive, this time disregarding the procedures that are outside of the criminal procedure as such – support

services for victims, the training of the relevant specialists, etc. The issues in the current paper are only being reviewed on the basis of a comparison between norms in the Criminal Procedure Law (KPL),⁹ and the Directive, without a particular focus on how the norms are applied and perceived in practical terms. Professor Strada-Rozenberga has written a separate paper about these issues in this journal.

The review of victims' status has been divided into several sections, looking at individually important issues or a set of related issues. In each case, the author will review the relevant norms of the Directive, then address the KPL norms in this regard and provide a conclusion about the extent to which the norms are in line with the requirements of the Directive.

1 Recognition of victims, provision of information to victims, individual evaluation of victims

1.1 The definition of victims

Definition of a victim must be seen as one of the most essential issues in this area of research, because it enables identification of the range of people to whom the minimal requirements of the Directive must be applied in Latvia.

Article 2 of the Directive defines the concept of a "victim", as follows:

"For the purposes of this Directive the following definitions shall apply:

(a) *"victim" means:*

- (i) *a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;*
- (ii) *Family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death."*

It is important to note that the definition of "family members" in this regard is the following: *"family members" means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim."*

In describing the situation, the author can repeat things that have been noted in other publications.¹⁰ There are several understandings of the concept of a "victim" in Latvian criminal procedure, including the KPL. This means that the person who has actually suffered from a criminal offence and the victim who takes a part in criminal procedure are recognised through a special decision by the handler of the process.

The KPL does not define the actual victim or regulate that individual's status. When it comes to a victim as a participant in criminal procedure, the law states that it is an individual or a legal entity which has suffered damages because of a criminal offence – moral damages, physical suffering or property losses (Section 95 of the KPL), also indicating that the victim can only be recognised through a special decision by the handler of the process (Section 96 of the KPL). The KPL also says that if the person has died, the victim in the criminal procedure can be the surviving spouse, relatives in a direct line and of the first or second degree in a collateral line, or affinity relatives of the first degree (Section 96 of the KPL).

The following things can be said when it comes to the positions that are enshrined in the Directive and the KPL in terms of comprehending the victim's status and the commensurability of this status:

- 1) If the requirements of the directive were to be fully enshrined in the KPL, it would mean including the status of the victim, as well as special instructions about procedures related to such persons. Particularly, the attention must be focused on the moment when the procedure begins, as well as on the provision of information to the victim about his or her possible status in criminal procedure, his or her rights, the support that the victim can receive, etc. To get a clear sense of the practical applicability of KPL norms, the text would have to clearly and unambiguously state and separate legal statuses, including the procedural guarantees for the actual victims, as well as for victims who are active participants in the procedure.
- 2) The status of a victim can be awarded to legal entities in Latvia, while the norms of the Directive apply only to individuals. That is no reason to reject the approach in which legal entities can be recognised as victims in Latvia, just because the guarantees in the Directive are mostly applied to individuals. Furthermore, there are no obstacles against separating those guarantees in Latvia, which do not apply to legal entities.
- 3) When it comes to a situation in which the actual victim of a criminal offence has died, it must be concluded that the KPL already regulates it by allowing a broader range of people to take on the status of the victim while also speaking to a narrower range of people than is indicated in the Directive. The Directive states that if the victim has died as a result of the criminal offence, then the status of a victim applies to that person's family members. This, in the sense of the Directive, applies to a spouse, a person who has had a permanent relationship with the victim, a person who has been part of a joint household with the victim, and then also brothers, sisters and dependents of the victim (Article 2 of the Directive). This clearly denotes that the KPL refers to a broader range of people, because the status of a victim is possible in any situation in which the victim has died – not just when the death has been a result of the criminal offence. The KPL also refers to adoptive parents (but not adoptees). The Directive, in turn, refers not just to spouses, as is the case with the KPL, but also to others who have had a close relationship with the victim, as well as to dependents. Article 19 of the preamble of the Directive also states that the member states must introduce procedures to limit the range of family members who can make use of the rights that are included in the Directive. This means that the KPL should have a more precise definition of the range of people who can obtain the status of a victim if the original victim has died. This also involves the creation of a mechanism that would enable limiting the range of relatives who can make use of the rights that are enshrined in the Directive.

1.2 Provision of information to victims

This issue relates to norms stated in Articles 3, 4 and 7 of the Directive. The essence of these norms can be expressed, as follows:

- 1) The victim must receive information from the very first moment when he or she has contacted the relevant institution – information about possible support, appeals about the procedure that relates to criminal offences, opportunities for protection, procedures for receiving legal aid, possibilities to receive compensation, the availability of translations, appeals of the decisions and actions of officials, contact information about the case, the availability of restoration of justice, and the possibility of receiving compensation for expenses;

- 2) From the moment when the victim has contacted the relevant institution and throughout the entire procedure, it must be ascertained that the victim understands the information that has been provided and that the victim is understood by the relevant institution in several senses:
 - a) Translation services must be provided to victims who do not speak the language in which the process is being handled;
 - b) Communications with victims must involve simple and comprehensible language;
 - c) When first contacting the relevant institution, the victim has the right to select a companion if that is necessary because of the effects of the crime and there are no objective obstacles against same.

When it comes to the first aspect, it has to be said that in accordance with the KPL, anyone who is involved in criminal procedure must receive information about all of his or her rights and obligations as soon as the relevant status is obtained. This also applies to the victims. The law clearly states that the handler of the process must provide timely information to people about their right to be recognised as victims. Once the status is assigned, people must be informed about all of the rights that are enshrined in the KPL in a detailed and precise manner – overall principles of victims' rights (Section 97), the rights of victims during pre-trial procedure (Section 98), the rights of victims at court (Section 99), the rights of victims at the appellate level (Section 100), and the rights of victims at the cassation level (Section 101). It must also be noted that certain procedural guarantees for victims and other aspects of this issue are regulated in other KPL norms. Thus, for instance, the right to receive compensation for expenses during the procedure is not cited in any of the aforementioned sections of the law; instead this issue is regulated by KPL norms which address the procedural expenditures.

This means that the practical information about the rights of victims depends on whether the guarantees are specifically defined in the KPL and on how they are defined. The author would like to briefly deviate from the initial decision to avoid reviewing the relevant practices to offer a concise description of conclusions that have been developed while observing those practices. If specific rights for victims are directly stated in those sections of the KPL which address the rights of victims – the right to legal aid, opportunities to receive compensation, etc. – then the victims receive such information as soon as they obtain the status of victims. Victims seldom receive information, however, about the rights that are enshrined in other sections of the KPL. When it comes to the issues like support institutions and their services, the KPL has nothing to say about them, and, as a consequence, the victims hardly ever receive information regarding these matters.

When it comes to the other issue of ensuring that the victim understands what is happening and is understood during the procedure, it has to be said that the requirement in the KPL that translation services be provided is fulfilled in all cases. The fundamental principles of the KPL state that victims and their representatives have the right to speak their own language during the procedure if they do not speak the state language. They have the right to a translator at no charge to themselves, and the participation of the translator is ensured by the handler of the procedure or another competent person. Procedural documents must also be provided in the language spoken by the victim and his or her representative (Section 11 of the KPL). The same rights for victims have been enshrined as an overall principle of rights (Section 97 of the KPL).

The same cannot be said about the right of victims to be addressed in a clear and understandable way. The KPL does not include direct requirements regarding this. In practice, handlers of procedure usually do not consider ensuring that victims understand, what is being said to them. Often the process involves only the presentation of copies of the law without any appropriate explanation thereof. Handlers of procedure often speak strict and formal legal language that cannot be understood by a layperson. One solution might be the publication of informational brochures for victims to contain and explain all the issues which relate to their status, their legal rights and obligations, list all the available support and protection services, etc., in a clear, understandable and non-legalese language. The KPL could be amended to state that handlers of process are obliged to prepare individualised explanations of rights and obligations for each and every victim. It is also true that, at this time, the KPL does not respond to the victim's right to bring along a "companion" apart from a lawyer.

1.3 Individual evaluation of victims

Article 22 of the Directive instructs the member states to ensure that victims are evaluated individually and on the basis of the relevant procedures in each country to address the need for special protection. Other norms refer to those victims who require specific protection, and have additional procedural guarantees.

The KPL does not, at this time, call for the individual evaluation of victims, and there is a single procedure for all of them. A slightly different, adjusted procedure is prescribed only for specific groups of victims – juveniles and those who require specific procedural protection. The specifics of this issue are basically enshrined in the KPL, but there are a few cases in which an individual solution is found, based on the views of a relevant specialist (for more regarding this matter, see the norms of the KPL about investigatory work that involves juveniles).

It can be hereby concluded that, as the requirements of the Directive are implemented, the range of victims who require special protection must inevitably be expanded, applying the status not only to juveniles, but also to other groups of victims, such as the victims of human trafficking, victims of terrorism and organised crime, victims of sexual violence or family violence, victims with special needs, etc. At the same time, it also has to be said that the recognition of a victim as one who requires a specific protection must be based less on the belonging of a particular victim to a specific group and more on the specific and individual evaluation of the relevant individual. This enables recognizing the special importance of this evaluation, as well as the need to increase the importance of an individualised approach in criminal procedure.

Several amendments to the KPL will be needed when it comes to procedures that are relevant to victims if additional procedural guarantees are to be offered to victims and, particularly, to those victims who require a specific protection. These changes might particularly relate to the specifics of investigations, including those who conduct them, when the investigations take place, how many investigatory operations are implemented, etc.

Generally, it has to be said that implementation of the Directive's requirements by amending the KPL and then putting the new requirements into practice can be perceived as a new development in victim protection, based on an understanding of the victim's role and of the need for a specific attitude toward this participant in the procedure.

2 The right of individuals to demand the launch of criminal proceedings and to appeal a decision to reject the launch of criminal proceedings or to end criminal proceedings

Let us now turn to the rights that are enshrined in Articles 5, 6 and 11 of the Directive. In brief, these can be described as the right to file a petition related to the language that is spoken in criminal procedure when receiving a written confirmation of the receipt of the petition, the right to receive certain information about “one’s own” case, and the right in certain cases to ask that a decision to fail to launch criminal proceedings be reviewed.

According to the KPL, every victim has the right to demand that criminal proceedings are launched. This right can be exercised through an application (Section 369 of the KPL). There are criminal offences such as petty theft, light assault and battery, defamation, etc., in which only an application from the victim can lead to the launch of criminal proceedings; without such an application, the process cannot begin.¹¹

A person who has suffered from a criminal offence can submit a written or an oral petition. The law does not stipulate that a confirmation of the receipt of such a petition is necessary, but if the victim asks for such confirmation, then it is provided and not refused. If the relevant institution decides to launch criminal proceedings, the person has the right to obtain the status of a victim and a participant in the criminal procedure (Section 96 of the KPL). A decision to launch criminal proceedings cannot be appealed (Section 372 of the KPL).

If the decision is to refuse to launch criminal proceedings, the person who has suffered harm from the criminal offence can appeal that decision before a competent official at the Prosecutor-General’s Office. In such cases, the request must be filed within ten days after the day when the person has learned that criminal proceedings are not to be launched. The appeal must be reviewed within ten days after the date upon which the appeal (or its translation, if the appeal has not been filed in the state language) has been received. In exceptional cases, the deadline for reviewing the appeal can be extended to 30 days (Section 373 of the KPL).

As noted above, every person who is involved in criminal procedure and does not speak the state language has a right to ensure that the process involves a language which he or she speaks, as well as that a translator is available. This also applies to victims of criminal offences.

When it comes to the right to appeal a refusal to begin a criminal investigation, the victim can file the same type of appeal before a prosecutorial official as is the case with the request to launch criminal proceedings. The prosecutorial decision is final and cannot be appealed (Section 373). This means that victims do not have the right to ensure that the issue is considered by a court.

Criminal proceedings include investigations, prosecutions, trials in court, etc. The process can be halted at any point at all if circumstances are discovered which lead to a decision to end criminal proceedings. A person who has the status of a victim can always file appeals about a decision to end criminal proceedings (including an end to criminal prosecution). Here, again, the victim must file the appeal within ten days after the decision has been received (Section 392.1 of the KPL), and the appeal must be reviewed in 10 or, in exceptional cases, 30 days’ time. In order to ensure the more effective utilisation of such rights, victims have the right to study the relevant case file.

Victims also have the right to appeal court rulings on ending the procedure or the final ruling in the criminal case. At the same time, however, an appeal which is aimed at convicting someone who has been exonerated by the first-level court can be filed only with the support of the relevant prosecutor.

All of this means that Latvian law includes minimal standards prescribed by the Directive when it comes to the rights of the victim in relation to launching the procedure and to requesting that a decision not to engage in criminal prosecution be appealed. The law provides victims with broad opportunities to file petitions related to the launching of criminal proceedings, as well as appeals of decisions not to do so or to suspend proceedings that have already begun. At the same time, it is likely that there should be more precise regulations about providing a written confirmation of receiving the aforementioned documents. There must also be a more thorough assurance of the availability and quality of translations and translator services.

3 The right of victims to submit evidence

The right of victims to submit evidence is regulated in the Directive as a part of the “right to be heard.” The rules are included in the chapter on participation in criminal proceedings, and this includes the right of the victim to submit evidence and to provide witness testimony during a trial. This article of the Directive is quite laconic, only saying that victims can testify in criminal proceedings and submit evidence, adding that if children are to be heard, then sufficient attention must be devoted to their age and level of maturity. Procedural rules are left to the discretion of the member states. In Latvia the right of victims to participate in evidentiary processes is fully in line with the Directive’s standards. The victim must be seen as a subject and a source of evidence. When it comes to victims being subjects of evidence, they have the right to ask for investigation and other activities, take part in the review of the case, express their views about each issue at hand, including the identification, examination, etc., or evidence, take part in each court hearing which deals with direct or oral evidence, submit applications, take part in court proceedings, and otherwise actively contribute to the evidentiary process. This applies only to those victims who are ready and willing to do so. When it comes to victims as sources of evidence, Latvian legal norms clearly state that they have the right to testify and to submit evidence in other ways. At the same time, victims are obliged to do this, and the refusal to comply can lead to unfavourable consequences. Victims can only refuse to testify against themselves and their relatives, which means spouses, parents, grandparents, children, grandchildren, siblings, as well as anyone with whom the relevant individual lives or with whom he or she shares a joint property. Criminal charges can be filed against people who refuse to testify or submit evidence without justification, who knowingly submit false evidence, or who file fraudulent documents when asking for the launch of criminal proceedings.¹²

The main method of obtaining evidence from victims is interrogation, and this process is basically regulated by the same rules which apply to witnesses. The rules are fairly generalised, and they are the same for victims and witnesses who are to be interrogated. The only exceptions relate to juvenile victims, for whom a shorter period of interrogation is enshrined in the law. Juveniles can be interrogated with the involvement of a specialist, and they also enjoy several other procedural guarantees.

4 The right of victims to protection

Chapter 4 of the Directive addresses the victims' right to protection. This relates to the general rights to protection (Article 18), the right to avoid contacts between the victim and the defendant (Article 19), the right to protection during criminal investigations (Article 20), the right to protection of the victim's private life (Article 21), an individual evaluation of each victim (Article 22), and steps to be taken in relation to victims who require particular protection (Articles 23-24). Here it must be noted that regulations relevant to the protection of victims are scattered through several sections of the KPL, mostly at the level of basic principles of criminal procedure. In some cases this relates to the norms that are devoted to specific aspects of criminal procedure. Among the general rules, we can look at the fundamental principle of guaranteeing human rights that is enshrined in the KPL and states that the criminal procedure must always take into account the internationally recognised human rights, never permitting unjustified obligations related to criminal procedure or any incommensurate intervention into the person's private life (Section 12 of the KPL). General rules about interrogations (Section 139 of the KPL) that relate to people who are taking part in investigations ban violence, threats, lies, or any other unlawful or amoral activities. The rules also ban anything that endangers the individual's health or life or damages his or her dignity. Investigations which require the individual to strip down must involve an investigator of the same gender, the exception being medical personnel.

Section 24 of the KPL includes fundamental principles about the protection of the individual and his or her property. The rules state that when people face threats because they are fulfilling their obligations in relation to criminal procedure, they have the right to demand that the handler of the process takes all of the steps defined by law to protect themselves and their property.

Special procedural protection for victims can be applied in those cases where the victim is experiencing serious threats (Chapter 17 of the KPL). This can apply to victims who are testifying or have testified in a criminal procedure that is related to serious or particularly serious crimes, to juveniles who testify in relation to specific types of crimes, as well as to other people whose endangerment can influence the testimony that they provide. When people are declared to be subject to special procedural protection, the process involves specifics at the pre-trial level and at court. Technologies can be used, for instance, which make it impossible to identify the protected person, closed court hearings can be held, etc.

As noted, the KPL does not address the individual evaluation of victims, which means that procedures can be adapted for the needs of each victim. Specific rules only apply to a certain set of juveniles, as well as to those people who receive special procedural protection. Without more specific mechanisms to protect victims, the practical protection of each victim depends on the relevant official's professionalism and responsibility in the criminal procedure. Of particular importance here is the will and ability of actual employees to act properly in each specific situation when it comes to the fundamental principles of criminal procedure. They must understand, for instance, that the number of interrogations and medical examinations is directly linked to the fundamental requirements of criminal procedure – such processes must not, without reason, intervene into the individual's private life. When determining the content of investigatory work, specialists must remember the need to protect the life, health, dignity, respect and inviolability of the individual, as well as the other rights which are granted to the person.

5 The right of victims to legal assistance

The right to legal assistance is enshrined in Article 13 of the Directive, and the rules are fairly general. Victims must have access to legal assistance if they have the status of a participant in criminal procedure, but the specific rules about this are left at the discretion of the member states. Latvia fully complies with this requirement of the Directive. The right to legal assistance rests with every person irrespective of whether he or she is or is not a “party” (i.e., an active participant) in criminal procedure. Accordingly, the right to legal assistance rests with people who have formally been declared as victims, as well as with actual victims who have not wished to receive that status. When it comes to victims who participate in criminal procedure, an overall principle is that the victim or his or her representative can seek the help of a lawyer in order to guarantee the relevant rights (Section 97 of the KPL). It must be noted that the lawyer can also represent the victim (Article 104 of the KPL). When it comes to the general differences between these statuses, a lawyer offers legal assistance to the individual and provides explanations, recommendations, etc., that are of a legal nature, while a legal representative replaces the victim in pursuit of the relevant rights. It must also be noted that in line with Article 104 of the KPL, if the protection of the rights and interests of juveniles is encumbered or not guaranteed, or if the juvenile’s so-called legal representatives submit a relevant request, then the handler of the process must take a decision on hiring a lawyer to represent the juvenile victim. In exceptional cases in which it is otherwise not possible to ensure the protection of the person’s rights and interests in criminal procedure, the handler of the process must take a decision to bring in a lawyer to represent a victim who is an impoverished or poor adult. In such cases the state pays for the legal assistance and covers the relevant costs. Rules about this process are defined by the Cabinet of Ministers.

6 The right of victims to receive compensation

The right of victims to receive compensation relate to three permanent rights for victims – the right to recover property, the right to receive compensation, and the right to receive compensation for losses incurred as a result of taking part in criminal procedure.

The right to recover property is enshrined in Article 15 of the Directive. The rules state that property that has been recovered during criminal procedure must immediately be returned to the victim unless it is needed to ensure the success of the procedure. Rules about this process are left to be defined by each member state.

The KPL addresses the return of property to victims. Property that has been lost because of theft, robbery, fraud, etc., is seen as criminally obtained property in the eyes of the KPL. There are two things that can be done with criminally obtained property – either it is returned to the victim or it is confiscated on behalf of the state. If the property has been declared to have been criminally obtained, the first issue relates to whether it must be returned to the owner. If not, then it can be confiscated. Section 356 of the KPL stipulates that the declaration that property has been obtained criminally can be approved by a court or prosecutor when the decision is taken to end criminal proceedings or during the pre-trial proceedings. Property can be declared to be criminally obtained during a pre-trial or unfinished procedure by a district (city) court via a particular procedural process (involving criminally obtained property) if the handler of the process has a sufficient evidence to show that

the property is of a criminal origin or has been involved in a criminal offence. The decision can also be taken by the handler of the process if during criminal procedure it has been found that the property is in the hands of the suspect, defendant or a third party and has been confiscated. This must be a property declared to be lost by its owner or legal manager. Once it is found, the owner or legal manager must prove his or her rights to the property so as to eliminate any sensible doubts about the matter.

It must also be noted that in accordance with Section 357 of the KPL, the property is returned to its owner or legal manager on the basis provided by the handler of the procedure, but only once the property is no longer necessary in relation to the goals of the procedure.

Chapter 12 of the KPL refers to the use of material evidence and documents. The rules prescribe that the property obtained during an investigation can be returned to the owner in return for a signature of receipt if it is found that the property is not of an evidentiary importance or if the necessary investigation has been completed, and the return of the property to the owner or manager will not hinder the ongoing procedure.

Requirements set down in the Directive regarding the return of a property to its owners are generally in place in Latvia, though there may be certain timeliness issues. Actions with criminally obtained property at this time are not regulated in a single and homogeneous manner, which means that there can be overlaps or disagreements about this. Earlier publications provide a discussion of this matter in greater detail.¹³

When it comes to compensation as such, Article 16 of the Directive states that the member states must ensure that victims in criminal procedure have the right to a decision on compensation from the criminal in a timely way, unless the laws of the relevant country state that the decision must be taken in another manner. Member states must also take steps to encourage criminals to pay appropriate compensation to victims. The KPL states that compensation is an element in the fair resolution of criminal and legal relations. Section 22 regulates the right to compensation for damages, stating that the person who has suffered harm because of a criminal offence has guarantees to demand and receive moral and material compensation in relation to moral offences, physical suffering, or property losses. Section 26 of the KPL prescribes, how people apply for compensation, how the request is reviewed, how the decision is made, etc. The legal norms in this section define compensation and the content of the applications for obtaining it. They also regulate the procedure of submitting applications, the scope of compensation, and the people who can be obliged to pay a compensation. Without discussing these norms in detail, it can be said that the essence of a compensation is that the criminal (or, in some cases, other persons) must pay a specific sum of compensation to the victim in return for damages. This compensation must be paid voluntarily or on the basis of a court order. This means that the Directive's requirements about the existence of a compensation mechanism are fulfilled in Latvia. When it comes to the fact that the member states must facilitate ways of encouraging criminals to voluntarily pay compensation, it has to be said that the KPL includes several norms which indirectly contribute to this end. For instance, this issue is important when making decisions about the possibility of applying simplified forms of criminal procedure. It must be mentioned that a person can be exempted from a criminal liability on the basis of a settlement only if the guilty party has fully paid compensation for all harm or damages that have been caused by

the criminal offence (Sections 379.1.2 of the KPL and Section 58.2 of the Criminal Law). An agreement on compensation for harm that has been caused is a mandatory prerequisite for reaching agreement in this regard (Section 437 of the KPL).

When it comes to the third right related to “compensation” for victims – the right to receive compensation for the expenses incurred because of participation in the criminal procedure, these rights are enshrined in Article 14 of the Directive, which states that the victims who take part in criminal procedure must be able to receive a compensation for expenses that they incurred because of their active participation therein. The procedure for such compensation is determined by the member states. The KPL says that the procedural costs relate to the sums that are paid out to victims so that they can cover travel expenses related to visiting the location where the procedure is taking place to enable their return home, paying for accommodation and covering the costs which victims receive as an average wage during the period of time when they are not at work because of their participation in the procedure (Section 367 of the KPL). The relevant processes and the amount of compensation are dictated by Cabinet of Ministers regulations on the procedure and scope of compensation for expenditures related to criminal procedure.¹⁴

It must be said that the norms in the KPL fully meet these requirements of the Directive. At the same time, however, a more effective approach to this process could be achieved. When it comes to the right to receive compensation for expenditures incurred during participation in criminal procedure, this should be stated as one of the general principles related to the victims’ rights.

7 The criminal procedure status of victims who are not residents of Latvia

Article 17 of the Directive addresses the special status of victims who are residents of other member states. Among other things, the Directive states that the member states must be particularly prepared to receive testimony from the victim as soon as a criminal offence has occurred, also stating that videoconferencing and teleconferencing must be used as much as possible. The member states must also ensure that people can submit petitions related to criminal procedure in their own country if that is not possible or if, in some cases, the person does not want to do so in the country where the criminal offence occurred.

When it comes to these norms in the KPL, it has to be said that in terms of so-called local procedural regulations, the KPL does not contain specific instructions as to what is to be done if the victim lives in another country. This means that if it is necessary to obtain information or evidence from victims, international co-operation legal norms are put into place in relation to assistance in conducting procedural operations (Chapter 18 of the KPL). This includes, among other things, procedural activities which involve technologies. It is recognised that the evidence obtained as a result of criminal and legal co-operation in accordance with criminal procedures in another country is comparable to the evidence that is obtained in accordance with the law itself (Section 676 of the KPL).

It must also be noted that the KPL does not directly include the instruction from the Directive about the immediate interrogation of the victim. Here it must be noted that interrogation of victims is seen as an initial and immediate investigatory process, but the people who implement it often treat the issue with insufficient care and with too much formality. This creates the need for a repeated interrogation of the

victim in a more detailed and precise manner. Furthermore, one cannot disregard the fact that victims from abroad probably do not speak Latvian, and there may also be problems in finding high-quality translation services in a timely manner.

Summary

When it comes to the norms set down in the Criminal Procedure Law of Latvia, as viewed through the prism of the minimal standards of the EU, several conclusions can be made:

- Full implementation of the minimal standards in the Directive that relate to the rights of victims will mean a new development in the criminal and procedural protection of the victims' rights in Latvia.
- Since victims in Latvia are considered to be active participants in criminal procedure – people who already have extensive procedural authority – in many cases this substantially exceeds the minimal requirements that are enshrined in the Directive.
- As the Directive applies to every victim of every criminal offence irrespective of whether the person has been declared to be a victim by virtue of a special decision by the handler of the process, the need for improvements of Criminal Procedure Law norms relates to the implementation of the victim's status in a precise manner.
- This does not, however, mean that it is necessary to reject the position of victims as active participants in criminal procedure, as it is stated in current norms of Criminal Procedure Law. This status can presumably be preserved, and the same is true of the status pertaining to an actual victim of a criminal offence, if the separation between these two statuses is drawn so as to regulate them with a sufficient precision. The status of a victim as an active participant in criminal procedure after that victim is specifically declared to have been a victim would enable an effective determination and identification of situations in which the actual victim has or has not wanted to take active part in criminal procedure. This, in turn, would create a mechanism that would ensure that those victims who wish to take active part in criminal procedure can do so, while those who do not wish to do so are not involved in the procedures in an unjustified and unnecessary manner.
- Reviewing the extent to which Latvia satisfies the minimal standards of the Directive that apply to victims' rights, one can conclude that, in most cases, Criminal Procedure Law norms include the relevant criminal procedure guarantees, though in some cases they must be made more precise or supplemented.
- Thus, for instance, the Criminal Procedure Law already ensures the right to appeal a decision to refuse to launch or continue criminal proceedings, the right to translation and legal services, the right to recover properties, the right to receive compensation, the right to receive compensation for expenses that have been incurred during the procedure, etc.
- There is a need for comparatively minimal specifications and supplements in terms of a few minimal requirements – the right, for instance, of victims to be informed if the defendant is released from prison, the right to choose a “companion” during the first contact with the relevant institutions, the right to receive written confirmation from the relevant institutions about receiving the petition to launch criminal proceedings, etc.
- It can be expected that the major changes will relate to the introduction of an individualised approach toward each victim in the Criminal Procedure Law.

First and foremost, this has to do with the need to introduce an individualised evaluation of victims. This individualised evaluation must be at the foundation of the application of individualised procedures, which includes a complex view of the entire criminal procedures' scope that relates to victims and their involvement therein. Procedures that are adapted in this manner include the specifics of investigatory operations as well as a whole series of practical aspects – ensuring “understandable” language, identifying the necessary forms of protection, etc.

- All in all, the determined changes in the Criminal Procedure Law cannot be seen as fundamental and they will not change the conceptions of victims and their rights. The Criminal Procedure Law will have to be supplemented with several norms which increase procedural guarantees for victims or groups of victims, but the view of Criminal Procedure Law norms through the prism of minimal standards that are enshrined in the Directive does not reveal strong incompatibilities; only comparatively small improvements are required.
- In conclusion, the greatest changes can be anticipated in the practical implementation of criminal procedure and in the area of support and protection for victims outside of criminal procedure as such. It is specifically from this perspective that the views about the protection of victims must become significantly different in order to satisfy the requirements of the Directive.

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