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Victim of Crime and the State's Liability for the Result of Criminal Proceedings

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This paper examines the issues related to the state's liability for such a result of criminal proceedings that impairs the victim's right to a fair trial. The views presented in this paper follow the notion of the victim's constitutional rights in Latvia and the principles established in the jurisprudence of the European Court of Human Rights, particularly with respect to the victim's right to an effective and thorough investigation of a crime. Consequently, this paper provides an analysis of Latvia's regulative framework on reparation of harm caused by state's unlawful actions in criminal proceedings and the implementation thereof in the case law.

Keywords: victim of crime, fair trial, effective remedy, state's liability.

Contents

Introduction

The right to effective remedy as an element of a fair trial prescribes that a victim of crime must be endowed with the opportunity to receive restitution of rights violated in the result of a crime. At the same time, the state has a corresponding responsibility to provide procedural rules that enable the victim to exercise this right.

A question may arise if the state is accountable for such a result of criminal proceedings which fails to satisfy the victim's right to effective remedy. Although the answer to this question may go beyond the area of criminal-legal relations and may not be fully regarded as a matter of criminal proceedings, it is crucial to understand whether the law has an adequate solution for a situation when the criminal justice system has not been functional for the victim.

The aim of this paper is to define the ground and scope of the state's liability for such criminal proceedings that have resulted in the victim's inability to achieve a redress of harm caused by an act of crime. Considering the complexity of this issue, an insight to the concept of a fair trial for the victim is provided in the beginning. The attention further is directed at the issue of the effectiveness of criminal proceedings as a part of the victim's right to effective remedy. The third part of the paper is dedicated to the development and problematic of Latvia's regulation on the state's liability.

1. Criminal proceedings from the victim's perspective

The purpose of criminal proceedings according to Article 1 of the Criminal Procedure Law[1] of Latvia (hereinafter – the "CPL") is to ensure effective application of the Criminal Law and to fairly regulate criminal-legal relations. A link between the concept of fair regulation of criminal-legal relations and the right to a fair trial established in the first sentence of Article 92 of the Constitution of the Republic of Latvia[2] (hereinafter – the "Constitution") can be clearly seen.

The legislator intentionally allowed for a broad interpretation of what constitutes criminal-legal relations and what fair regulation thereof entails. As a social phenomenon, crime affects various actors in society. In most cases, there is a victim whose violated rights need to be restored. Society usually empathises with the victim and desires the offender to receive a just punishment. The state seeks to convict and punish the offender. Finally, the offender has a right to be presumed innocent until proven otherwise, as well as to have lawful and impartial professional proceedings with the opportunity to defend oneself. In an ordinary situation, these interests are the criminal-legal relations that must be balanced equitably in the result.

Still, the right to a fair trial is generally understood as a set of guarantees for the offender. Indeed, the presumption of innocence determines the rules of how the offender must be treated by state's authorities and what rights he must be endowed with. A disregard of these rules in certain situations can make the proceedings unfair *per se*.[3] Nevertheless, the purpose of the proceedings, as stipulated by the Constitutional Court of the Republic of Latvia, embraces the principle of protection of the victim, and determines the restoration of the victim's violated rights.[4] Hence, one may inquire what the elements of the victim's right to a fair trial there are.

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1 Kriminālprocesa likums [Criminal Procedure Law] (21.04.2005). Available: https://likumi.lv/ta/id/107820-kriminalprocesa-likums [last viewed 05.02.2023].

2 Latvijas Republikas Satversme [Constitution of the Republic of Latvia] (15.02.1922). Available: https://likumi.lv/ta/id/57980-latvijas-republikas-satversme [last viewed 05.02.2023].

3 Judgement of 7 March 2019 of the European Court of Human Rights in case Abdullayev v. Azerbaijan, No. 6005/08, paras 58–60. Available: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-191357%22]} [last viewed 05.02.2023].

4 Judgement of 10 March 2017 of the Constitutional Court of the Republic of Latvia in case No. 2016-07-01, para. 21. Latvijas Vēstnesis, No. 52, 10.03.2017.

At the first glance, the answer to this question seems self-evident. The victim's purpose in participating in a criminal case appears to be obtaining compensation for harm inflicted by the offender. The term "compensation" is defined in Article 350(2) of the CPL as an element of the regulation of criminal-legal relations which an accused pays voluntarily, or on the basis of a court or prosecutor's ruling. Harm and its redress, whether provided voluntarily or imposed by the state, is therefore a criminal-legal relation between the victim and the offender.

Nonetheless, the analysis of the victim's rights supports the inference that limiting the victim's access to a fair trial to compensation for harm would be imprudent. Articles 95 and 96 of the CPL determine the victim as an active participant in criminal proceedings.[5] The victim's basic rights are outlined in Article 97 "prim" of the CPL, however, the catalogue of procedural rights which ensure the victim's active role includes the right to submit evidence and testimonies[6], the right to express opinion on any matter[7] during the trial, as well as the right to be acquainted with evidence after the conclusion of the pre-trial stage of the process.[8]

It is clear that the victim's participation in criminal proceedings is crucial not merely concerning the compensation for harm, but also for executing certain control mechanisms over the conduct and outcome of a criminal case. The victim's participatory rights help to ensure that the state does not overlook anything that is necessary for the result of criminal proceedings.[9] The idea of victim's participation in criminal proceedings as a tool for providing justice suggests that the participatory rights of the victim are intended to serve the pursuit of his or her individual interest in the conviction and punishment of the offender.[10] Consequently, the victim's role in criminal proceedings includes the opportunity to actively contribute to the achievement of a fair regulation of criminal-legal relations, particularly by presenting evidence and challenging decisions of competent authorities. At the same time, while the offender uses the right to speak and submit evidence for defence, the victim's right to be heard pursuits three-fold objectives: first, to contribute to the fact-finding process; second, to instil confidence about the final verdict and how it is reached; and third, to come to terms with the plight of the crime.[11]

In this regard, the right to punishment imposed on the offender is another possible aspect of the right to a fair trial that has been discussed in legal literature. Behind this suggestion, there is a narrative that punishment should work as a reaffirmation (rather than restoration) of the victim's violated rights.[12] However, the implementation of this right can be complex, as it raises questions about the appropriate degree of victim involvement in sentencing decisions. Latvia's legal doctrine and case law lack a comprehensive analysis of the victim's right to punishment of the offender and therefore, further research and discussion are necessary to determine how this right

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[5] *Strada-Rozenberga, K.* Victims and their Criminal Procedure Status in Law Enforcement Practices in Latvia. Journal of the University of Latvia "Law", No. 6, 2014, p. 52.

[6] Article 189(1) of the CPL.

[7] Article 99(1)(4) of the CPL.

[8] Article 98(1)(8) of the CPL.

[9] *Cassell, P. G., Mitchell, N. J., Edwards, J. B.* Crime Victims' Rights During Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges Are Filed. Journal of Criminal Law and Criminology, Vol. 104, issue 1, 2014, p. 70.

[10] *Göhler, J.* Victim Rights in Civil Law Jurisdictions. In: *Brown, D. K., Turner, J. I., Weisser, B.* (eds). The Oxford Handbook of Criminal Process. New York: Oxford University Press, 2019, p. 274.

[11] Ibid., p. 275.

[12] *Brown, S. P.* Punishment and the restoration of rights. Punishment & Society, Vol. 3, issue 4, 2001, pp. 493–494.

could fit into the country's legal system. Despite these challenges, CPL addresses this issue by allowing the victim during the court debates to express opinion regarding compensation for harm and the sentence to be imposed on the accused.[13] The court, needless to say, is not obligated to follow the victim's views on the appropriate punishment. This leads to the question of effectiveness of criminal proceedings as a part of a fair trial for the victim.

2. Effective criminal proceedings as a necessary remedy

The right of a victim of crime to seek redress is an expression of the principle of effective remedy, which is guaranteed by the third sentence of Article 92 of the Constitution. This principle is a general guarantee that if rights or interests protected by law are infringed, an individual is entitled to adequate reimbursement of harm.[14] As admitted by the Court of Justice of the European Union, this principle underlines the constitutional traditions common to the member states of the European Union and grants judicial protection to everyone.[15] In the context of the purpose of criminal proceedings, even though a remedy provided for a victim of crime cannot be perceived as a punishment,[16] it undeniably may have a punitive effect and be as powerful as a criminal sanction.

However, the main task of criminal law is to protect the interests of society.[17] It means that a fair regulation of criminal-legal relations may not require investigation and conviction of the offender at any price.[18] In Latvia's criminal proceedings, the victim's right to effective remedy may be limited by the principle of public accusation laid down in Article 7(1) of the CPL which mandates that criminal proceedings shall be conducted in the interests of society regardless of the will of the person upon whom harm was inflicted (except for cases provided in Article 7(2)). Thus, Latvia's legislator has established that a crime, as an infringement of public order, must be investigated, and the offender must be punished for the benefit of society. Even though Article 22 of the CPL recognises the victim's right to compensation for harm, from the explicit provision of law it is not possible to draw a conclusion regarding whether the victim has a legitimate basis to anticipate that the result of a criminal case satisfies a victim's interests.

Paradoxically, the case law of the European Court of Human Rights (hereinafter – the "ECtHR") provides a basis for a reasoning that the effectiveness of criminal

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13 Article 506(2) of the CPL.

14 Judgement of 5 March 2021 of the Constitutional Court of the Republic of Latvia in case No. 2020-30-01, para. 11.1. Latvijas Vēstnesis, No. 46, 08.03.2021.

15 Judgement of 25 July 2002 the Court of Justice of the European Union in case C-50/00 P, para. 39. Available: https://curia.europa.eu/juris/document/document.jsf;jsessionid=D32B96C2112576097354 7A348043B426?text=&docid=47107&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part= 1&cid=1224949 [last viewed 05.02.2023].

16 Decision of 5 November 2010 of the Senate of the Supreme Court in case No. SKK-508/2010. Available: https://www.at.gov.lv/files/uploads/files/archive/department2/2010/skk%20508_2010.doc [last viewed 05.02.2023].

17 *Meikališa*, Ā., *Strada-Rozenberga*, *K*. Kriminālprocesa obligātums un lietderīguma elementu Latvijas krimināltiesisko un kriminālprocesuālo normu sistēmā [The Mandatory Nature of Criminal Proceedings and the Elements of Expediency in the System of Latvian Criminal and Criminal Procedural Norms]. In: Kriminālprocesa obligātuma principa ietekme uz kriminālprocesa efektivitāti [The Impact of the Mandatory Principle of Criminal Procedure on the Efficiency of Criminal Proceedings], p. 155. Available: https://juristavards.lv/wwwraksti/JV/BIBLIOTEKA/PRAKSES_MATERIALI/ KRIMINALPROCESA%20OBLIGATUMS.PDF [last viewed 05.03.2023].

18 Ibid., pp. 157–159.

proceedings may be an essential part of what constitutes an effective remedy for a victim of crime. The ECtHR has drawn a conclusion that, in a situation when an individual has been seriously harmed, the notion of an "effective remedy" in the light of Article 13 of the European Convention on Human Rights[19] (hereinafter – the "ECHR") entails, in addition to the payment of compensation, a thorough and effective investigation capable of leading to the identification and punishment of those responsible.[20]

This inference is derived from the states' positive duty to effectively protect fundamental rights according to Article 1 of the ECHR, and therefore it entitles individuals who arguably claims to have been victimised to request the state to conduct an in-depth investigation capable of identifying and punishing those responsible.[21] The ECtHR, however, restrained itself from providing a general conclusion on the victim's right to effective criminal proceedings, restricting this deduction solely to the rights protected by Articles 2, 3, 5 and 8 of the ECHR.[22] Still, on the basis of the jurisprudence of the ECtHR, it can be said that a result of criminal proceedings cannot be regarded as fair in a situation when the state has not been able to ensure the victim's right to effective remedy. Such a situation was examined by the ECtHR in case Lapsa v. Latvia, which should be examined briefly.

In 2008, Ms. Lapsa's child died the next day after birth due to medical complications. Following an inquiry by the Health Inspectorate of the Republic of Latvia, criminal proceedings were initiated against the doctors who had overseen Ms. Lapsa's delivery. The case went to trial in 2010 but was terminated in 2012 due to the withdrawal of charges. The decision was later reversed, and the doctors were found guilty of medical negligence in 2015. The decision was upheld by the appellate court but quashed by the Supreme Court (hereinafter – the "SC") in 2018, leading to a third round of trial that ultimately ended in the termination of the case against the doctors in 2019.

Ms. Lapsa referred this matter to the ECtHR on account of Latvia's failure to protect the child's life under Article 2 of the ECHR.

In its judgement, the ECtHR stated that under Article 2 of the ECHR, legal remedies should constitute means for establishing the facts, holding the guilty accountable, and providing redress for the victim; criminal proceedings should be effective and concluded within a reasonable time to fulfil the state's procedural obligation. Hence, the ECtHR found that the applicant's criminal proceedings were excessively lengthy, preventing her from bringing a civil claim against the doctors and indicating the state's failure to conduct a thorough investigation. As the result, the applicant was awarded 10,000 euros for non-pecuniary damage.[23]

This case highlights the importance of effective criminal proceedings in ensuring that victims can receive redress for the harm they have suffered. As a participant in

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[19] Convention for the Protection of Human Rights and Fundamental Freedoms (04.11.1950). Available: https://www.echr.coe.int/documents/convention_eng.pdf [last viewed 05.02.2023].

[20] Judgement of 25 September 1997 of the European Court of Human Rights in case Aydın v. Turkey, No. 23178/94, para. 103. Available: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58371%22]} [last viewed 05.02.2023].

[21] For a greater deal see: *Mowbray*, *A*. Duties of Investigation under the European Convention on Human Rights. The International and Comparative Law Quarterly, Vol. 51, issue 2, 2002, pp. 437–448.

[22] *Göhler*, *J*. Victim Rights, p. 281.

[23] Judgement of 22 October 2022 of the European Court of Human Rights in case Lapsa v. Latvia, No. 57444/19, paras 1–6, 15–27. Available: https://hudoc.echr.coe.int/fre#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-219945%22]} [last viewed 27.02.2023].

the proceedings, however, the victim is often deprived of any procedural mechanism to ensure effectiveness of the proceedings[24], particularly in terms of thoroughness and timeliness. Therefore, it is crucial to examine the legal mechanisms available for holding the state accountable for ineffective criminal proceedings.

3. Legal framework of the state's liability in criminal proceedings

In Latvia, the Law on Compensation for Harm Caused in Criminal Proceedings and Administrative Offence Proceedings[25] (hereinafter – the "Law on Compensation") regulates an individual's right to claim restitution for harm caused by state authorities within criminal proceedings. To understand this right fully, especially with regard to a crime victim, it's necessary to have a brief overview of how the law was elaborated.

The Law on Compensation was prepared by the Ministry of Justice to reconcile the regulation on the state's liability and to substitute the outdated 1998 law.[26] The original intention of the Law on Compensation was limited to ensuring compensation for those who were unjustly or illegally arrested or detained, thereby excluding victims of crime and other individuals from its purview.[27]

While the draft law was being examined in *Saeima*, the Department of Administrative Cases of the SC submitted a proposal to include a provision which would concern all the "non-typical" cases when individuals are harmed in criminal proceedings.[28] Without any further discussion, this proposal was supported by the Commission of *Saeima*, and Article 2 of the draft law was complemented by para. 2, as follows: "The provisions of this Law shall also apply to cases not explicitly mentioned in this Law if a private individual has suffered harm in criminal or administrative offense proceedings due to the illegal actions of an institution, the Office of the Prosecutor, or a court."

Pursuant to Article 4 of the Law on Compensation, compensation for harm incurred during criminal proceedings can be awarded based on various circumstances, including a court ruling of acquittal or the termination of criminal proceedings due to exculpatory reasons. Additionally, Article 2(2) allows for the assessment of any harm suffered by an individual during criminal proceedings. This creates a broad interpretation of what may constitute "harm" under the Law on Compensation. Nonetheless, the mere occurrence of harm does not automatically render the state liable.

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[24] *Trechsel*, *S*. Human Rights in Criminal Proceedings. Oxford University Press: 2005, p. 37.

[25] Krimināprocesā un administratīvo pārkāpumu lietvedībā nodarītā kaitējuma atlīdzināšanas likums [Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offence Proceedings] (30.11.2017). Available: https://likumi.lv/ta/id/295926-kriminalprocesa-un-administrativo-parkapumu-lietvediba-nodarita-kaitejuma-atlidzinasanas-likums [last viewed 27.02.2023].

[26] Likumprojekta „Krimināprocesā un administratīvo pārkāpumu lietvedībā nodarītā kaitējuma atlīdzināšanas likums" sākotnējās ietekmes novērtējuma ziņojums (anotācija) [Initial Impact Assessment Report (Annotation) of the Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Offence Proceedings]. Available: https://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/0/D358C46EE64B01CFC2257FB5003F122B?OpenDocument [last viewed 27.02.2023].

[27] Decision of 14 November 2018 of the Supreme Court of the Republic of Latvia in case SKA-1081/2018, para. 12. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/368366.pdf [last viewed 05.02.2023].

[28] Letter of 13 April 2017 of the Department of Administrative Cases of the Supreme Court No. 10-1/1-691nos. Available: https://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/0/6EC3C6645E1411D8C2258106002478DF?OpenDocument [last viewed 27.02.2023].

First, the harm must have occurred due to an illegal action of an authority in criminal proceedings. The Law on Compensation indicates that this action must be of criminal-procedural nature, however, as was stipulated by the SC, inaction of officials may also be considered as a part of criminal proceedings.[29] The illegality of such an action must be established by the ruling of an authorised official or court.[30] This provision infers from the rule that illegal action should be identified in the same process in which the harm has occurred.[31] Additionally, the process of establishing and compensating harm caused by a state's authority is separated from criminal proceedings, hence, the institution authorised to make decisions to compensate harm under the Law on Compensation[32] acts as an independent administrative body without the right to review actions made in criminal proceedings.[33]

In criminal proceedings, illegal actions of competent authorities can be reviewed and contested if an interested participant lodges a complaint to a higher authority or investigative judge. However, the authors consider that this requirement can impose an excessive burden on individuals, particularly in situations when criminal proceedings have been unreasonably delayed, leaving the victim of crime to wait for the conclusion of the proceedings, as demonstrated in the case of Lapsa v. Latvia. At the same time, there is a range of decisions and actions in the CPL that cannot be challenged and nullified, especially with regard to actions of investigative bodies in the pre-trial stage of proceedings.[34] Nonetheless, the case law of Latvia's courts demonstrates that some flexibility might be applied to this provision to ensure the constitutional right to redress of harm. The SC has acknowledged that when the legislator has not introduced an effective mechanism for the evaluation of the legality of a criminal-procedural action, as an exception, the administrative court is empowered to assess the existence of harm.[35] While this conclusion does not substitute the general rule on the determination of an illegal act in criminal proceedings, it shows that an individual is entitled to expect that the harm inflicted upon him or her will not remain "unnoticed". Accordingly, justice Dr. iur. Jautrīte Briede has encouraged judges who adjudicate criminal and administrative offence cases not to restrain themselves from evaluating procedural infringements that could potentially harm a person's rights, thus ensuring the opportunity to claim compensation for harm from the state.[36]

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[29] Krimināprocesā un administratīvo pārkāpumu lietvedībā nodarītā kaitējuma atlīdzināšanas likuma piemērošanas prakse. Senāta judikatūras atziņas (2018.–2022. gada februāris) [Practice of Applying the Law on Compensation for Harm Caused in Criminal Proceedings and Administrative Offence Proceedings in the Senate's Case Law (February 2018-2022], p. 9. Available: shorturl.at/gjpq6 [last viewed 04.04.2023].

[30] Article 6 of the Law on Compensation.

[31] See note 29, p. 8.

[32] See Article 17 of the Law on Compensation.

[33] Judgement of 9 June 2022 of the Regional Administrative Court in case No. A420181021, para. 11. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/480536.pdf [last viewed 27.02.2023].

[34] *Meikališa*, Ā., *Strada-Rozenberga*, *K*. Grounds for Compensation in Administrative Procedure for the Damages Caused in Criminal Proceedings – Some Relevant Aspects Observed in Latvia's Law and Case Law. In: New Legal Reality: Challenges and Perspectives. II, 21–22 October 2021. Riga: University of Latvia Press, 2022, pp. 338–340.

[35] See note 29, p. 11.

[36] Vispārējās jurisdikcijas tiesās izskatīto krimināprocesu un administratīvo pārkāpumu lietu korelācija ar kompensāciju piedziņu Administratīvo tiesu lietās/vai administratīvajā procesā [The Correlation Between Criminal Proceedings and Administrative Offences Reviewed in Courts of General Jurisdiction and the Recovery of Compensation in Administrative Court Cases or in the Administrative Process]. Available: https://m.juristavards.lv/biblioteka/283054-visparejas-jurisdikcijas-tiesas-izskatito-kriminalprocesu-un-administrativo-parkapumu-lietu-korelaci/ [last viewed 04.04.2023].

Second, according to Article 7 of the Law on Compensation, a causal link between an illegal action of an institution and the harm caused to an individual must exist. In other words, in order to entail the state's liability, an illegal action of an authority in criminal proceedings must be the key reason which caused harm to an individual. An example from case law can illustrate the meaning of this provision.

The person "A" submitted a claim to the Office of the Prosecutor General for compensation for harm from the state in the amount of 5656 euro, considering that the criminal proceedings, in which A has participated as the victim, have been unreasonably delayed and therefore A has not been able to receive compensation from the offender for financial fraud. The Office of the Prosecutor General rejected A's claim on the ground of non-existence of the causal link between the illegal action of the investigator (failure to conduct investigation and consequent unreasonable delay of the proceedings which was established by the supervising prosecutor in the case) and the harm which was caused to A by the crime that allegedly had been committed.

The applicant challenged the decision of the Office of the Prosecutor General in the Administrative Court. By the decision of the District Administrative court, A's claim for compensation of harm was dismissed. The court, *inter alia*, established that the harm that had been caused to the applicant occurred as the result of the crime that had been investigated by the State Police, and therefore, no evidence that the investigator's omission was the "main factor", which caused damages to A, was presented to the court.[37]

It is worth noting that in this case the applicant requested compensation while the criminal proceedings were still ongoing, which means that the outcome of the proceedings was uncertain, and the applicant still had the opportunity to seek compensation under the CPL. However, the provision of Article 2(2) of the Law on Compensation has also been applied to benefit victims of crime, as demonstrated in the following example.

The person "D" was severely beaten by his neighbour, the person "H". Criminal proceedings were initiated against H for committing intentional bodily injury, and later the case was sent to trial. By court ruling, H was acquitted due the lack of proof. The court, however, took an ancillary decision, in which it established that the prosecutor had failed to conduct a thorough supervision of the investigation, and therefore the accusation against H had been ill-founded.

After an unsuccessful appeal, D submitted a claim to the Office of the Prosecutor General for compensation of moral harm in the amount of 3000 euro. The Office of the Prosecutor General partially satisfied D's claim and provided an apology. The claim regarding pecuniary compensation was rejected.

D then challenged this decision in the Administrative Court. In its judgement, the District Administrative Court, firstly, outlined a general conclusion on the victim's right to receive compensation under Article 2(2) of the Law on Compensation; secondly, the court admitted that the prosecutor's negligent performance of duties in criminal proceedings had breached D's right to a fair trial; thirdly, the court formulated the purpose of compensation as to provide satisfaction for the victim's violated rights and to deter authorities from repeating such actions; fourthly, the court recognised that, although it was not possible to fully restore D's rights that had been violated due to the crime as H had been acquitted, a compensation from the state

[37] Judgement of 6 February 2023 of the District Administrative Court in case No. A420221622, para. 9. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/497819.pdf [last viewed 28.02.2023].

for moral harm would be a reasonable remedy for D. As a consequence, the court awarded D a compensation of 1500 euro for moral damages.[38]

The authors wish to draw attention to the court's conclusion that the prosecutor's negligence, which led to the offender's acquittal, constituted a violation of the victim's right to a fair trial. The purpose of the Law on Compensation, declared in Article 1(1) therein, unequivocally provides that the state is responsible for harm caused to individuals by an illegal actions of state authorities in criminal proceedings. Conversely, the offender is responsible for harm caused by violating provisions of the Criminal Law. Therefore, compensation awarded to a victim under the Law on Compensation is not intended to provide complete redress for harm caused by the offender, but rather to compensate for the state's failure to ensure the victim's right to a fair trial.

The application of the Law on Compensation in practice shows that Article 2(2) provides a broad margin for victims of crime to receive compensation if the state has failed to ensure a fair regulation of criminal-legal relations. However, as stipulated by the SC, the legislator is ought to evaluate and refine the enforcement of this law to ensure that victims of crime are provided with the appropriate level of redress and that their rights are fully protected.[39] The authors concur with this observation.

Finally, in accordance with Article 14(4) of the Law on Compensation, the maximum compensation for non-material harm may be up to 30,000 euro if the harm is deemed "particularly severe". Paragraph 1 of this Article stipulates the general criteria for assessing such harm; however, these cannot be considered comprehensive. As there are two bodies authorised to compensate for the state's actions in criminal proceedings – the Ministry of Justice and the Office of the Prosecutor General – and taking into account the principle of equality (i.e. in comparable cases, compensation for moral harm should be similar, but in different cases, it may differ)[40], the authors hope that the implementation of the Law on Compensation will provide a more detailed and consistent benchmark for evaluating infringements of one's constitutional rights in criminal proceedings.

Summary

The victim's right to effective remedy in criminal proceedings goes beyond obtaining a compensation for harm caused by the offender, as the victim has control mechanisms over the conduct and result of the case, influencing the offender's conviction and punishment. The victim, however, cannot expect that the conviction and punishment of every offender is ensured in each criminal case.

The effectiveness of criminal proceedings leading to the identification and conviction of the offender, in addition to compensation for harm, may constitute an element of the victim's right to a fair trial. Therefore, the state is responsible for criminal proceedings that fail to fulfil the victim's expectation of effective proceedings.

The Law on Compensation provides a mechanism for victims to hold the state liable for ineffective criminal proceedings and to seek redress for a violation of their right to a fair trial. The case law shows that some derogations from the Law on

[38] Judgement of 15 June 2022 of the District Administrative Court in case No. A420255921, paras 5–13. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/480999.pdf [last viewed 05.03.2023].

[39] Decision of 14 November 2018 of the Supreme Court of the Republic of Latvia in case No. SKA-1081/2018, para. 13. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/368366.pdf [last viewed 05.02.2023].

[40] See note 29, p. 16.

Compensation's provisions on the establishing an illegal action of an authority in criminal proceedings are needed to ensure the fundamental right to redress of harm.

The legislator must ensure that the Law on Compensation is intended to compensate victims for the negligent performance of the state's authorities in criminal proceedings, and, if necessary, introduce more specific regulations to safeguard crime victims' rights. At the same time, the application of this law is ought to provide a more detailed criteria for the evaluation of the victim's violated right to a fair trial.

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