State compensation to the victim in criminal proceedings is an integral component of the just resolution of criminal legal matters

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Abstract

In recent years, there has been attention, both at the international and national levels, on the protection of the rights of victims of criminal offences. The first article of the Criminal Procedure Law outlines the objective of criminal proceedings, namely, to establish a procedural order that ensures the effective application of Criminal Law norms and the fair regulation of criminal legal relations without unjustified interference in a person’s life. One of the key elements of this fair regulation of legal relations is recognising the victim’s right to compensation for the harm suffered. A person who has been a victim of a criminal offence has the right to state compensation, as well as the right to seek compensation within the framework of criminal proceedings, which will be collected from the guilty party. It should be noted that legislative acts provide the opportunity for the victim to both receive state compensation and demand it from the guilty party.

Keywords

State compensation • Victim • Criminal proceedings

INTRODUCTION

The present article delves into the intricate landscape of victims’ rights to state compensation within the context of Latvian criminal proceedings, examining the interplay between these rights and the entitlement to legal representation, all while seeking to maintain a fair regulation of criminal legal relations. By employing a comprehensive mixed-methods approach, which combines both qualitative and quantitative methodologies, including literature reviews, legal analysis, surveys and statistical data analysis, this research aims to provide a holistic understanding of the protection of victims’ rights and state compensation.

In any criminal proceedings, the victim, the perpetrator and the State shall form a tripartite model of relations characterised by individual interests and balanced in criminal procedural law, taking into account the equality of the parties within it (Zīle, 2002).

In accordance with Article 95 of the Criminal Procedure Law, a victim in criminal proceedings can be a natural or legal person who has suffered harm due to a criminal offence, which may encompass moral injury, physical suffering or property loss. However, obtaining the status of a victim in criminal proceedings is contingent upon a decision by the prosecuting authority, recognising the person as a victim, based on their expressed consent to attain this status either personally or through their representative. This status grants the individual access to the rights stipulated by law.

Several internationally recognised documents also explain the concept of victim. In the Declaration of the General Assembly of the United Nations of 29 November 1985 on the fundamental principles of justice for victims of crime and abuse of power, the term ‘victim’ means any person who has been individually or collectively harmed. The damage may be of a different nature, physical, moral, emotional or material; it can also take the form of an infringement of a fundamental right of a person; the damage may have been caused by acts or omissions.

Furthermore, the article explores the nuanced interpretation of Article 95, particularly the third part of the Criminal Procedure Law, which allows for multiple individuals to be recognised as victims when a person has died as a result of a criminal offence. Each recognised victim possesses the ability to exercise the rights accorded to victims in the context of criminal proceedings (O’Driscoll, 2023). However, not all victims of a crime are also victims in a criminal procedural sense (Meikališa and Strada-Rozenberga, 2015). The study also delves into Article 22 of the Criminal Procedure Law, highlighting the procedural opportunities provided to those who have suffered harm due to criminal offences. This includes the ability to demand and receive both moral and material compensation, taking into consideration the moral injury, physical suffering and property loss incurred. These provisions not only enable victims to seek compensation for harm but also ensure the achievement of the overarching objective outlined in Article 1 of the Criminal Procedure Law:
the equitable and proportionate regulation of criminal legal
relations without unwarranted intrusion into individuals’ lives.
This is in line with the principles of DIRECTIVE 2012/29/EU
EC, which mandates member states to establish systems
for compensating victims of intentional violent crimes,
guaranteeing just and proportional compensation.
In Latvia, the mechanism for claiming compensation for
harm is intricately integrated within the framework of criminal
proceedings, aligning with the requirements of European
directives and ensuring the protection of victims’ rights.

**RESEARCH RESULTS AND DISCUSSION**

In 2006, the ‘Law on State Compensation to Victims’ was
adopted, which established a system for state compensation
to victims and a mechanism for compensation payments. The
aim of this law is to provide a natural person recognised as
a victim in accordance with the Criminal Procedure Law with
the right to receive state compensation for the moral injury,
physical suffering or property loss resulting from an intentional
criminal offence. When establishing the State compensation
Mechanism in Latvia, the interests of the victim have been
taken into maximum account, thus the State has taken the
most important role in this stage of protection of the rights of
victims, and it can be concluded that this effective Mechanism
is progressive and fair (Jansons, 2007).
Compensation for the victim is one of the most significant
elements in ensuring a fair regulation of criminal legal
relations. However, in practice, considering the personal
circumstances of the perpetrator of the criminal offence and
their financial situation, as well as their potential incarceration,
it may be impossible for the victim to receive compensation for
the harm suffered from the guilty party. It is crucial to ensure
that the necessary emotional, medical, legal and material
assistance is provided to the victim in a timely manner.
Therefore, a significant role in the mechanism for obtaining
compensation for harm is given to state compensation within
the framework of criminal proceedings. A person recognised
as a victim in criminal proceedings has the right to submit a
request and receive state compensation in accordance with
the ‘Law on State Compensation’.
To receive state compensation, the victim must submit a
completed state compensation request form to the Legal Aid
Administration. This form has been approved by the Cabinet
of Ministers in their regulations No. 218 of 23 April 2013,
titled ‘Regulations on the Sample of the State Compensation
Request Form’.
In the case of a completed criminal process, the victim should
attach the final decision of the prosecuting authority to the
request form. However, if the criminal process is in the pre-
trial investigation stage or in the trial process, the ‘Law on
State Compensation’ specifies that the victim should attach
a notification from the prosecuting authority to the request
form. This notification should include a substantial amount of
information, including:
- The time and place of the criminal offence.
- The classification of the criminal offence.
- The culpability of the perpetrator as of the date of the
  notification.
- The date of initiation of the criminal process and the case
  number.
- Information about the person recognised as the victim in
  the criminal process (name, surname, personal identification
code, address of residence as stated in the criminal process,
contact information and the date when the person was
recognised as a victim).
- Information about the person recognised as the representative
  of the victim if the victim exercises their rights through a representative.
- The nature of the harm caused as a result of the criminal
  offence.
- The date of the expert opinion, its reference number and the
  expert who provided it.
- Information about the perpetrator in the criminal process, if
disclosing such information does not hinder the establishment
of the truth in the case.
- The number of persons recognised as victims in the same
  criminal process due to the death of the accused, along with
information about these individuals.
It is worth noting that despite the legal requirement of
attaching the notification from the prosecuting authority to
the compensation request form, in practice, the application
process has evolved differently from what is stipulated in the
law. In practice, the victim first approaches the prosecuting
authority to obtain the notification with the specified content
as per the ‘Law on State Compensation’. The prosecuting
authority informs the victim that they need to submit only the request form to the Legal Aid Administration,
and the notification containing the information listed in the
previous text will be sent to the Legal Aid Administration in
written form. As a result, when the Legal Aid Administration
receives the victim’s application for state compensation, they
contact the prosecuting authority with a request to provide the
information specified in Article 8, Part 2 of the ‘Law on State
Compensation’ in the relevant criminal case. After receiving
this information, the Legal Aid Administration assesses the
validity and amount of state compensation.
It must be acknowledged that the application mechanism
implemented in practice for state compensation is more
convenient and understandable for the victim. Therefore, it is
suggested that the ‘Law on State Compensation to Victims’
should be amended to grant the victim the right to submit only
the request form. Simultaneously, the law should impose a
duty on the Legal Aid Administration to request the information
specified in Article 8, Part 2 of the ‘Law on State Compensation’
from the prosecuting authority within 10 days from the receipt
of the application. These proposed amendments, firstly,
formalise the existing practice and, secondly, significantly
streamline the procedure that victims must follow to apply for
state compensation (Levine and Russell, 2023).

Article 351 of the Criminal Procedure Law stipulates that the
victim has the right to submit an application for compensation
for the harm caused at any stage of the criminal process until
the commencement of the trial in the first-instance court.
However, concerning the application for state compensation,
the legislator has set a different deadline. Based on Article 9
of the ‘Law on State Compensation’, the victim must apply to
the Legal Aid Administration within 3 years from the day when
the person is recognised as a victim or becomes aware of the
facts that give them the right to do so. From this provision,
it follows that the victim is entitled to submit an application
for state compensation even during the trial stage or after
the final decision becomes legally effective in the criminal
process (conviction, prosecutor’s statement on punishment,
or a decision that terminates the criminal process due to non-
rehabilitative circumstances).

It is debatable that the existence of such a deadline may
infringe upon the rights of the accused or the defendant to
a fair regulation of criminal legal relations when the criminal
process is terminated based on a settlement agreement.

A settlement can be seen as a reconciliation process with
certain conditions. The author agrees with the opinion that
‘reconciliation, in this case, does not mean the proclamation
of the absence of conflict, nor absolute satisfaction of both
parties, nor the establishment of trustful relationships between
the victim and the offender. It merely demonstrates that
through discussion, the victim and the offender have managed
to find a conflict resolution that is acceptable to both sides,
thus reducing the harm associated with the criminal offence
and promoting the restoration of justice’. (Judins, 2010).

Reconciliation can be considered one of the mechanisms for a
fair regulation of criminal legal relations. Although the concept
of reconciliation is not defined in the Criminal Procedure Law,
its explanation can be found in the theory of criminal procedure.
It is described as a voluntary agreement between the person
who committed the criminal offence and the victim, in which
the offender admits guilt, and the victim acknowledges that
they will not make further claims against the offender (Strada-
Rozenberga, 2001).

Therefore, it can be concluded that a settlement between the
victim and the accused is considered legally concluded if:
It is made voluntarily.
The accused admits guilt for the alleged offence.
The victim acknowledges that they no longer have any claims
against the person who committed the criminal offence as a
result of the settlement.

The Criminal Procedure Law allows for settlements between
those responsible for a criminal offence and victims to be
reached at any stage of the criminal process. However, for a
settlement to have legal consequences, the prosecutor must
notify it to the court before the case proceeds to the deliberation
chamber. It is crucial in the context of the analysed issue to
determine the legal consequences of a concluded settlement.

Article 377, point 9, of the Criminal Procedure Law states that
a criminal case must not be initiated, and if already initiated,
it must be terminated if there has been a settlement between
the victim and the accused or the defendant in a criminal case
that can only be initiated based on the victim’s application, and
the harm caused by the criminal offence has been completely
eliminated or compensated.

Based on the first part of Article 379 of the Criminal Procedure
Law, an investigator, with the consent of the supervising
prosecutor, the prosecutor or the court, may terminate the
criminal case if a person who has committed a misdemeanour
or a less serious crime has reconciled with the victim or their
representative. Article 58, paragraph 2, of the Criminal Law
states that a person who has committed a misdemeanour or
a less serious crime, except for criminal offences resulting in
human death, can be exempt from criminal liability if there is
a settlement with the victim or their representative and the
person has not been exempt from criminal liability for a wilful
criminal offence through reconciliation in the last year and
has completely eliminated the harm caused by the committed
criminal offence or compensated for the losses incurred.

Therefore, it is unequivocal that for a criminal case to be
terminated based on a settlement, the harm caused by
the criminal offence must be completely eliminated or
compensated. Thus, if a criminal case is terminated due to a
settlement, the victim no longer has material or other claims
against the person who committed the criminal offence.

In this context, the author critically evaluates the victim’s
right to submit an application for state compensation after
a prosecutor’s decision on the termination of criminal
proceedings has become legally effective due to a settlement
between the victim and the accused.

In the author’s opinion, it would not be fair or justified to
demand state compensation according to the ‘Law on State
Compensation for Victims’ in a situation where a settlement has
been reached between the victim and the guilty person, even
if a prosecutor’s decision to terminate the criminal process
due to non-rehabilitative circumstances has become legally
effective. The fact that the victim, by exercising their right to
compensation for harm, has chosen to enter into a settlement
with the guilty person and has received compensation for the
harm from the guilty person should be taken into account. The
rights of the accused or defendants should be protected in
cases of reconciliation with respect to the conditions of the settlement, even if a prosecutor’s decision to terminate the criminal proceedings is legally effective (Miers, 2019). If the victim indicated in the reconciliation that they have no material or any other claims against the guilty person, then the victim has no grounds to apply for additional compensation for the damage. Such a restriction would be necessary because state compensation is not intended as state support for victims from the state budget but rather as the recovery of state damage compensation paid from the guilty person, namely, in accordance with Article 4, paragraph 1, subparagraph 4 of the Law on State Compensation for Victims, the Legal Aid Administration ensures the recovery of the amount of state compensation paid to the victim from the perpetrator of the criminal offence. Therefore, in the author’s opinion, in the analysed situation, the victim’s application for state compensation is not fair and justified in relation to the person who has the right to defence, and its rights should be respected.

To address the issue, amendments should be made to the Law on State Compensation for Victims, specifically to Article 3, which defines the rights to state compensation for victims. The proposal is to add the following words to this article: ‘except if the damage has been fully compensated’. Furthermore, Article 8, paragraph 3, of the Law on State Compensation for Victims, which specifies the list of documents to be attached to the state compensation application, could be supplemented with a condition to attach the reconciliation agreement if one was concluded during the criminal process. In this way, the Legal Aid Administration would have the opportunity to assess the validity of the submitted state compensation and simultaneously observe the rights of all parties involved in the criminal process to a fair regulation of criminal legal relations. The next issue that the author wishes to draw attention to is related to the consequences of a criminal offence. Article 1 of the Law on State Compensation for Victims provides for the right to receive state compensation for the moral harm, physical suffering or pecuniary loss resulting from an intentional criminal offence. Article 3 of the same law specifies the cases in which a person has the right to receive state compensation, and this list is exhaustive. It includes situations where a person has died as a result of an intentional criminal offence, the victim has suffered serious or moderately serious bodily injuries, the victim’s moral integrity or sexual inviolability has been violated, the victim is a victim of human trafficking or the victim is infected with the human immunodeficiency virus or hepatitis B or C as a result of the intentional criminal offence.

The mentioned norm implies that state compensation is not provided in cases where a person has suffered an intentional criminal offence directed at their life, but fortunately survived, and only minor or insignificant bodily harm was inflicted due to fortunate circumstances. As an example, we can refer to a judgement from the Riga District Court in which it was established that [Person A] attempted murder under the following circumstances: On 21 February 2020, after midnight, [Person A] initiated a dispute with their stepfather [Person B]. During a domestic argument, with direct intent and deliberately using violence against a family member with whom they lived in a common household, [Person A] repeatedly verbally threatened [Person B] with murder. Subsequently, [Person A] pushed the victim to the ground and struck them multiple times. Becoming increasingly aggressive and continuing to carry out their intent, [Person A] went to the kitchen, where they deliberately took a kitchen knife and used it to inflict several blows and stabs on [Person B]. Aware that using a knife in this manner and deliberately delivering multiple stabs to the victim’s body could cause severe and irreversible consequences, inflicting serious bodily injuries or even death, and with the explicit intention to carry out the threats they had previously articulated, [Person A] persisted in physically assaulting the victim and delivering multiple deliberate stabs with a kitchen knife. Thus, using a kitchen knife with a blade length of no less than 11 cm, [Person A] repeatedly stabbed [Person B] in various parts of their body, including a deliberate attempt to strike the victim’s neck and chest area. [Person A] inflicted several more blows with the knife and several targeted stabs with the knife held in their hand. Seeing that they were unable to realise their intent, [Person A] returned to the kitchen, where they took another kitchen knife with a blade length of no less than 16 cm and, with deliberate and targeted actions, continued to direct their aggression towards [Person B] who was lying on the ground. In this manner, using knives deliberately at their disposal, [Person A] inflicted no fewer than eight knife stabs to the chest and abdominal areas of [Person B], as well as other injuries in the form of cuts and puncture wounds. As a result of [Person A]’s actions, [Person B] suffered only minor bodily injuries (The Judgment of the Riga District Court of the Republic of Latvia, Case No. 11352009420, 2021).

According to existing legal norms, in the mentioned cases, the victim was denied the right to claim state compensation. However, as previously mentioned, the absence of death is merely a matter of luck. I believe that unequivocally and unambiguously, despite the physical injuries inflicted on the person, significant moral damage was done, manifested in strong psychological distress and fear for their life. In the author’s view, the person should have the right to state compensation for moral harm and suffering. As another example where victims are not entitled to state compensation, one can refer to the judgement of the Kurzeme District Court, in which the accused /pers. A/ was found guilty of attempted murder. The crime was committed under the following circumstances: on 2 September 2021, at 21:40
hours, /pers. A/, under the influence of alcohol and during common alcohol consumption, after a domestic dispute with the mother’s de facto husband /pers. C/, in a fit of anger, left the room, took a knife, and returned to the room with the intention of committing a deliberate unlawful killing. He approached /pers. C/, who was lying on the bed, and intentionally stabbed /pers. C/ at least nine times in the head and chest area with the knife. However, he did not complete the murder due to reasons independent of his will because an eyewitness to the crime, /pers. D/, intervened by using physical force against /pers. A/. As a result of /pers. A/ stabbing /pers. C/ nine times with the knife, /pers. C/ suffered minor physical injuries (Judgment of Kurzeme District Court of the Republic of Latvia, No. K69-0260-22/20, 2022).

The author believes that, to prevent the disregard of the victim’s right to state compensation in cases of attempted murder, it is proposed to amend Article 3, paragraph 4 of the Law on Compensation for Harm to Victims by adding point 6, which provides that the right to state compensation is granted to the victim who is a victim of attempted murder.

Another debatable issue regarding the provision of state compensation to the victim is the legislator’s stance to pay compensation to the victim as a percentage based on the consequences that occur rather than the object of the threat. Specifically, Section 7 of the ‘Law On State Compensation to Victims’ prescribes that compensation is paid in the amount of 100% if the victim dies; 90% if the victim has suffered severe bodily harm or the criminal offence is classified as rape or sexual violence, or if the victim’s honour or sexual integrity is infringed, or if the victim is a victim of human trafficking; 70% if a minor victim has suffered moderate bodily harm or if the minor victim is infected with human immunodeficiency virus, hepatitis B or C; and 50% if the victim has suffered moderate bodily harm or if the victim’s honour or sexual integrity is infringed, or if the victim is infected with human immunodeficiency virus, hepatitis B or C, except for the cases mentioned in points 2 and 3 of this section.

The legislator’s stance would be critically evaluated in cases where the guilty party’s intent was to take a person’s life but this was not successful due to reasons beyond their control. In the author’s opinion, in such situations, it is not fair and justified for the compensation amount to be determined based on the object of the threat (life) rather than the actual consequences that occurred. Specifically, on 7 July 2017, at 12:00 p.m., person A arrived at the social care home managed by SIA ‘[…]’ located at [address] to visit their acquaintance, person B. At that time, the duty room on the 3rd floor of the home was being staffed by employee person C from SIA ‘[…]’. Out of revenge for not being allowed into the social care home by person C while performing her duties, person A entered the duty room and, with the intention of causing the death of person C and desiring it, shouting ‘I’ll cut you!’, intentionally stabbed person C four times with the knife he had brought with him. The first time, person A attempted to stab person C with the knife but failed because person C blocked him with her right hand, resulting in the hand being cut. Then, person A made a second stab, stabbing person C in the right chest. On the third time, person A stabbed person C in the stomach, and on the fourth time, person A stabbed person C in the left chest. Believing that bodily harm had been inflicted on person C that was incompatible with life and that the victim’s death would occur, person A left the scene of the criminal offence. As a result of the violent actions by person A, person C suffered severe, life-threatening bodily harm (Criminal Cases Department of the Supreme Court of the Republic of Latvia, Case No. 11352033817, SKK-399/2018, 2018).

The author believes that it would be unjustified to determine the compensation amount as a percentage in the following example when moderate bodily harm occurs independently of the perpetrator’s will, while endangering the person’s life interests. Specifically, in the judgement of the Riga Regional Court, individual A was found guilty of attempted murder. Individual A, while under the influence of alcohol, on 11 April 2019, at approximately 13:00, during a conflict with individual B at their place of residence, acted with the deliberate intent to kill individual B. Using an axe in their possession, individual A struck individual B’s head in the area of the forehead four times, causing moderate bodily injuries. Individual A was unable to fully execute their criminal intent due to reasons beyond their control, as another person present woke up due to the noise and began shouting upon witnessing individual A’s actions, causing individual A to flee the scene.

Joining the opinion expressed in scientific literature that the most serious offences, from the perspective of moral offence, should be considered those directed at a person’s life, health and sexual integrity, the author believes that a solution should be found to address the issue at hand. To rectify these shortcomings, the author suggests amending Article 7(1)(1) of the Law on State Compensation to allow victims to receive 100% compensation if severe, moderate or light bodily injuries result from an attempted murder, thereby eliminating the need for a percentage-based assessment of compensation in such cases.

In relation to the procedure and amount of state compensation calculation, another issue arises. Article 7.1, paragraph 4 of the Law on State Compensation, stipulates that if as a result of a criminal offence several individuals are recognised as victims, the state compensation is distributed proportionally to the number of victims, provided that all recognised victims apply for state compensation. However, the legal question remains unanswered if only one or a few of the victims wish to apply for state compensation, and in such a case, how the state compensation should be distributed.

Let’s model a situation: a criminal proceeding has been
initiated for the intentional killing of another person (murder) in accordance with Article 116 of the Criminal Code. Three persons are recognised as victims in the criminal proceedings – the deceased mother (individual A) and two deceased brothers (individuals B and C). According to the Law on State Compensation, if the criminal offence occurred in 2023, the compensation amount is €3,100.00. Considering the aforementioned legal norm in Article 7.1, paragraph 4 of the Law on State Compensation, each of the victims should be paid compensation in the amount of €1,033.33 if all three victims apply to the Legal Aid Administration. However, in the modelled situation, only the deceased mother has applied for state compensation. The Legal Aid Administration, upon receiving information from the prosecuting authority that three persons are recognised as victims in the criminal proceedings, will only pay individual A €1,033.33, while also respecting the other victims’ rights to receive state compensation. This is a fair and reasonable approach, but if individuals B and C choose not to exercise their rights to receive state compensation or do not believe they have suffered moral damage, should individual A not be entitled to receive the entire state compensation in this case? To be considered legally and reasonably, there should be a provision that regulates such a mechanism of payment. The author believes that the provision in Article 7.1, paragraph 4 of the Law on State Compensation should be supplemented to include the right for a victim to receive the entire state compensation if, within a period of 3 years, those individuals recognised as victims in a criminal proceeding do not exercise their rights or do not apply for state compensation. It should be supported that, in order to promote protection of victims of crime, consideration should be given to creating a victim support fund, possibly similar to the Maintenance Guarantee Fund in Latvia. This would allow the victim to be compensated in a timely and proportionate manner (Kronberga and Logina, 2019).

CONCLUSION

The process of ensuring victims’ rights is dynamic. It is commendable that continuous improvements are made in the realisation of victims’ rights in criminal offences, and the development of new legal provisions can guarantee the legal protection of the interests of the victim. State compensation to victims in the context of criminal proceedings stands as a crucial pillar within the framework of just and equitable regulation of criminal legal relations in Latvia. Over recent years, both international and national attention has been dedicated to safeguarding the rights of victims of criminal offences. The primary objective of criminal proceedings, as articulated in the first article of the Criminal Procedure Law, is to establish a procedural framework that upholds the effective application of criminal law norms while ensuring the fair regulation of criminal legal relations, all without unjustified intrusions into individuals’ lives. Central to this principle of fair regulation is the acknowledgement of a victim’s right to receive compensation for the harm they have endured. Victims of criminal offences hold the right to claim state compensation, as well as the right to pursue compensation within the boundaries of criminal proceedings, with the expectation that it will be retrieved from the responsible party. It is noteworthy that legislative acts not only grant victims the opportunity to receive state compensation but also empower them to demand it from the guilty party. The interplay of these legal provisions serves to restore a sense of justice and support the rehabilitation of victims, reaffirming their rights and placing them at the core of the criminal justice system. By addressing the practical and theoretical dimensions of state compensation for victims, this article has illuminated the essential role it plays in the pursuit of justice and the establishment of a more compassionate, equitable and responsive criminal legal framework in Latvia.

REFERENCES


The Judgment of the Riga District Court of the Republic of Latvia, dated 2 September 2021, in Criminal Case No. 11352009420.