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Victim's Right to Prove in Criminal Proceedings

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Abstract

This article is about the victim's right to prove in criminal proceedings. It studies the victim's right to prove only in criminal proceedings before the court. However, it does not consider the victim's ability to prove in court.

The aim of the study is to examine the possibilities of victims to prove in criminal proceedings, to identify legal and practical issues for the victim's right to prove in criminal proceedings, as well as to put forward proposals for solving them.

Material and methods used in the preparation of the study include analysis and description of regulatory enactments, court judgments, comparable and logical method. Analysis and description of normative acts and court judgments were used for the creation of the study. The comparative method has been used to compare provisions of regulatory enactments, while the logical method has been used to draw conclusions. Methods of interpretation of legal norms have also been used in the study: grammatical, systemic and teleological method.

Keywords: criminal proceedings, the victim, proof.

Introduction

In the basic law of Latvia, it is stipulated that everyone has the right to know their rights (The Constitution of the Republic of Latvia, 1922, Article 90). This indicates that the right of every victim in criminal proceedings is to know their rights. The right of

such a victim is also specified in the Criminal Procedural Law. It stipulates that as soon as a person has been recognised as a victim, information on the victim's fundamental rights shall be immediately provided to them in writing and, if necessary, explained (Criminal Procedural Law, 2005, Article 97).

According to the Criminal Procedural Law, the victim in criminal proceedings may be a natural or legal person who has suffered harm as a result of a criminal offense, namely moral damage, physical suffering or property damage. A person who has been morally offended as a representative of a certain group or part of society may not be a victim in criminal proceedings. If a person dies, the victim may be one of the relatives of the deceased (Criminal Procedural Law, 2005, Article 95).

In addition, according to the Criminal Law, a harmful offense (act or omission) committed intentionally or negligently, which has been provided for in the Criminal Law and for the commission of which a criminal penalty is threatened, shall be recognised as a criminal offense. An offense (act or omission) which has the characteristics of an offense provided for in this Law, but which is committed in circumstances which exclude criminal liability, shall not be recognised as a criminal offense (Criminal Law, 1998, Article 6).

The above indicates that a person who has been a victim of a criminal offense described in the Criminal Law and meets the requirements specified in the Criminal Procedural Law has the right to know their rights, including the right to prove it.

Different rights of expression are granted to the victim in criminal proceedings. They have both directly defined rights and rights indirectly included in court norms. Criminal Procedural Law sets out the rights of the victim in criminal proceedings before the court. Nevertheless, the list of these rights does not specify the right of the victim to take evidence in criminal proceedings before the court (Criminal Procedural Law, 2005, Article 98).

According to the Criminal Procedural Law, the proof is the act of a person involved in criminal proceedings in the form of substantiating the existence or non-existence of the facts which are the subject of the evidence (Criminal Procedural Law, 2005, Article 123). Such an explanation of evidence in the Criminal Procedural Law indicates the right of the victim to take evidence, as the victim is one of the persons involved in the criminal proceedings. However, the question is whether the victim can take evidence in accordance with the requirements of the Criminal Procedural Law.

The aim of the study is to examine possibilities of the victims to prove in criminal proceedings, to identify legal and practical issues for the victim's right to prove in criminal proceedings, as well as to put forward proposals for solving them.

Material and methods used in the preparation of the study include analysis and description of regulatory enactments, court judgments, comparable and logical method. These materials and methods in the study help to achieve the goal of the research. Analysis and description of normative acts and court judgments have been also used. The comparative method has been used to compare provisions of regulatory enactments, while the logical method has been used to draw conclusions. Methods of interpretation of legal norms have also been used in the study: grammatical, systemic and teleological method.

1 Victim and Rights in Criminal Proceedings before Court

According to the Criminal Procedural Law, the victim in criminal proceedings may be a natural or legal person who has suffered harm as a result of a criminal offense, namely moral damage, physical suffering or property damage. A person who has been morally offended as a representative of a certain group or part of society may not be a victim in criminal proceedings. If a person dies, the victim may be one of the relatives of the deceased (Criminal Procedural Law, 2005, Article 95). Thus, the victim is a person who has an interest in the evidence in criminal proceedings being high.

Over the last decade, activities of European Union institutions have contributed to protection of victims in Latvia, including ensuring effectiveness of victims' rights. The authors agree with the opinion of Professor A. Meikališa that activities of European Union institutions in the field of victim protection have taken place in dual direction. One – for victims in categories of criminal offences, and the other – for all victims of criminal offences, regardless of the type of criminal offence (Meikališa, 2013, 146). Protection of the victim's rights is, among other things, the granting and securing of rights in criminal proceedings.

The Criminal Procedure Law sets out general principles of the victim's rights. Firstly, the victim can exercise all their rights only in part of the criminal proceedings, which directly relates to the criminal offense with which has been harmed. Secondly, the victim, i.e. a natural person, can exercise their rights themselves or through a representative. Next, the rights of the victim, i.e. legal person, are exercised by their representative. Further, the victim exercises their rights voluntarily and to the extent of their choice. Non-exercise of rights does not hinder the proceedings. Moreover, without the consent of the victim, their image recorded by means of a photograph, video or other technical means during the proceedings may not be published in the media, unless this is necessary for the detection of the criminal offense. Even more, a victim whose adulthood is in doubt has the rights of a minor victim until their age is ascertained. Lastly, a state-provided representative of the victim or a legal aid provider participates in the case from the moment the order is accepted until the end of the criminal proceedings. (Criminal Procedural Law, 2005, Article 97)

These general principles apply to the victim in criminal proceedings in general; they serve as guidelines for realisation of the victim's rights and obligations in criminal proceedings. These principles do not contain any direct reference to the victim's right to take evidence.

The Criminal Procedural Law also determines the fundamental rights of the victim in criminal proceedings. Firstly, the victim has the right to receive information on the conditions for applying for and receiving compensation, including state compensation, and to apply for compensation for the damage caused. Secondly, the victim has the right to participate in the criminal proceedings in a language they understand, if necessary with

the assistance of an interpreter free of charge. Next, the victim has the right not to testify against themselves and their relatives. Furthermore, the victim has the right to reconcile with the person who has caused them harm, as well as to receive information on implementation of the settlement and its consequences. Additionally, the victim has the right to call a lawyer for legal aid. The victim has the right to apply for measures in the event of danger to the person themselves, their relatives or property. The victim has the right to apply for reimbursement of procedural expenses incurred in the criminal proceedings in cases specified in the Criminal Procedural Law. Even more, the victim has the right to submit a complaint regarding the procedural decision or the actions of the official authorised to perform the criminal proceedings in the cases within the terms and in accordance with the procedures specified in the Criminal Procedure Law. The victim has the right to receive contact information for the specific criminal proceedings, information on available support and medical assistance. The victim also has the right to request information on the progress of the criminal proceedings, on the officials who are or have been conducting the criminal proceedings. Also, the victim has the same rights as the witness during the testimony. In addition, the victim or their guardian has the right to request adoption of a European protection order at all stages of the criminal proceedings and in all its forms if there are grounds for adopting a European protection order under the Criminal Procedural Law. Finally, the victim has the right to receive an explanation of the victim's fundamental rights in writing and, if necessary, immediately (Criminal Procedural Law, 2005, Article 97¹).

These fundamental rights of the victim also make no express reference to the victim's right to take evidence. Although the set of fundamental rights is wide, it does not include the right of proof.

Considering the emphasis of this study in criminal proceedings before the court, the rights of the victim specified in the Criminal Procedural Law are also to be taken into account.

According to the Criminal Procedural Law, the victim in criminal proceedings before the court has the following rights:

- 1) to apply for rejection to the official who conducts the criminal proceedings;
- 2) to submit applications regarding performance of investigations and other activities;
- 3) to get acquainted with the decision regarding determination of expert examination before the transfer thereof for performance and to submit an application regarding the amendment thereof, if expert examination is performed upon their own application;
- 4) after completion of criminal proceedings before the court, to receive copies of the materials of the criminal case to be handed over to the court which directly relate to the criminal offense for which they have been harmed, if they have not been extradited earlier, or with the consent of the prosecutor;

- 5) to apply to the investigating judge for a request to acquaint them with the materials of the special investigative activities which are not attached to the criminal case (source documents);
- 6) to receive a written translation in the cases provided by law;
- 7) to request the person conducting the proceedings to inform about the progress of the criminal proceedings in the part regarding the criminal offense with which they have been harmed, if they have suffered from a criminal offense related to violence or against sexual integrity or morality (Criminal Procedural Law, 2005, Article 98).

It is also clear from the content of these specific rights that the victim does not have a certain right to prove themselves. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA is a major step forward at the European Union level, guaranteeing effective protection of victims' rights. The purpose of the Directive is to ensure that victims of crime receive adequate information, support, protection and are able to participate in criminal proceedings (Directive 2012/29/EU of the European Parliament and of the Council, 2012, Article 1).

In the context of this Directive, significant amendments have been made to the Criminal Procedural Law in order to achieve its objective. Amendments were also made to the rights of the victim, substantially extending the content of the rights of the victim. Through such expansion, there is also a greater involvement of the victim in the criminal proceedings, which is possible by exercising the victim's rights. Although the victim's rights sufficiently allow the victim to participate in the criminal proceedings, a specific right to prove the victim in criminal proceedings before the court is not granted.

2 Proving Proceedings in Criminal Proceedings

According to the Criminal Procedural Law (Article 123), evidence is the activity of a person involved in criminal proceedings, which manifests itself as the substantiation of the existence or non-existence of the facts included in the subject matter of the evidence. It follows that proof is an activity carried out for a specific purpose and carried out by a specific group of persons using specific means, namely evidence. Also, the process of proof has three integral components, namely the circle of persons carrying out the evidence, the specific activities of those persons and the tools to be used. Commenting on the provisions of the Criminal Procedural Law on evidence, Professor K. Strada-Rozenberga has pointed out that the activity of a person who is not involved in the criminal procedure in a certain status is not recognised as evidence, moreover, the above explanation of evidence (Strada-Rozenberga, 2019a, 413).

Given that the victim is a person involved in the criminal proceedings, their action, which takes the form of substantiating the existence or non-existence of the facts which are the subject of the evidence, should be regarded as evidence.

The Criminal Procedural Law (Article 126) stipulates that all persons involved in criminal proceedings who have been obliged or granted the right to take evidence by the Criminal Procedure Law shall be deemed to be subjects of evidence. Such a legal norm, in the author's opinion, narrows the range of subjects of evidence, as it establishes a restriction that the subjects of evidence are persons involved in criminal proceedings, but also adds that they are persons involved in criminal proceedings who are obliged or granted the right to take evidence by the Criminal Procedural Law.

In interpreting the meaning of the term "right", the right means a statutory advantage which other persons are obliged to respect (European Union Glossary of Terms, 2004). On the one hand, the Criminal Procedural Law allows the victim to take evidence in criminal proceedings as a person involved in the criminal proceedings; on the other hand, the victim does not have a specific right to do so.

An interesting situation arises in relation to the victim's right to apply for an investigation and other actions and the right to acquaint himself with the decision to order an expert examination before it is handed over and to apply for its amendment if the examination is carried out at their own request. This raises the question of whether pointing to evidence is proof. Professor K. Strada-Rozenberga, giving an expert opinion on the adequacy and clarity of the Criminal Procedural Law regarding the standard of proof and the sufficiency of evidence, has indicated that in cases when the legislator has chosen not to use the word "prove" but "to indicate", there is no duty to persuade but merely to state the fact, prompting it to be verified (Strada-Rozenberga, 2020).

Evidence must be used to make evidence as required by the Criminal Procedural Law (Article 123). Evidence in criminal proceedings is any information obtained in accordance with the procedures prescribed by law and confirmed in a certain procedural form regarding the facts which the persons involved in criminal proceedings use to substantiate existence or non-existence of circumstances included in the subject matter of evidence. Only reliable, relevant and admissible facts may be used as evidence by persons involved in criminal proceedings (Criminal Procedural Law, Article 127). Professor K. Strada-Rozenberga, commenting on the content of evidence in criminal proceedings, has pointed out that evidence is the unity of content (information) and its procedural form of confirmation (Strada-Rozenberga, 2019b, 430).

Regarding the evidence in the decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 22 August 2018 in case No. 11250014115, SKK-297/2018, it is stated that information on facts obtained in accordance with the procedures prescribed by law and confirmed in a certain procedural form shall be recognised as evidence, and not the assessment of this information provided by a witness. The situation studied in the judgment clearly indicates that if one of the witnesses has a subjective assessment of what has happened, such subjective assessment cannot be considered as

evidence. In addition, regarding the evidence, the decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 4 October 2018 in case No. 11520035214, SKK-540/2018, stipulates that circumstances included in the subject of proof shall be proved by admissible, relevant, reliable and sufficient evidence obtained, verified and assessed in accordance with the procedures specified in the Criminal Procedural Law. (Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia, 2015)

Reliability of evidence is the degree to which a piece of information is established. Reliability of the factual information used in the taking of evidence shall be assessed by looking at all facts or information obtained in the course of criminal proceedings as a whole and in relation to each other. No evidence has a higher level of confidence than the other (Criminal Procedural Law, Article 128).

Evidence is applicable to specific criminal proceedings if information on the facts directly or indirectly confirms existence or absence of circumstances to be proved in criminal proceedings, as well as reliability or unreliability of other evidence, possibility or impossibility of use (Criminal Procedural Law, Article 129).

Information on facts obtained during criminal proceedings may be used as evidence if they have been obtained and procedurally confirmed in accordance with the procedures specified in the Criminal Procedural Law. Information on facts obtained through violence, threats, blackmail, deception or coercion obtained in the course of proceedings performed by a person who was not entitled to do so under the Criminal Procedural Law, including information obtained by allowing in particular the specified violations that prohibit the use of the specific evidence, as well as in violation of the basic principles of criminal proceedings cannot be deemed admissible. Information on facts obtained through other procedural irregularities shall be deemed to be of limited admissibility and may be used in evidence only if the procedural irregularities are insignificant or can be remedied, could not affect veracity of the information obtained or are corroborated by other news. Accordingly, evidence obtained in a situation of conflict of interest is admissible only if the prosecutor is able to prove that the conflict of interest has not affected the objective conduct of the criminal proceedings (Criminal Procedural Law, Article 130).

It follows that evidence, in order to be evidence in criminal proceedings in general, must contain many specific features. Without this property, proof cannot be evidence in criminal proceedings.

Having examined judgements of the first instance of Kurzeme District Court in 2020 and 2021, it can be concluded that the court in its judgements referred to evidence indicated or submitted by the victim. For example, in the judgement of Kurzeme District Court of 12 November 2020, case archive No. K69-0609-20/26, the testimony of the victim has been indicated as a piece of evidence (Judgement of Kurzeme District Court, 2020).

In the judgement of Kurzeme District Court of 8 October 2020 in case No. 11261093216, the victim has submitted an extract from a psychologist, substantiating

the compensation for moral damage. In its turn, in the judgement of Kurzeme District Court of September 7, 2021 in case No. 11261045320, the victim based the moral damage only on their testimony in criminal proceedings before the court. Examining the judgement, it can be concluded that there are cases when the court claims there to be no evidence to substantiate the moral damage caused to the victim. An example is the judgement of Kurzeme District Court of September 7, 2021 in case No. 11151013521.

With regard to submission of documents as evidence, in the judgement of Kurzeme District Court of 13 October 2021 in criminal case No. 11151031621 presents the situation of the victim's representative submitting the video surveillance camera recordings on a CD matrix as a document.

Examining the above, it is evident that the court also indicates in its judgments that the compensation for pecuniary damage has been proved by the victims or representatives of the victims, but does not indicate exactly as what evidence. Examples include the judgement of Kurzeme District Court of 5 July 2021 in criminal case No. 11261048718 and the judgement of Kurzeme District Court of June 4, 2021, criminal case No. 11261072520.

The above allows to conclude that the court most often evaluates evidence proved by the victim as evidence when deciding on the material or moral compensation of the victim.

According to the Criminal Procedural Law (Article 135), a document may be used as evidence in criminal proceedings if it can be used in evidence only due to substantive information contained therein. The document may contain factual information in written or other form. Documents in the meaning of evidence in criminal proceedings shall also include computerised information carriers, recordings made by technical means recording sound and images, in which the content of the recorded information may be used as evidence. When submitting a document to be attached to a criminal case to substantiate existence or absence of the facts included in the object of proof, the victim may take evidence. The same situation can be seen with regard to physical evidence and electronic evidence. The victim can also take evidence in criminal proceedings for this type of evidence.

According to the Criminal Procedural Law, information on the facts provided by a person in their testimony during interrogation or interrogation regarding circumstances to be proved in the criminal proceedings and the related facts and ancillary facts may be evidence in the criminal proceedings. A testimony is also a report, application or explanation of a criminal offense, specific facts or circumstances addressed to the investigating authority, prosecutor's office or court. If a person had the right to refuse to testify in the cases specified in the Criminal Procedural Law and the person was informed about it, but this testimony was nevertheless provided, such testimony shall be assessed as evidence (Criminal Procedural Law, Article 131). A similar situation exists with regard to the victim's testimony.

The situation is different with regard to expert opinion. According to the Criminal Procedural Law (Article 132), an expert or auditor's opinion on the facts and circumstances provided in writing by an expert or auditor involved in the particular criminal proceedings may be evidence in criminal proceedings. In addition, the Criminal Procedural Law (Article 193) states that an expert examination is an investigative activity performed by one or more experts on behalf of the person conducting the proceedings and the content of which is the examination of objects submitted for examination in order to detect facts and circumstances relevant to criminal proceedings. It is clear from the above that expert examination, for which an expert opinion would be drawn up, is performed by an expert or experts only on behalf of the person conducting the proceedings. However, it must not be forgotten that the victim's rights determine the victim's involvement in determining the examination, but in the form of an application. It follows that the victim may request something in connection with the examination, but the examination in the criminal procedural sense will not be performed on their behalf.

Conclusions

1. The existing legal norms in the Criminal Procedural Law, which reflect general principles of the victim's rights, fundamental rights and rights in criminal proceedings do not include the right to take evidence, but the legislator has given this right in the criminal procedural legal norms on evidence.
2. It follows from the content of legal norms of evidence that the victim, as a person involved in criminal proceedings, has the right to take evidence, but the right to use all evidence specified in the legal norms of criminal procedure. There is a clear difference between the evidence that the victim can use to prove it and the official's evidence.
3. After all, the victim is a person in the criminal process who is very interested in the success of the trial, which is also one of the possibilities to achieve the goal of the criminal process, that is, to achieve a fair settlement. The victim's right to prove its content is not the same as to point to evidence. Referring to evidence reduces the victim's ability to prove it.

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