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**THE ROLE OF THE VICTIM IN CRIMINAL PROCEEDINGS –  
NEWS FROM CENTRAL EUROPE**

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**INTRODUCTION**

At the beginning, I am introducing several important legal acts of the European Union, especially the Council Framework Decision “on the standing of victims in criminal proceedings”. Furthermore, I will describe victims’ rights in Austria, especially in connection with the Criminal Procedural Reform Act which will enter into force in 2008. Finally, I will talk about the legal situation in Germany (as another EU member state) and Switzerland (a non-EU member state).

**LEGAL ACTS OF THE EUROPEAN UNION**

**A. Survey**

The central point of reference for the legal treatment of victims’ rights is the EU-Council Framework decision “on the standing of victims in criminal proceedings” of 15 March 2001 which has been created on initiative of the Republic of Portugal. This framework decision refers to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) as well as to the Recommendation of the Ministerial Committee of the Council of Europe on the Standing of the Victim, also from 1985. The framework decision is further based on the Treaty of Amsterdam (1997). Furthermore, the European Convention on Human Rights is also an important reference for victims’ rights in criminal proceedings. Finally, the Council Directive of 29 April 2004 relating to compensation to crime victims has to be consulted.

## **B. The Framework Decision**

As an introduction, the Framework Decision offers twelve reasons for establishing it. These are followed by 19 articles addressing the national legislatures. The provisions containing the definitions concentrate, among other things, on the victim. This term is described as a natural person who has suffered harm as a consequence of a crime. He/she shall be treated with due respect during the proceedings, and his/her rights shall be recognised with particular reference to criminal proceedings. He/she has to be heard and has to be entitled to supply evidence. On the other hand, he/she shall have various rights to have access to information, especially about the release of the perpetrator. In order to secure those rights, certain communication safeguards have to be established, for example the right to have an interpreter. Advice and legal aid shall be provided free of charge, and all expenses which incur as a result of their legitimate participation in criminal proceedings have to be reimbursed. A crucial point of the framework decision is the right of the victim and his/her families to protection against the perpetrator but also against interference with their privacy. The second focus lies in the right to obtain a decision on compensation in the course of criminal proceedings. Recoverable property belonging to victims which has been seized in the course of the proceedings shall be returned without delay. Penal mediation in the course of criminal proceedings, i.e. a reconciliation between victim and perpetrator, shall be promoted in all cases which are appropriate for this sort of measure. Special help shall be provided for victims who are resident in another member state. The involvement of non-governmental organisations shall be promoted. In order to avoid secondary victimisation, all the necessary infra-structural conditions shall be created. In order to implement the framework decision, graduated time limits, the last of which has expired on 22 March 2006, were established. The framework decision itself has entered into force on 20 March 2001.

## **ROLE OF THE VICTIM IN AUSTRIA**

At the beginning, it has to be noted that victims' rights do not exist only within criminal proceedings. Victim protection according to Art 8 Framework Decision is also established within police law. The right to compensation according to Art 9 Framework Decision is based on and described more precisely in civil law. Victims' rights in criminal proceedings have to be established according to Art 2 – 7 Framework decision. The following explanations concentrate solely on this latter aspect.

### **A. Aspects of history**

In the beginning of the 19<sup>th</sup> century, the victim was redirected from criminal to civil procedure. It was only in 1873 that – according to the newly reformed Criminal Procedure Code – the person who had suffered damages as a consequence

of an offence could again participate in criminal proceedings: He/she could join the proceedings with regards to his/her claims of compensation and could appeal against court decisions he/she was not content with. These provisions have remained in force ever since and will continue to do so until 2008. More than a century later, in 1987, the Criminal Law Reform Act granted the right to appoint a person of confidence to be present at interrogations to victims of sexual offences. In 1993, the Criminal Procedural Reform Act extended this right to all witnesses.

The Criminal Procedural Reform Act of 2004 by which the Framework Decision is implemented in Austrian Law, victims' rights are put onto a completely new basis. The reform will enter into force in 2008. The criminal procedural reform of 2005 has preliminarily implemented selected victims' rights, which is why since the beginning of 2006, victims have the right to "psycho-social" and "legal" support during criminal proceedings. In this connection it has to be noted that one of the most important promoting factors for victims' rights is the NGO called "White Ring" which is mostly based on honorary work and is active in many more countries than just Austria.

Since 2008 is approaching fast, victims' rights will now be described on the basis of the Criminal Procedural Reform Act in which a whole main section (§§ 65 – 73) deals with the victim. § 65 comprises the definitions of the most important legal terms.

#### **B. Definition of the term "victim"**

A general definition is contained at the very end of § 65 Criminal Procedural Reform Act. According to this provision, any person whose legal goods could be affected is to be termed „victim“. The hypothetical character of this term is based on the fact that the offence in question is yet to be proved during the criminal proceedings. The above-mentioned law provides the example that a person has suffered damages or harm as a result of an offence and can now sue for compensation. As a special example for such harm, the above-mentioned provision refers to persons "who, through an intentional deed, have been subject to violence or dangerous threat or whose sexual integrity could be infringed". This definition especially refers to victims of coercion or blackmail as well as to rape victims. It has to be noted, however, that those persons who have been distantly affected by an offence are also termed as victims under Austrian law: Close relatives of a deceased victim as well as relatives who witnessed the deed have to be included. The importance of this type of victims can be seen in connection with the special rights granted to them by the law.

Thus, we can distinguish between "direct" and "indirect" victims, and among the former, between "normal" victims and victims of coercion or sexual offences, the last of which are granted special rights during the proceedings.

### **C. Summary on the victims' rights**

§ 66 enumerates those rights that are granted to all types of victims. In this respect, the provision mostly refers to more detailed provisions in other acts. In this connection, it can be seen that the above-mentioned rights are such towards the police, the public prosecution and the court. The enumeration in § 66 is a rather unsystematic one. According to their substance, four groups of rights can be distinguished. The right to receive information, to representation and to participation in the proceedings as well as the right to appeal.

#### **1. Right to receive information**

The right to be informed and to have access to information about the proceedings which is a fundamental one is mentioned only in the third place in the legal enumeration. The victim has to be kept informed about the course of the proceedings as far as this information could be of interest for him/her. In addition to that, the victim has to be granted access to records in a similar way as the accused. According to necessity, interpretation aid is provided.

#### **2. Right to representation**

The victim is entitled to appoint a representative who supports, advises and substitutes him/her. Provisions on the costs of the representation are established by law and differ according to the type of victim.

#### **3. Right to participate**

The victim has various possibilities to participate actively in the criminal court proceedings as well as in the investigation proceedings. In this respect, it is especially the participation in a contradictory interrogation as well as the active participation in the main trial which have to be noted.

#### **4. Right to appeal**

In case the public prosecution should drop the case, the victim has the right to apply to continue with the case. In case the proceedings have been settled by a verdict, the victim then has the right to appeal against the passages of the verdict which refer to him/her.

### **D. Right to receive information**

According to § 70, the police as well as the prosecution have to inform the victim about the subject as well as about the course of the proceedings from the beginning and without delay. Equally, the victim has to be informed about his genuine rights according to §§ 66 and 67. Information must only be postponed if the purpose of the investigation will otherwise be at risk. The provisions in question are similar to those which apply for the accused.

### **E. Access to records**

Since the proceedings are similar in that particular aspect, the law refers to the provisions on access to records for the accused (§§ 51 ff). Consequently, the restriction of publication of personal data applies also for the victim. Before the Criminal Procedural Reform Act access to records was granted only to the private participant, whereas now this right is granted to all victims. It must be restricted or denied only in exceptional cases where either the purpose of the investigation would otherwise be at risk or where an influence on the objectivity of the testimony of the witness would have to be feared.

### **F. Special rights**

Certain groups of victims are granted special rights. Victims who are severely traumatized, for instance, have the right to psycho-social support as well as legal advice during the proceedings, as far as such a support is necessary to maintain the victims' procedural rights. In this respect, and according to the law, the utmost attention has to be paid to the personal affection of the victim.

On the one hand, "psycho-social" support means that the victim is prepared for the proceedings as well as for the emotional strain which is to be expected, and on the other hand it means that victims are physically accompanied to interrogations which take place during the investigation and during the trial. "Legal" support means legal advice as well as representation by a lawyer. We will have to come back to this issue later in connection with the aspect of representation.

Victims of sexual offences need special consideration. § 70 sect 2 which is titled "right to information" provides several „hidden“ special rights for victims whose sexual integrity could be violated. Those victims have to be informed about various additional rights, e.g. the right to be interrogated by a person of the same sex, the right to deny testimony of circumstances which he/she thinks unacceptable to describe and the right to have the public excluded from the trial.

### **G. Private participation**

Victims can join the proceedings with regard to their claims to compensation as a private participant. This position also comprises further rights such as the right to call for evidence and to have a lawyer whose fees are state-funded.

### **H. Subsidiary prosecution**

In case the public prosecutor drops the case after bringing charges, the private participant can maintain the charges and at this point will become subsidiary prosecutor.

## **I. Representation**

Every victim may appoint an appropriate representative for the proceedings. These representatives must not necessarily be lawyers but can also be members of victim support organisations which are acknowledged by the state, such as the White Ring, or other suitable persons.

## **ROLE OF THE VICTIM IN SELECTED CENTRAL EUROPEAN STATES**

In EU member states, the above-mentioned framework decision has been widely implemented by various national legal acts. In addition to Austrian law, the present legal situation in Germany may serve as an example. But it is also non-EU-member states which follow the trend to enforce the victim's standing in criminal proceedings. The main reason for this is to be found in the above-mentioned UN declaration as well as in the European Convention on Human Rights. In order to include also non-EU member states, the present situation in Switzerland will be described.

### **A. Germany**

The improvement of the victim's position in criminal proceedings was initiated by the first Victim Protection Act of 1986, which among other things included a special section about victims' rights into the German Criminal Procedure Code. After various minor amendments in the following years, the Victim Protection Act of 1998 formed another crucial point. With these new laws, video recordings were qualified as legal documentations of interrogations, and simultaneous video interrogation was finally implemented. As implementation of the EU framework decision, the Victims' Rights Act was enacted in 2004. The main aims of this act are as follows:

- the strain on the victim, especially the one caused by interrogation, shall be minimised
- the victims' rights of participation and information during the proceedings shall be enforced
- the legal instrument of procedural support shall be improved
- the so-called "adhesive proceedings" by which victims' claims of compensation can be enforced shall be reformed and thus be made more effective

According to the victims' positions within the proceedings, their rights differ. By law, a person who is entitled to accessory prosecution has to be distinguished from a mere victim. The procedural position of the former, who is entitled to procedural support, is much stronger than the one of the latter which also becomes of some importance as far as financing of procedural support is concerned. As long as no state funding is granted, non-governmental victim support organisations will help, especially the „White Ring“ which is mostly based on honorary work.

The appointment of a person of confidence, however, who may be present at all interrogations and in every state of the proceedings, has been possible for all victims since 2004 now. The presence of a person of confidence can be refused by court and prosecution only if he/she poses a certain risk for the purpose of the proceedings.

## **B. Switzerland**

Contrary to Germany and Austria, Switzerland has no uniform criminal procedural law: Each of the 26 cantons has its own procedure code which, of course, is gradually being replaced by prevailing federal and supranational law. For instance, in 1991, a federal Victims Support Act, which has established mandatory minimum standards, has been enacted. The main purpose of this act is to provide comprehensive help for victims of crimes to cope with the consequences of the offence. On the one hand, secondary victimisation shall be prevented, and on the other hand, the victim shall be supported when enforcing his/her claims of compensation. In order to do that, the following rights are provided:

- to advice and support
- to participation in the criminal proceedings
- to compensation

Indirect victims, especially close relatives, are considered equal to direct victims of crime. An important victims' procedural right is the right to psycho-social and legal advice. Covering of costs, however, is provided only in certain cases.

## **CONCLUSION**

Victims' criminal procedural rights in Central Europe refer mainly to the EU Council Framework Decision "on the standing of victims in criminal proceedings" of 15 March 2001, a similar UN declaration and the European Convention on Human Rights.

It is not only "direct" victims who are granted various procedural rights but also "indirect" victims, e.g. relatives of the offended persons. The national laws differentiate between rights for all victims and those for special victims, e.g. victims of sexual offences.

The most important rights which are granted to all victims in Central Europe are

- to be informed and to have access to information on the procedure
- to advice, support and representation by a suitable person
- to participate actively in court
- to appeal

In detail, of course, there are differences between the various national legal systems but on the whole, the victim's standing in criminal proceedings in Central Europe is of equal standard.