

# Victim's Paradigm in European Union Criminal Law

**Dāvids Gurevičs**

Master of Laws  
Second year doctoral student  
Faculty of Law, University of Latvia  
Raiņa bulvāris 19, Rīga, LV-1586, Latvia  
Phone: (+371) 26589097  
E-mail: [davids.gurevics@gmail.com](mailto:davids.gurevics@gmail.com)

The victim's legal status and participatory rights in criminal proceedings vary among the European Union member states, which can potentially hinder the harmonisation of the field of criminal law. The aim of this article is to reveal the main features that determine the victim's paradigm in European Union criminal law by focusing on the rights which the member states are obliged to guarantee in their criminal justice systems. Considering that criminal proceedings must result in a fair balance of interests of the parties involved, this article concludes that, in the victim's paradigm enshrined in the European Union legal acts concerning the area of criminal law, the victim must be endowed with certain procedural rights, however, for that very reason, as an actor of the criminal justice system, the victim might be required to participate in the proceedings.

**Keywords:** victim, fair trial, effective remedy, balance of interests, procedural rights and obligations.

## Nukentėjusiojo paradigma Europos Sąjungos baudžiamojoje teisėje

Nukentėjusiojo teisinis statusas ir dalyvavimo teisės baudžiamajame procese Europos Sąjungos valstybėse narėse skiriasi, o tai gali trukdyti suderinti baudžiamąją teisę. Šio straipsnio tikslas – atskleisti pagrindinius požymius, lemiančius nukentėjusiojo paradigmą Europos Sąjungos baudžiamojoje teisėje, daugiausia dėmesio skiriant teisėms, kurias valstybės narės privalo užtikrinti savo baudžiamosios justicijos sistemose. Atsižvelgiant į tai, kad baudžiamojo proceso rezultatas turi būti teisinga jame dalyvaujančių šalių interesų pusiausvyra, šiame straipsnyje daroma išvada, kad Europos Sąjungos teisės aktuose, susijusiuose su baudžiamosios teisės sritimi, įtvirtintoje paradigmoje nukentėjusiajam turi būti suteiktos tam tikros procesinės teisės, tačiau būtent dėl šios priežasties iš nukentėjusiojo, kaip baudžiamosios justicijos sistemos dalyvio, gali būti reikalaujama dalyvauti procese.

**Pagrindiniai žodžiai:** nukentėjusysis, teisingas bylos nagrinėjimas, veiksminga teisinė gynyba, interesų pusiausvyra, procesinės teisės ir pareigos.

## Introduction

In October 2022, the Victims' Rights Directive (Directive 2012/29/EU of the European Parliament..., 2012) (hereinafter – the “VRD”) marked its tenth anniversary. The drafting of this act was accompanied by an ambition to increase enjoyment of access to justice and redress of plight done in result of crimes within the European Union (hereinafter – the “EU”). After ten years, the first conclusions can be made regarding whether the purposes set by the EU legislator have been achieved.

**Received:** 30/01/2023. **Accepted:** 27/04/2023

Copyright © 2023 Dāvids Gurevičs. Published by Vilnius University Press

This is an Open Access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

In June 2022, the European Commission (hereinafter – the “EC”) published an evaluation of the VRD (Evaluation of Directive 2012/29/EU of the European Parliament..., 2012), in which it admitted, *inter alia*, that “the lack of a clear legal concept for the status of a victim in criminal proceedings potentially raises practical issues for the achievement of the directive’s objectives” (Evaluation of Directive 2012/29/EU, 2022). Even though recital 20 of the VRD provides that the rights enshrined in this act must be ensured regardless of how the victim’s role is perceived within the criminal justice system of a particular EU member state (Directive 2012/29/EU, 2012), EC’s evaluation clearly admits that the variety of the viewpoints on the victim’s status in criminal proceedings creates obstacles to the harmonisation of the victims’ rights among the EU member states.

Taking into account the conclusions made in the EC’s evaluation, the EC announced that a possible revision of the VRD is required in order to strengthen standards of justice for victims of crime (Revision of the victims’ rights acquis...). Since the legislative proposal for the revision of the VRD is expected in 2023, it is difficult to predict whether the EC will provide a common standard of the victim’s position in the criminal justice system.

For a substantive understanding of the victim’s rights which member states are obliged to guarantee in their national legislation, the idea of the victim as an actor in criminal proceedings must be analysed. Although the victims’ rights stem from various sources, including legislation and case law (Mitsilegas, 2022, p. 297), the aim of this article is to formulate the victim concept, or the paradigm, that can be analysed from legal acts adopted by the EU, and foremost – the VRD. Consequently, the object of this research is the concept of the victim that is conditioned by provisions of the VRD.

The VRD had been preceded by various normative acts, policy documents and the evolution of EU’s competence in the field of criminal law. Therefore, the first task of this research is to analyse the definition of a victim in the VRD and its predecessor—the 2001 Framework Decision—by appealing to EU’s purpose to create the area of freedom, security and justice, as well as to general principles of the victim’s rights, such as the right to a fair trial and effective remedy. To fulfil this task, from the methodological point of view, the author focuses on systemic analysis of EU legal acts and on concretisation of general principles of law. The second task of this research is to reveal the development of the victims’ rights discourse in international human rights law. For this reason, the author will give an insight to the core rights that must be ensured in accordance with the EU legal acts in interconnection with relevant documents adopted by international organisations.

The issue of the victim’s procedural status under the VRD has not yet been sufficiently researched, however, several authors have attempted to define the VRD victim’s concept. The broadest analysis on this topic is included in A. Dearing’s monograph (Dearing, 2017, p. 2), which is dedicated to the reconceptualisation of the term “crime” from the position of the victim. In the recent legal literature, the VRD victim’s legal status was scrutinised by M. J. Lehmkuhl (Lehmkuhl, 2020, p. 185–187, 190–191). Yet, it must be noted that the victims’ participatory rights in criminal proceedings had been studied before the VRD entered into force, including in various researches dedicated to efforts of the Council of Europe (Brienen *et al*, 2000).

The main sources of this article are legal acts and doctrine. This research does not seek to provide a comparative analysis of the victim’s role in criminal justice systems of the EU member states, nevertheless, for the sake of demonstrativeness, the author will provide examples of national legislation of the Republic of Latvia and the Republic of Lithuania. The author hopes that the problematics described in this article will help to improve understanding of the victims’ rights in the EU and will be taken into consideration in the forthcoming legislative process.

## 1. Basis for providing a common standard of the victim's role in criminal proceedings in the EU

### 1.1. General principles of EU law as a source of the victim's rights

The EU is founded on the premise that all EU member states share common core values, or, as put in Article 6(3) of the Treaty on European Union (hereinafter – the TEU), “constitutional traditions common to the Member states” (Consolidated version of the TEU, 2012). Article 6 of the TEU establishes that fundamental rights provided in the European Convention on Human Rights (hereinafter – the ECHR) and in the Charter of Fundamental Rights of the EU (hereinafter – the Charter) are part of the EU constitutional system (Rezevska, 2022, p. 156).

In legal theory and legislation of criminal proceedings, the stress is usually put upon the rights of the offender. Indeed, the main task of the proceedings is to ensure a fair trial for the person who is accused of committing a crime. Without underestimating the rights of the offender, the unclear question is to what extent “fairness”, taking into account its aspects provided in the human rights catalogues, as a general principle of criminal proceedings can be applied to the victim of crime. The second question therefore is whether and what elements of the right to a fair trial are reserved exclusively for the victim.

Neither the Charter, nor the ECHR has explicit provisions regarding the rights of crime victims. Needless to say, this does not exclude victims from the scope of these legal instruments. Article 1 of the Charter declares that human dignity is inviolable, and it must be respected and protected (Charter of Fundamental Rights of the European Union, 2012). The principle of human dignity implies that the state has an obligation to provide such legal order which ensures an individual has effective mechanisms to achieve restoration of his violated rights. The lack of such mechanisms or their ineffectiveness can lead to the state's liability for the harm done to the victim (*T.P. and K.M. v. the United Kingdom*, 2001).

From the victim's perspective, fair criminal proceedings must result in restoration of the victim's violated dignity. Article 47 of the Charter declares that “[e]veryone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article”. Article 13 of the ECHR has a corresponding provision (European Convention on Human Rights, 1950). Both legal provisions express an element of “fairness” – the principle of effective remedy. Hence, the right to effective remedy, being part of the right to a fair trial, creates the basis of justice for victims (Dearing, 2017, p. 53).

However, the victim's concerns usually exceed the need to retrieve a remedy for the harm that has been inflicted. While there is no major disagreement on importance of the right to effective remedy, the victim's entitlement to effective investigation and ultimately to punishment imposed on the offender, as a part of the victim's right to a fair trial, has recently been discussed in legal literature (Alm, 2019, p. 63–81; Göhler, 2019, p. 280–282). The European Court of Human Rights has provided a basis for this narrative by concluding that the authorities' failure to conduct an effective investigation of a crime can lead to violation of Article 13 of the ECHR (*Aydın v. Turkey*, 1997). The Court thus has stated that an effective and thorough investigation can itself be a necessary remedy for the restoration of victim's dignity in the light of Article 13 of the ECHR (Dearing, 2017, p. 41).

The victim's right to effective criminal proceedings usually is not written down in constitution or criminal procedure law since there is no clear understanding of what is the scope of this right. For this reason, it must be “found” in the way of concretisation of general principles of law. However, an example of the victim's right to effective and thorough investigation is provided in Article 44(10) of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter – the CCP), according to

which every person who has suffered in result of a crime has the right, *inter alia*, to demand that the person who committed the crime be identified and correctly punished (Lietuvos Respublikos baudžiamojo proceso kodeksas, 2002). Lithuania's legislator has therefore determined the state's positive obligation to lead criminal proceedings to resolution not just in the interest of society but for the sake of the victim as an individual.

It can be concluded that the system of fundamental rights in the EU, shared by the member states and prescribed by the Charter and the ECHR, includes certain principles in regard to crime victims, which are necessary to protect and restore the victim's human dignity in the course of criminal proceedings and therefore determine a fair trial for the victim. The further analysis in this article will show that the victim's paradigm in the EU legislation is determined by participatory rights that stem from both these principles.

## 1.2. Victim's rights as a part of EU's competence

Article 82(2)(c) of the Treaty on the Functioning of the European Union (hereinafter – the “TFEU”) provides that, to the extent necessary to facilitate mutual recognition of judgments and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may establish minimum rules, *inter alia*, concerning the rights of victims of crime (Consolidated version of the TFEU, 2012). Some legal scholars have doubted whether the competence laid out in Article 82(2)(c) of the TFEU is a sufficient basis for setting standards of the victim's rights, considering that it imposes a narrow leeway of regulatory power on behalf of the EU in this field (Mitsilegas, 2022, p. 305–308). The issue of “legality” of EU's competence in respect to the rights of victims is out of the scope of this article, however, in the author's mind, the harmonisation of the victims' rights and providing a common understanding of the concept of a victim has proved to be necessary in order to assure that the victim's rights guaranteed in one member state would not be diminished or disregarded in another, thus negatively affecting trust between the member states.

Succinctly, the development of EU regulation on the rights of crime victims dates back to 1989, when the European Court of Justice (hereinafter – “ECJ”) in *Cowan* affirmed that the prohibition of discrimination of EU citizens is applicable to services for victims of crime, more specifically, to the right to obtain compensation (Ian William Cowan v. Trésor public, 1989). Hence, before the EU was granted competence to regulate mutual recognition in the field of criminal law, the ECJ had established the prohibition of discrimination of victims from the perspective of Community's citizenship.

After *Cowan* the political decision to move ahead towards harmonisation of criminal law with an emphasis on the rights of crime victims was done, as was declared in the result of the Tampere Meeting in 1999 (Tampere European Council..., 1999). The Tampere Programme was followed by the Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings (hereinafter – the “Framework Decision”), which became the first EU document that obliged the member states to ensure the victim's “real and appropriate role in its criminal legal system” (Council Framework Decision, 2001).

Recital 9 of the Framework Decision stated that it did not impose an obligation on the member states to ensure that victims are treated in a manner equivalent to that of a party to proceedings. It indicates that the EU legislator did not seek to provide a common understanding of the victim's status in criminal proceedings but rather encouraged the member states to increase the victim's role in the proceedings by guaranteeing certain participatory rights such as the right to be heard and to supply evidence (Article 3), the right to information about the case in understandable language (Article 4), the

right to assistance, representation, and legal aid (Article 6), the right to the restorative justice services such as mediation (Article 10), etc.

Even though the Framework Decision ultimately was admitted lacking the necessary effect for ensuring the rights of crime victims (Lehmkuhl, 2020, p. 183), it served as a basis for several fundamental ECJ judgments, which formulated the core principles of the victim's entitlement to participate in criminal proceedings. Thus, for instance, in *Katz* the ECJ highlighted the victim's right to be heard and to supply evidence through testimonies as a right without which the "real and appropriate role" of the victim in criminal proceedings cannot be imagined (*György Katz v. István Roland Sós*, 2008). The same conclusion was later repeated by the ECJ in *Gueye and Sánchez* (Magatte Gueye and Valentín Salmerón Sánchez, 2011).

The stance taken in the Framework Decision was subsequently advanced in the VRD. The VRD, among other procedural rights, establishes that the right to challenge a decision not to prosecute the offender must be guaranteed to the victim. In the author's opinion, this procedural right is a concrete expression of the victim's right to effective and thorough investigation, and it stipulates that the course of criminal proceedings must not solely depend on the will of prosecution. On the other hand, this right strengthens the victim's control over how criminal proceedings are conducted and, in some sense, can be regarded as a guarantee that the state will not allow the offender to escape criminal liability. However, the VRD allows the member states to determine the scope of rights set out in the VRD according to the role of a victim in the relevant criminal justice system. Hence, the EU legislator has restrained itself from going into details on how these rights must be ensured.

In substance, the VRD does not define the victim's legal status in criminal proceedings, but, at the same time, it is aimed to provide a more significant role of a victim in the proceedings.

## 2. Victim's procedural status in EU legislation

### 2.1. Victim's role in criminal proceedings

The call for an increased role of the victim in criminal proceedings has been one of the purposes of the victims' rights movement on both sides of the Atlantic since the 1970s. In the late 1970s and early 1980s, the Council of Europe adopted several non-binding documents which encouraged governments to promote policies and enact legislation guaranteeing rights for victims of crime. In 1985, the Recommendation of the Committee of Ministers on the position of the victim in the framework of criminal law and procedure (hereinafter – the Recommendation) was adopted. In this Recommendation, it was emphasised that victim's interests, such as access to information about the ongoing criminal case, expression of an opinion regarding prosecution and conviction of the offender, legal representation and aid, obtaining compensation for the suffered harm and protection against intimidation and violation of privacy, must be ensured in each criminal process (Brienen *et al*, 2000, p. 12–22).

In 1985, another significant document on the rights of victims was adopted – the United Nation Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereinafter – the UN Declaration). The UN Declaration is not a binding legal act, nonetheless, sometimes it is referred to as Magna Carta of the victims' rights (Lehmkuhl, 2020, p. 181) as it consolidates the main principles of the victim's rights in the course of criminal proceedings. Article 6(b) of the UN Declaration formulates the essence of the victim's role in the proceedings, namely, that victims' views and concerns must be allowed to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system (Declaration of Basic Principles of Justice for Victims ..., 1985).

Although the UN Declaration invokes peculiarities of national criminal justice systems and the victim's position therein, it implies that a victim must be allowed to participate in criminal proceedings and to express his views regarding matters that can affect his interests. Therefore, the victim's participation in criminal proceedings must not be reduced to obtaining compensation for the harm done by the offender or to assistance to prosecution by giving evidence when required.

To return to the analysis of the victim's paradigm in the VRD, it is important to note that the VRD follows the notion expressed in the Recommendation and in the UN Declaration that the victim should have a voice in criminal proceedings, however, it does implicit that the victim's interests should not take precedence over the interests of other parties in the proceedings. Dearing suggests that the VRD obliges to regard the crime not merely as a matter between the state and the offender but primarily as a violation of the victim's rights. For this reason, as Dearing argues, the VRD provides that the victim should have an "important" role in criminal proceedings (Dearing, 2017, p. 2). The author agrees with this observation, nevertheless, it would be unfair to disregard the rights of the person against whom the proceedings are conducted, as well as the interest of society, which is represented by the prosecution, to convict and punish the offender for the crime he has committed.

In connection with this aspect, Recital 12 of the VRD *expressis verbis* provides that the rights of the offender must not be undermined in favour of victims. The offender first and foremost has the right to be presumed innocent, from which derives the right to know the accusation and, respectively, the right to be acquainted with inculpatory evidence. This means that the offender should be entitled to challenge the victim's statements and other submitted evidence during criminal proceedings. At the same time, the principle of equality of arms requires that no testimony received from a victim should have preference over other evidence obtained in the course of the proceedings.

The necessity to respect the rights of the accused, while speaking about the victim in criminal proceedings, is reminded in a judgement of the European Court of Human Rights in *Bureš v. the Czech Republic*. In this case, the Court underlined the victim's entitlement to be involved in criminal proceedings to the extent necessary to safeguard the victim's interests, however, the Court noted that the victim's right to access to the proceedings does not arise from the ECHR because "the interests of other persons or the risk of jeopardising the achievement of the aim of the investigation can prevail over his interest" (Bureš v. the Czech Republic, 2013). While this observation may seem rather controversial, the European Court of Human Rights designated that victim's participation in criminal proceedings is not an objective *per se* but a means to achieve fairness of the proceedings through respect of interests of all parties involved.

This leads to the question of the victim's role in the achievement of the purpose of criminal proceedings, which is scrutinised in the next subchapter of this article, as well as to the issue of the victim's obligation to participate in the proceedings. Speaking about the latter, the VRD has provided certain rights for cases when the victim is obliged to take part in the proceedings upon a request of an authority. In essence, these include the right to avoid contact with the offender (Article 19 of the VRD) and the right to protection during criminal investigation (Article 18 and 20 of the VRD). These rights are needed to avoid repeated victimisation, but, at the same time, they are aimed to ensure that the offender has an opportunity to examine the victim's statements and other evidence, while the prosecution has the ability to create a sound evidential basis against the offender. Considering the offender's right to know the accusation and to examine the evidence against him, as well as bearing in mind the state's responsibility to establish the truth, the victim's obligation to participate in criminal proceedings seems to be justified.



To summarise, on the one hand, the VRD declares that a victim must be granted certain procedural functions to ensure his access to a fair trial and his “voice” in criminal proceedings, as enshrined in the UN Declaration. On the other hand, the VRD does not preclude that the authorities responsible for investigation of criminal proceedings and the offender might have a legitimate interest in the victim’s participation, regardless of whether the victim wishes to exercise his rights and to participate in the proceedings at all. For this reason, the VRD does infer that the victim might be required (and not just entitled) to participate in the proceedings. In other words, it would be reasonable to suggest that, according to the VRD victim’s paradigm, the victim’s role in criminal proceedings is not merely to benefit from the criminal justice system but to actively contribute to it as well.

## 2.2. Purpose of criminal proceedings from a victim’s perspective

In spite of the fact that the VRD defines the core rights which must be ensured to guarantee the victim’s active position in criminal proceedings, the VRD lacks a clear postulation of the purpose of the proceedings and the victim’s role in the achievement thereof. However, the victim’s paradigm embodied in a particular legal system cannot be determined without having an idea of what criminal proceedings are aimed at. At once, the answer to the question of what constitutes a fair trial for a victim of crime also depends on the purpose of criminal proceedings, which is usually declared in the law or can be logically deduced from its provisions.

Legal doctrine struggles to define the purpose of criminal proceedings with the victim’s perspective taken into account. It has been fairly suggested that conviction and punishment of the offender cannot itself be the aim of the process since every person must be protected from ungrounded accusation and unproportionate punishment. Furthermore, fairness also means that the offender will be convicted and punished exclusively in a case when his guilt is established in an impartial procedure and based on admissible evidence (Duff, 2018, p. 304–305). Therefore, the victim’s right to expect a desirable conclusion of criminal proceedings, with the offender facing punishment, cannot have a preference.

Nevertheless, every law of the criminal proceedings in certain respects should contain a possible satisfaction of the victim’s interests. To illustrate, let us consider two examples.

Article 1 of the Criminal Procedure Law of the Republic of Latvia (hereinafter – the CPL) formulates the purpose of the process to determine procedures that ensure a fair regulation of criminal legal relations (Kriminālprocesa likums, 2005). Latvia’s legislator has intentionally provided a possibility of a broad interpretation of the term “fair regulation of criminal legal relations”, thus implying that relations which arose due to the committed crime should be identified and regulated individually in each criminal case (Strada-Rozenberga *et al*, 2019, p. 24–25). At the same time, Article 22 of the CPL contains the principle that a person upon whom harm has been inflicted by a criminal offence shall, by taking into account the moral injury, physical suffering, and financial loss, be guaranteed procedural opportunities for the request and receipt of moral and financial compensation.

Consequently, on the one hand, the purpose defined in the CPL puts the victim’s interest in compensation of harm and restoration of his dignity in the category of relations that must be fairly regulated in the result of criminal proceedings. On the other hand, the adjective “fair” indicates that criminal legal relations must be balanced according to the interests of society and with respect to the rights of the offender. Moreover, Article 7(1) of the CPL *expressis verbis* declares that criminal proceedings shall be conducted in the interests of society regardless of the will of the person upon whom harm was inflicted (save for cases provided in paragraph 2 of Article 7).

Respectively, Article 103(1) of the CPL provides that a victim has the obligation, among others, to arrive at the time and place indicated by an official authorised to conduct criminal proceedings, and to

participate in an investigative action. Furthermore, Article 96(3) of the CPL prescribes that a person who does not want to be a victim (as a part in the proceedings) shall obtain the status of a witness. This leads to the conclusion that the CPL requires the person harmed in the result of the committed crime to participate in the process at least in the status of a witness regardless of his will. This, as aforesaid, does not contradict the requirements of the VRD.

In comparison, Article 1 of the Lithuanian CCP provides a broader definition of the goal of criminal proceedings, which is to protect the rights and freedoms of the person and the citizen, the interests of the society and the state, to quickly and thoroughly reveal the criminal acts and to apply the law properly so that the person who committed the criminal act is justly punished and no one innocent is convicted. Protection of the victim therefore is declared as one of the purposes of the proceedings, and, similarly to the provision of the Latvian CPL, Lithuania's legislator has established that prosecuting the offender cannot be the aim of the process itself. Correspondingly to the Latvian CPL, Article 28(3) of the CCP imperatively stipulates that the victim must testify and he is sworn and liable for perjury as a witness.

The purpose of criminal proceedings which stems from both definitions described above can be formulated as to set in a fair balance the interests of all parties who have been influenced by a crime. It signifies that, in an ideal situation, the offender must receive a fair trial, meaning that he is presumed innocent until proven guilty and the accusation against him is scrutinised by an impartial court with the defence being able to examine evidence against the accused; the society, if the state fulfils its procedural obligations imposed on investigation and prosecution, gets to see the offender convicted and punished for a violation of the criminal law; the victim obtains satisfaction from acknowledgement of his violated rights, compensation of harm and punishment imposed on the offender.

Even though the aforementioned definitions are just two examples of how the purpose of criminal proceedings may be understood, fairness is recognised as one of the fundamental values of criminal proceedings (Lippke, 2019, 38–40). Thus, the concept of fairness is supposed to ensure that the victim is treated as an active participant of the process, not as an auxiliary partaker of the system. From the perspective of the VRD, the victim's legal status, namely, whether the victim is recognised as one of the key parties of the proceedings, is of lesser significance, whereas the victim's ability to actually have an influence on the outcome of the proceedings is the aim of the EU legislation in this area. At the same time, for the need to achieve a reasonable balance of the interests of actors of the criminal justice system, the increase of the victim's role and protection in criminal proceedings should not undermine the right of the offender to be presumed innocent until proven otherwise and the legitimate interests of the state to punish the offender for the crime he has committed.

## Conclusions

1. From the perspective of the victim of crime, the right to a fair trial, above all, means that the state has provided procedural rules that ensures the victim's right to claim remedy for the harm that occurred in result of a crime. At the same time, the right to a fair trial does not exclude that conviction and punishment imposed on the offender can constitute a necessary remedy for the victim, though the scope of this right is to be profoundly researched yet. However, the VRD has obliged the member states to ensure that the victim must be endowed with certain participatory rights to control how the criminal proceedings result, which can be regarded as a part of the victim's right to just remedy and the state's positive obligation to conduct effective and thorough investigation. Therefore, the victim's participation in criminal proceedings must not be reduced to obtaining compensation for the harm done by the offender.



2. Considering the scope of the European Union's competence regarding the rights of crime victims, the European Union legal norms do not define the victim's legal status in criminal proceedings. Nevertheless, the Union's legislator has concretised the principle that the victim should have a voice in the proceedings, which must be corresponded by the victim's right to provide evidence and testimony (and, respectively, the right to legal aid and assistance). The principle of balance of arms, however, restrains the evidence given by the victim to be regarded with a more significant "weight" as the one submitted by the offender or prosecution.
3. A fair result of criminal proceedings must include a satisfaction of the victim's legally protected interests. However, the state's obligation to ensure a fair trial for the offender means that the victim also has an obligation to participate in the proceedings, if it is needed for the exercise of the offender's right to defence or for the prosecution to gain evidence essential for the result of the proceedings. Therefore, according to the VRD, the European Union member states are obliged to guarantee a set of victim's procedural rights, which, on the one hand, are necessary to protect the victim from repeated victimisation but, on the other hand, are aimed to ensure a fair balance of interests of all parties that have been affected by the committed crime.

## Bibliography

### Legal acts

#### International acts

- Convention for the Protection of Human Rights and Fundamental Freedoms (1950) [1955]. UNTS 2889.  
 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985). A/RES/40/34.  
 Consolidated version of the Treaty on European Union. *OJ C* 326, p. 13.  
 Consolidated version of the Treaty on the Functioning of the European Union. *OJ C* 326, p. 47.  
 Charter of Fundamental Rights of the European Union. *OJ C* 326, p. 391.

#### EU acts

- 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. *OJ L* 82, p. 1.  
 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. *OJ L* 315, p. 57.

#### National acts

- Lietuvos Respublikos baudžiamojo proceso kodeksas (2002). *Valstybės žinios*, 37-1341.  
 Kriminālprocesa likums (2005). *Latvijas Vēstnesis*, 74.

### Special literature

- Alm, D. (2019). Crime Victims and the Right to Punishment. *Criminal Law and Philosophy*, 13, 63–81.  
 Brienen, M. E. I. and Hoegen, E. H. (2000). *Victims of Crime on 22 European Criminal Justice Systems. The Implementation of Recommendation (85) 11 of the Council of Europe on the Position of the Victim in the Framework of Criminal Justice and Procedure*. Nijmegen: Wolf Legal Productions.  
 Dearing, A. (2017). *Justice for Victims of Crime. Human Dignity as the Foundation of Criminal Justice in Europe*. Cham: Springer.  
 Duff, R. A. (2018). *Fairness in Criminal Proceedings: Concluding Thoughts and Further Questions*. In: Jackson, J. D. and Summers, S. J. (eds.) (2018). *Obstacles to Fairness in Criminal Proceedings. Individual Rights and Institutional Forms*. Oxford: Hart Publishing, 301–314.  
 Göhler, J. (2019). *Victim Rights in Civil Law Jurisdictions*. In: Brown, D. K., Turner, J. I. and Weisser, B. (eds.) (2019). *The Oxford Handbook of Criminal Process*. Oxford: Oxford University Press, 267–288.  
 Lehmkuhl, M. J. (2020). *The Value of Legal Provisions for an Adequate Treatment of Victims of Crime: Does the Victims' Rights Directive of the European Union Set a New Benchmark?* In: Joseph, J., Jergenson, S. (eds.) (2020). *An International Perspective on Contemporary Developments in Victimology*. Cham: Springer, 181–196.

- Lipke, R. L. *Fundamental Values of Criminal Procedure*. In: Brown, D. K., Turner, J. I. and Weisser B. (eds.) (2019). *The Oxford Handbook of Criminal Process*. Oxford: Oxford University Press, 25–42.
- Mitsilegas, V. (2022). *EU Criminal Law*. 2nd edition. Oxford: Hart Publishing.
- Rezevska, D. (2022). General Principles of Law as Common Constitutional Traditions of the European Union Member States. *Journal of the University of Latvia. Law*, 15, 154–165.
- Strada-Rozenberga, K. (eds.) (2019). *Kriminālprocesa likuma komentāri. A daļa*. Rīga: Latvijas Vēstnesis.

## Case law

### European Court of Human Rights

- Aydın v. Turkey* [ECHR], No. 23178/94 [25.09.1997]. ECLI:CE:ECHR:1997:0925JUD002317894
- T.P. and K.M. v. the United Kingdom* [ECHR], No. 28945/95 [10.05.2001]. ECLI:CE:ECHR:2001:0510JUD002894595
- Bureš v. the Czech Republic* [ECHR], No. 37679/08 [18.01.2013]. ECLI:CE:ECHR:2012:1018JUD003767908.

### Court of Justice of the European Union

- Ian William Cowan v Trésor public* [CJEU], No. 186/87 [02.02.1989]. ECLI:EU:C:1989:47.
- György Katz v. István Roland Sós* [CJEU], No. C-404/07 [09.10.2008]. ECLI:EU:C:2008:553.
- Magatte Gueye and Valentin Salmerón Sánchez* [CJEU], No. C-483/09, C-1/10 [15.09.2011]. ECLI:EU:C:2011:583.

## Other sources

- Revision of the victims' rights acquis. In: A New Push For European Democracy [online] (modified 2022-10-22). Available at: <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-revision-of-the-victims-rights-acquis?sid=6301> [accessed on 28 November 2022].
- Evaluation of 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 [online]. Available at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12727-Supporting-crime-victims-evaluation-of-the-Victims-Rights-Directive\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12727-Supporting-crime-victims-evaluation-of-the-Victims-Rights-Directive_en) [accessed on 12 December 2022].
- Tampere European Council 15 and 16 October 1999 Presidency Conclusions. [online]. Available at: [https://www.europarl.europa.eu/summits/tam\\_en.htm](https://www.europarl.europa.eu/summits/tam_en.htm) [accessed 12 December 2022].

## Victim's Paradigm in European Union Criminal Law

### Dāvids Gurevičs

(University of Latvia)

#### S u m m a r y

The victim's rights in criminal proceedings emerge from general principles of law – the right to a fair trial and effective remedy, which are part of the European Union's constitutional system. Even though the victim's procedural status varies in criminal justice systems of the European Union member states, it is possible to define core elements of these principles that are necessary to ensure the victim's active role in the proceedings. The legislative acts of the European Union concerning the rights of victims of crime are aimed at providing the victim's voice in proceedings, allowing the victim to have certain control over how the criminal proceedings are conducted, thus ensuring satisfaction of the victim's interests.

At the same time, European Union's legislator has indicated that, considering the offender's right to a fair trial and the state's responsibility to establish truth, the member states must guarantee the victim's protection and corresponding procedural rights in a case when the victim is required to participate in criminal proceedings. Therefore, in the victim's paradigm of European Union law, the victim not only is entitled to benefit from the criminal justice system but is also obliged to actively contribute to it.

## Nukentėjusiojo paradigma Europos Sąjungos baudžiamojoje teisėje

### Dāvids Gurevičs

(Latvijas universitetas)

#### S a n t r a u k a

Nukentėjusiojo teisės baudžiamajame procese kyla iš bendrųjų teisės principų – teisės į teisingą bylos nagrinėjimą ir veiksmingą teisinę gynybą, kurie yra Europos Sąjungos konstitucinės sistemos dalis. Nors Europos Sąjungos valstybių

narių baudžiamosios justicijos sistemose nukentėjusiojo procesinis statusas skiriasi, galima apibrėžti pagrindinius šių principų elementus, kurie būtini siekiant užtikrinti aktyvų nukentėjusiojo vaidmenį procese. Europos Sąjungos teisės aktais, susijusiais su nusikaltimų aukų teisėmis, siekiama užtikrinti nukentėjusiojo balsą procese, leisti nukentėjusiajam turėti tam tikrą baudžiamojo proceso vykdymo kontrolę, taip užtikrinant nukentėjusiojo interesų patenkinimą.

Kartu Europos Sąjungos teisės aktų leidėjas nurodė, kad, atsižvelgiant į nusikaltėlio teisę į teisingą teismą ir valstybės atsakomybę už tiesos nustatymą, valstybės narės turi užtikrinti nukentėjusiojo apsaugą ir atitinkamas procesines teises tuo atveju, kai nukentėjusysis privalo dalyvauti baudžiamajame procese. Taigi Europos Sąjungos teisės paradigmoje nukentėjusysis ne tik turi teisę naudotis baudžiamosios justicijos sistemos teikiama nauda, bet ir privalo aktyviai prie jos prisidėti.

Dāvids Gurevičs is a second-year doctoral student at the Faculty of Law of the University of Latvia. His scientific interests include the procedural status and rights of crime victims in criminal proceedings, the right to effective remedy, as well as the state's liability for the harm inflicted upon individuals.

Dāvids Gurevičs yra Latvijas universiteto Teisės fakulteto antro kurso doktorantas. Jo moksliniai interesai – nukentėjusiųjų nuo nusikaltimų procesinis statusas ir teisės baudžiamajame procese, teisė į veiksmingą teisinę gynybą, taip pat valstybės atsakomybė už asmenims padarytą žalą.