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***Compensation Practices of States of the European Union
Connected to Crimes Against Women***

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Introduction

The overall aim of this preliminary study is to provide data on the compensation practices of various States within the European Union and in particular, will concentrate on crimes of domestic violence against women and examine the different outcomes for these victims, under each legal system.

A secondary purpose of the text is to contribute background material for the workshop on Women in the Criminal Justice System, during the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in April 2000 in Vienna, Austria.

Due to the fact that a violent crime is a criminal offence and at the same time triggers civil liability for compensation there are two possible proceedings against the offender: Civil proceedings in the criminal courts and civil proceedings in the civil courts.

For the reason that the financial resources of the offender may be not sufficient and for the reason that it is highly questionable especially in cases of domestic violence against women, if the offender is willing to cooperate the question of state compensation arises, too, in this respect.

Therefore, this report particularly deals with the possibilities for the victim to get compensation from the offender in criminal and / or civil proceedings, and with the existence, form, and extent of special State schemes of compensation for victims of violent crimes.

In our research we were studying not only these compensation practices but for each of the chosen countries we took also care in the position of the victim in legal proceedings, i.e. in particular: definition and legal status of the victim, the rights and duties in the prosecution, and the rights and duties in the court.

In an attempt to provide data in this field we conducted a systematic literature review. We sought information basically from the following sources:

- Egger, Renate (1995), Gewalt gegen Frauen in der Familie, Österreich Wien
- Driem van, G. (1990), Frauen kämpfen in anderen Ländern. Feministische Anwaltsarbeit in den Niederlanden. In: ZIF-Info

(Zentrale Informationsstelle der Frauenhäuser), Hamburg Deutschland

- Greer, Desmond (ed.) (1996), Compensating Crime Victims - A European Survey Beiträge und Materialien aus dem Max-Planck-Institut fuer ausländisches und internationales Strafrecht Freiburg, herausgegeben von Prof. Dr. Dr. h.c. Albin Eser, Band S 59.
- Home Office, Compensation for Victims of Violent Crime – Possible Changes to the Criminal Injuries Compensation Scheme, United Kingdom
- Wergens, Anna (1999), Crime Victims in the European Union, UMEÅ Sweden
- Otte Torsten (1998), Staatliche Entschädigung für Opfer von Gewalttaten in Österreich, Deutschland und der Schweiz, Deutschland Mainz
- Ministère de la Justice (1998), L'aide financière aux victimes d'actes intentionnels de violence, Bruxelles Belgique
- Survey on Crime Victims in the European Union by Anna Wergens

In addition, a questionnaire was sent to Governments, Universities and Non-Governmental Organisations of the concerned countries.

Austria

A. The position of a victim in legal proceedings

I Introduction

The main source on the position of crime victims, is the code of Criminal Procedure which is presently under review. Possibilities to drop charges in less serious cases, when the offender is prepared to offer financial or other compensation in an "out of court" settlement, are going to be introduced to improve the situation of crime victims.¹

The criminal code of Austria does not contain any special provisions concerning domestic violence; special legislation concerning compensation in cases of domestic violence does not exist either. However, there is a provision for victim-offender mediation within court procedures.² Rape in marriage (spousal rape) has been officially regarded as a crime since 1989.³

II Definition and legal status of a victim

A general term or a definition of the victim's legal status does not exist in the Austrian legal system. The legal status of a victim may range from that of a witness to that of an auxiliary prosecutor or a private party. If other definitions are lacking the general definition of the victim in criminal law is a person who has fallen victim of an unlawful act.⁴

If a victim wants to exercise their right to claim for civil damages, they have the possibility to become a private participant in the criminal proceedings.⁵ For this reason the victim is considered to have an active role in the court proceedings.⁶ In the position of a private participant, the victim has the right to read the court files, to put questions to

witnesses and experts and the right to get information about the course of the trial.⁷

III Rights and duties involved in a prosecution trial

The victim may declare himself as a private participant, at various stages of criminal procedure, if they have suffered material damage.⁸

The prosecutor, like other authorities, is obligated to inform victims of matters that are of interest of them, especially in the pre-trial phase, i.e. the decision to drop the charges, and the right to become an auxiliary prosecutor. If the prosecutor decides to waive the charge, the victim cannot appeal against this decision but if the victim is dissatisfied, they have the option of acting as an auxiliary prosecutor.⁹

IV Rights and duties in the court

The victim is only obliged to appear in court, if they are to be heard as a witness.¹⁰

The procedural law includes provisions to protect witnesses, i.e. a victim of a sexual offence is not under legal obligation to answer insufferable questions. Even though the defendant is present in the trial the victim of rape or other forms of domestic violence does not have to testify in court procedures while facing the offender.¹¹ An amendment of the code of criminal procedure from 1993 introduced the possibility that witnesses can give evidence in a separate room. For reasons of witness protection, the public may be excluded from trial.¹²

¹ Crime Victims in the European Union (Wergens), p. 59

² answer to the questionnaire, provided by the University of Graz

³ see Egger / Fröschl in: Gewalt gegen Frauen in der Familie, p. 165; answer to the questionnaire, provided by the University of Graz

⁴ Crime Victims in the European Union (Wergens), p. 62

⁵ *ibid.*, p. 63

⁶ answer to the questionnaire, provided by the University of Graz

⁷ see Egger / Fröschl in: Gewalt gegen Frauen in der Familie, p. 167

⁸ Crime Victims in the European Union (Wergens), p. 65

⁹ *ibid.*, p. 65

¹⁰ *ibid.*, p. 66

¹¹ answer to the questionnaire, provided by the University of Graz

¹² Crime Victims in the European Union (Wergens), p. 66

B. Compensation practices

I Obtaining compensation from the offender in criminal proceedings

In Austria a victim of crime has the possibility to initiate compensation proceedings within the criminal process, Paragraph 4 of the Criminal Procedure Act. This is done by the introduction of civil law claims in the criminal process. The procedure is called procedure of adhesion (Adhäsionsverfahren) and was introduced for reasons of process economy and to give the victim the opportunity to already enforce his/her claims, at an early stage.¹³

The procedure of adhesion presupposes that the victim joins the criminal proceeding as a private participant. A precondition for being a private participant is that the victim was injured by a crime and that civil claims for compensations are arising out of this offence. To become a private participant the victim has to declare that he/she will join the proceedings. An allegation that a civil claim may exist is sufficient.¹⁴

As a private participant, the victim has certain rights, when they become a party in the trial. The private participant has the right to take part in the proceedings, to pose questions to witnesses and experts; they can make personal statements and with regard to the question of guilt, they can make their own pleadings. Additionally the private participant may already examine the files in the pre-trial phase.

For the reason that victims are not entitled to get legal assistance within the criminal proceedings, the difficult situation may occur where the victim has to act as a witness and at the same time to defend their own interests, regarding the claim for compensation.¹⁵

The criminal court has to decide both the criminal and the civil law aspects. With respect to the deci-

sion regarding the civil claim the private participant can appeal the decision.¹⁶

II Obtaining compensation from the offender in civil proceedings

Since there are also possibilities for the victim to claim for compensation in civil proceedings prosecution of the offender and going through the procedure of adhesion is not necessary. On the other hand, not many victims find it worthwhile to proceed in this way. Claims for compensation are based on civil law.¹⁷

It is possible for the victim simultaneously to participate in the prosecution and initiate proceedings before the civil courts, as long as the civil case remains pending until the criminal case has been finally decided.

According to Art. 1325 ABGB tort liability in Austria encloses compensation for pain and suffering (*Schmerzensgeld*). Material losses, positive loss and loss of profits together with pain and suffering should compensate for the full loss if the criminal act was committed with gross negligence or wilfulness. There is also compensation available for sentimental value of things that had been taken from the victim.¹⁸

III Obtaining compensation from the State

According to the Crime Victim Aid Statute, compensation is a legal right in Austria. It is seen as a public offer of reward, even though the primary responsibility for paying compensation to the victim lies with the offender.¹⁹

Obtaining payment is subject to the principle of subsidiarity, which demands that all other means must have been exhausted before State compensation is sought.

A new amendment embracing all kind of crimes entered into force on 1 January 1999. This will grant compensation for psychotherapeutic costs in

¹³ see Otte, Staatliche Entschädigung für Opfer von Gewalttaten in Österreich, Deutschland und der Schweiz, p. 68

¹⁴ *ibid.*, p. 69

¹⁵ see Egger / Fröschl in: Gewalt gegen Frauen in der Familie, p. 167

¹⁶ see Otte, Staatliche Entschädigung für Opfer von Gewalttaten in Österreich, Deutschland und der Schweiz, p. 70

¹⁷ answer to the questionnaire provided by the University of Graz

¹⁸ see Raschka in Compensating Crime Victims, p. 22; Crime Victims in the European Union (Wergens), p. 67

¹⁹ answer to the questionnaire, provided by the University of Graz

cases where health insurance carriers have not contributed to the payments of such costs.²⁰

Belgium

A The position of a victim in legal proceedings

I Introduction

The legislative framework is characterised by the federal, and linguistic division in Belgium, there are three economic and administrative regions, and three linguistic divisions - French, Dutch, and German. Belgium criminal procedure is predominantly inquisitorial, the search for truth is the overriding aim of the trial.²¹ The Belgian criminal code does contain special provisions for cases of domestic violence. Special legislation on compensation for cases of domestic violence does not exist. Spousal rape is considered as a crime.²²

II Definition and legal status of the victim

The victim of a crime is defined as “person and their surrounding who, due to a punishable act, has suffered material or moral damage”. This is a very broad definition, with respect to all possible effects of a criminal offence.²³

In legal proceedings the victim is either witness or an injured party - *partie civile*. By becoming a *partie civile* a victim can claim moral and material damages and become a party to the proceedings.²⁴

III Rights and duties involved in a prosecution trial

The state has the prevailing right to prosecute, and a citizen may not prosecute privately. Public action is pursued in the name of the state, and in the name of the prosecutor. The principle of *opportunity* leaves room for discretionary decisions.

²⁰ Crime Victims in the European Union (Wergens), p. 68

²¹ *ibid*, p. 76

²² answer to the questionnaire, provided by the Ministry of Justice

²³ Crime Victims in the European Union (Wergens), p. 80

²⁴ *ibid*, p. 80

When considering the possibility of dropping charges; the interest of the victim to get compensation, is taken into account.²⁵

There are possibilities for the conclusion of a case before court procedures have taken place:

1. A Compound Fine which is a kind of pre trial settlement. This is arranged if the offender is willing to pay a sum of money, which compensates the moral and material injuries, suffered by the victim. However, there is the precondition that there are mitigating circumstances in favour of the offender.

2. Another way of avoiding a trial is through penal mediation, if the outcome is successful, then no further prosecution will take place.²⁶

The prosecutor is not obliged to assist victims in claiming for damages, as far as information are concerned, victims with the legal status of injured person have a right to know whether the case is terminated or not.²⁷

IV Rights and duties in the court

Since 1996 each court is obliged to provide services for victims. Only persons who have declared themselves to be *partie civile* have the right to information.²⁸ Possibilities to testify outside the court procedures are provided for the victim. Hence, especially a victim of rape or other forms of domestic violence does not have to testify in court facing the offender.²⁹

B Compensation practices

In Belgium, by virtue of Art. 4 of the Law of 17. April 1978, a victim has, in principle, the right to choose which form of proceedings they will take.³⁰

Compensation is based on both civil and criminal law; and procedures for compensation are also

²⁵ *ibid*, p. 83

²⁶ answer to the questionnaire, provided by the Ministry of Justice; Crime Victims in the European Union (Wergens), p. 83

²⁷ Crime Victims in the European Union (Wergens), p. 84

²⁸ *ibid*, p. 85

²⁹ answer to the questionnaire, provided by the Ministry of Justice

³⁰ Wyngeart in: Compensating Crime Victims, p. 69

within both civil and criminal law.³¹ Compensation for offences causing non-material damages is only available when the victim is a *partie civile* in criminal proceedings or in civil law.³²

I Obtaining compensation from the offender in criminal proceedings

Belgium has got the *partie civile* system. The victim – being a private participant – is able to institute compensation proceedings within the criminal process. This has to happen at the victim's request; a Belgian judge will never decide *ex officio* to compensate the victim. Since punishment and compensation are not mutually exclusive the criminal court then has to determine the civil claim for compensation in addition to imposing sentence.³³

II Obtaining compensation from the offender in civil proceedings

A victim can bring his claim for damages before a civil court. If the criminal proceedings are still pending, the civil court has to postpone its decision until the criminal court has returned its verdict.³⁴ The decision of the criminal court is binding on the civil judge; according to the principle "*le criminel tient le civil en état*", the verdict of the criminal court has precedence over the decision of the civil court; that means in case of an acquittal of the accused by a criminal court, the chances of the victim obtaining compensation in civil proceedings are small.³⁵

III Obtaining compensation from the State

The primary responsibility for paying compensation lies by the offender.³⁶ Belgium provides a special compensation scheme for victims of violent crimes (Victims Compensation Act 1985). The object and purpose of this Act is to provide financial assistance, rather than full compensation to victims, who cannot achieve compensation through criminal or civil proceedings and who are unable to benefit from other compensation

schemes, such as social security, private insurance, etc.³⁷ Therefore, compensation under this Act is subsidiary.³⁸ In case the victim applies for compensation for non-material damages from the public fund, such compensation can only be awarded in addition to compensation for physical injuries; which means the criminal offence must have caused some kind of a physical injury.³⁹

Denmark

A The position of a victim in legal proceedings

I Introduction

In general, the Danish criminal procedure system is both a inquisitorial and adversarial system. Danish criminal law provides a distinction between crimes, violations or less serious offences, which is significant in determining who will be empowered to decide on the proceedings of a case.⁴⁰

The criminal procedure is governed by principles of instruction, oral proceedings immediacy and concentration, the principle of equal parties is vested in the principle of public prosecution.

No act or code of criminal procedure exists in Denmark, only an Administration of Justice Act (AJA) which provides rules for both criminal and civil procedure.⁴¹

II Definition and legal status of a victim

Under Danish law, a provision which defines the injured party does not exist. An injured party is determined by whose private interests the penal provision, in the specific case actually serves to

³¹ answer to the questionnaire, provided by the Ministry of Justice

³² *ibid*

³³ see: Wyngaert in: *Compensating Crime Victims* (Desmond Greer), p. 69

³⁴ see Wyngaert in: *Compensating Crime Victims*, p. 75

³⁵ *ibid*, p. 75

³⁶ answer to the questionnaire, provided by the Ministry of Justice

³⁷ see brochure of the Ministry of Justice "*L'aide financière aux victimes d'actes intentionnels de violence*"; Wyngaert in: *Compensating Crime Victims*, p. 76

³⁸ see brochure of the Ministry of Justice "*L'aide financière aux victimes d'actes intentionnels de violence*"

³⁹ answer to the questionnaire, provided by the Ministry of Justice

⁴⁰ *Crime Victims in the European Union* (Wergens), p. 99

⁴¹ *ibid*, p. 99

protect. This causes uncertainty about who the injured party is, it may vary from case to case.⁴²

The victim has a few powers if they are heard as a witness, otherwise the victim has a weak position in the trial in comparison to the accused, which means that there is no legal support for claiming the same rights as the accused (giving an opinion, making himself acquainted with documents).⁴³

III Rights and duties involved in a prosecution trial

Criminal offences are subject to public prosecution, partly the injured party has a subsidiary right to prosecute, which means that the victim becomes a party in the proceedings, but this right applies only to a few offences. As far as violent offences and sexual offences are concerned subsidiary prosecution is not possible. Consequently, the injured party is not involved in the criminal part of the trial.⁴⁴

The principle of opportunity makes it possible to decide not to prosecute. The decision of the public prosecutor not to prosecute can be appealed by the victim, and the victim has to be informed of this opportunity. Another obligation of the public prosecution is the duty to claim for damages on behalf of the victim, if the victim so wishes.⁴⁵

IV Rights and duties in the court

A victim of a crime is under no obligation to appear in court, unless the victim is a witness. This is due to the fact that the victim is not a party in the trial. If the injured party is heard as a witness general procedural rules about witnesses are applicable, the witness must give evidence under oath and faces punishment in case of perjury.⁴⁶

In argumentation concerning the credibility of a witness, the court directs the argumentation, i.e. in cases of rape and other sexual offences the court directs the argumentation regarding to witnesses lifestyle and other personal questions. The submission of such evidence is only permitted if it is of major significance for the case. The hearing can take place without publicity, in cases that

individuals security is concerned or the witness is submitted to verbal abuse a hearing through video-equipment is possible. Additionally, the court can order the accused to leave the room.⁴⁷

B Compensation practices

A person who has suffered personal injury as a result of an offence against the Criminal Code has four possible methods of recovering damages from the offender or compensation under the Victim Compensation Act.

The Victim Compensation Act states for all four methods that the police shall be obliged to advise an injured victim of his or her right to claim compensation from the State under the Victim Compensation Act. When interviewing the victim of a sexual offence or another crime of violence, the police are furthermore obliged to inform the victim of the right to request the court to assign counsel to assist her. In the most serious sexual offences, the victim has an unconditional right to the assistance of a counsel if she so requests.⁴⁸ In the case of violent crimes and less serious sexual offences, the court may appoint a counsel to assist the victim, if this is considered reasonable. The duty of a counsel so assigned is to assist the victim in the proceedings generally, and (in the present context) assisting the victim's claim for damages or compensation.⁴⁹

I Obtaining compensation from the offender in criminal proceedings

A civil claim for compensation may be made by the victim against the offender in the course of the criminal proceedings. This is stated in Sections 991-996a of Part 89 of the Administration of Justice Act who display the procedure for bringing civil claims in criminal proceedings. These provisions are primarily designed to deal with claims for damages with respect to personal injuries or damage to property by a punishable offence. There is a legal obligation, on both the Court and the Prosecutor, to ensure that the victim can exercise his right to claim for damages.⁵⁰

The criminal court is allowed to refuse a claim for damages in criminal proceedings. The court must

⁴² Crime Victims in the European Union (Wergens), p.102

⁴³ *ibid*, p. 102

⁴⁴ *ibid*, p. 106

⁴⁵ *ibid*, pp. 106, 107

⁴⁶ *ibid*, p. 109

⁴⁷ *ibid*, p. 109

⁴⁸ Under s.741a(1) of the Administration of Justice Act

⁴⁹ see Lerche in: *Compensating Crime Victims*, p. 146

⁵⁰ *ibid*, p. 147

then refer this claim to either the civil courts or to the Victim Compensation Board.⁵¹

II Obtaining compensation from the offender in civil proceedings

If the question of damages has not been decided by means of a legally binding verdict within the course of the criminal proceedings, the victim has the right to bring an ordinary civil action for damages against the offender; such an action is dealt with according to the ordinary rules of civil procedure.⁵²

III Obtaining compensation from the State

A claim for compensation from the State may be made brought through the police to the Victim Compensation Board under the Victim Compensation Act.

Compensation from the State is subsidiary; that means compensation may only be paid to the extent that the injury is not compensated by the offender, private or public insurance schemes, or other payments to which the victim is entitled as a result of the injury.⁵³

IV Direct compensation without courts, etc.

The injured party may claim damages directly from the offender without involving public authorities, courts, etc.

Where the relationship between the injured party and the offender is close, however, it is possible for the parties to agree among themselves how the offender is to compensate the injured party. But it seems likely that it is only a very small percentage of cases that parties reach an informal agreement between themselves on the question of damages, especially in cases of domestic violence.⁵⁴

Finland

A The position of a victim in legal proceedings

I Introduction

The Finnish legal system is a statutory law system. The procedural criminal system is accusatory. The ex officio principle and the principle of public access to official records are important principles in Finnish law. The investigation and the main hearing are oral and concentrated and there is a determination between public prosecution and complaint offences.⁵⁵

II Definition and legal status of a victim

No definition of 'an injured party' exists in the legislation, this problem has been solved by jurisprudence.

The predominant view is focused on the interest that legislation tries to protect. The most accepted definition is: 'the injured party is the bearer of the legal value protected by the crime and the one to whom a legal claim has arisen through the offence.'

Within the Scandinavian countries, the status of the injured party is most powerful in Finland.⁵⁶

III Reform of the code of criminal procedure

In 1997, a new Criminal Procedure Act was introduced, resulting in a strengthening of the victim within criminal procedures, even though the primary right to prosecute which the injured party has enjoyed has been transformed to a subsidiary right which means a limitation of the injured parties' status.⁵⁷

The reform has influenced the situation of the crime victim in many ways. There is now a duty for the prosecutor to claim for damages on behalf of the victim. There are increased opportunities for victims of violent offences and sexual offences to obtain legal assistance during the procedure.⁵⁸

⁵¹ see: Lerche in *Compensating Crime Victims*, pp. 147, 148

⁵² *ibid*, p. 149

⁵³ *ibid*, pp. 149, 150

⁵⁴ *ibid*, pp. 146, 147

⁵⁵ *Crime Victims in the European Union* (Wergens), p. 128

⁵⁶ *ibid*, pp. 131, 132

⁵⁷ *ibid*, p. 133

⁵⁸ Chapter 2 Sec. 1 A Criminal Procedure Act

This right for legal counselling exists no matter if there is a financial need for that.

IV Rights and duties involved in a prosecution trial

Under the principle of legality, the prosecutor is obliged to prosecute, whenever there are reasonable grounds to believe that the suspect has committed an offence.⁵⁹

Some of the offences in the penal code are complaint offences, which means they are only prosecuted against the request of the injured party. This includes offences within closely related parties and offences where the initiation of a criminal proceeding, could cause major inconvenience to the injured party, e.g. assault and certain sexual offences.

Also a mixed category of relative complaint offences is to be found. These offences can be prosecuted against it is deemed to be of public importance. Rape and personal threats are included, but the prosecutor is obliged to take into consideration the wishes of the injured party.⁶⁰

The injured party has a right of subsidiary prosecution but in practice, a decision to terminate proceedings will be appealed in a higher prosecution instance, before the right of subsidiary prosecution is chosen. This is because this way might be risky and expensive.

The injured party also has right to information regarding the initiation and termination of the preliminary investigation and the right to state compensation.⁶¹

The most important duty of the prosecutor is the duty to claim for damages on behalf of the victim.⁶²

V Rights and duties in the court

For the purpose of giving evidence, the injured party may be heard in the trial but not interrogated as a witness under oath. The court must inform the victim, who is a party in the trial,

whether she/he will be heard as a witness or as an injured party.

There are no specified facilities provided for crime victims. However, there are waiting rooms for victims which protect from possible confrontations with the offender.⁶³

If the victim fears to testify in front of the offender, special arrangement can be made, like interviews with video links, but no special provisions for that in the criminal procedure act, the situation is not clear whether that is legal or not.

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

The above mentioned reform of the criminal procedure act, created a duty for the public prosecutor to claim damages on the behalf of the victim.

Compensation may be claimed for any personal injury, loss or damage caused by the offence. These claims are based on the Damages Act, mainly on chapter 5 and are applicable in criminal proceedings. However, it is important to note that the claims are of a civil law nature.

These claims include compensation for all damages, arising out of the criminal act; compensation for pain and suffering; meaning any sort of agony including mental suffering, if medically proven.

Another feature (Chapter 5, § 6 Damages Act) is damages for suffering caused by an offence against a person's freedom, honour or domiciliary peace; the scope of this provision is narrow but it refers to sexual offences as well.

If the claim is well founded a compensation order is issued together with imposing sentence. Where compensation is ordered, the offender is also normally required to pay the victim's trial expenses.⁶⁴

⁵⁹ Chapter 2 sec. 1 A Criminal Procedure Act, p. 136

⁶⁰ *ibid*, p. 136

⁶¹ Crime Victims in the European Union (Wergens), p. 137

⁶² Chapter 3 sec. 9 I Criminal Procedure Act

⁶³ *ibid*, p. 140

⁶⁴ see Söderholm in: Compensating Crime Victims, p. 164

II Obtaining compensation from the offender in civil proceedings

Under Finnish law, a person injured by a crime of violence is entitled to bring proceedings in tort against the offender in order to receive compensation.⁶⁵

If the victim chooses civil proceedings, he/she does not necessarily have to take part in the criminal proceedings at all, but he/she may do so if he/she wishes.⁶⁶

The question of compensation in civil proceedings is not necessarily dependent on the decision of the related criminal proceedings; i.e. if the accused is not criminally liable, the court in civil proceedings may re-examine the issues and reach its own decision.⁶⁷

III Obtaining compensation from the State

The Criminal Injuries Compensation Act 1973 enables the victims of crime to receive compensation from the State.

The victim can apply for compensation already before the trial has taken place but in practice, compensation will not be paid before a court decision about whether the claim is well founded or not, is issued. After the decision including a compensation order has been issued, the victim is not obliged to enforce the judgement. Instead, he/she can directly apply for compensation without having to prove that the offender is incapable of paying.

France

A The position of a victim in legal proceedings

I Introduction

The French legal system is a typical inquisitorial system, i.e. judges with far-reaching investigative powers. Even though the principle of legality has

an important role in French criminal procedure law methods of dismissing cases through payment of the offender to the victim, which are compensating damages are known in the French system.⁶⁸

There is a clear division between public action and civil action pursued in conjunction with a criminal trial. The classification of offences in crimes, délits, contravention, influences the court when a case is tried and the method of investigation. Murder and rape are classed as crimes.

The trial is oral and public. Decisions to proceed in private are common cases of rape.⁶⁹ In France the raping of a spouse is officially regarded as a crime and the French criminal code does contain special provisions concerning domestic violence. On the other hand, there is no legislation concerning compensation for cases of domestic violence, in particular; only general legislation about compensation.⁷⁰

II Definition and legal status of a victim

The term victim appears in the French criminal procedure code act in provisions about obtaining damages and in the compensation act. A victim is defined as an individual whose personal integrity is attacked by an obvious injury as defined by the majority of society.⁷¹

A victim may become a party in a criminal trial, and faces the prospect of actively participating in the proceedings. The victim has the same rights as the defendant, as a party the victim is entitled to study the file before and during the trial, and to receive up-to-date information on the proceeding.⁷²

The basic rights of crime victims are set forth by the Ministry of Justice in an information leaflet and according to that: victims have the right to be heard, to report an offence, to pursue a lawsuit and to claim compensation. Additionally, compensation is no longer deemed to be of subsidiary

⁶⁸ Crime Victims in the European Union (Wergens), p. 161

⁶⁹ *ibid*, pp. 161, 162

⁷⁰ answer to the questionnaire, provided by the Institut National d'Aide aux Victimes et de Mediation

⁷¹ Crime Victims in the European Union (Wergens), p. 166

⁷² answer to the questionnaire, provided by the Institut National d'Aide aux Victimes et de Mediation; Crime Victims in the European Union (Wergens), p. 166

⁶⁵ see Söderholm in: Compensating Crime Victims, p. 164

⁶⁶ see *ibid*, p. 164

⁶⁷ see Lombard in: Compensating Crime Victims, p. 164

importance in cases of serious offences, like rape or murder.⁷³

III Rights and duties involved in a prosecution trial

Due to the opportunity principle, prosecution is not mandatory in France. The prosecutor is permitted to exercise discretion, in assessing how the case should be treated.

The decision not to prosecute may be conditional on payment of compensation to the victim but the evidence must be straightforward and the evidence on the loss of the victim, must be established.⁷⁴

Crime victims have wide powers to prosecute: either through a public action, exercised by the prosecutor or by what is termed as prosecution by the victim. The latter allows the victim to commence a public prosecution indirectly, by bringing a civil claim and declaring himself to be a *partie civile*. There are no specific duties towards the victim with regards to compensation.⁷⁵

IV Rights and duties in the court

The parties involved in the trial have to attend the public hearings but due to the broad discretion of the judge, it is possible to exclude publicity from the hearing at the request of the victim. Cross-examination is not permitted but the parties are given the opportunity cross-examine each other.⁷⁶

According to French criminal procedural law, there are different rules for informants and witnesses. Only the latter are obliged to appear in the court and to give their statements under oath. A civil party is not required to give evidence under oath. Witnesses may voice their feelings and desires, regarding sanctions.⁷⁷

B Compensation practices

In France, a victim who seeks compensation for a criminal injury has two possibilities: they can bring a civil action as part of a public action in a

criminal court or they can bring a civil action alone in a civil court.⁷⁸

I Obtaining compensation from the offender in criminal proceedings

The victim, being a private participant, is able to bring a claim for compensation in the course of the criminal proceedings. The object and purpose of this possibility is to provide the victim with a simplified procedure, for achieving compensation. The procedure is simplified, because a duality of proceedings can be avoided and hence proceedings are less expensive. The judge, who decides on compensation is already familiar with the case, and, as a matter of criminal policy, compensation can be considered as a factor in the treatment of the offender.⁷⁹

II Obtaining compensation from the offender in civil proceedings

As one can see that the crime victim is, according to the *parie civile* system, able to pursue their civil claim in criminal proceedings; but the victim must choose one course. They cannot refer the same complaint to both courts simultaneously.⁸⁰

Compensation is based on both civil and criminal law and the procedures for compensation are within both civil and criminal law proceedings. Compensation for non-material injuries is available.⁸¹

The applicant does not have to prove the insolvency of the offender.

III Obtaining compensation from the State

With regards to state compensation, it is fair to say that in general the primary responsibility for paying compensation to the victim lies by the offender. However, in cases of sexual abuse or other related serious crimes the primary responsibility is shifted to the state.⁸²

⁷³ Crime Victims in the European Union (Wergens), p. 166

⁷⁴ *ibid*, p. 172

⁷⁵ *ibid*, p. 172

⁷⁶ *ibid*, p. 174

⁷⁷ *ibid*, pp. 175, 176

⁷⁸ see Lombard in: *Compensating Crime Victims*, p. 198

⁷⁹ *ibid*, p. 207

⁸⁰ see *Crime Victims in the European Union* (Wergens), p. 176

⁸¹ answer to the questionnaire, provided by the Institut National d'Aide aux Victimes et de Mediation

⁸² *ibid*

All the victim has to establish is that the act which caused his injury or loss "has the material character of an infringement".⁸³ Compensation is provided for death, serious bodily injury and certain sexual assaults, and certain pecuniary loss.⁸⁴

Germany

A The position of a victim in legal proceedings

I Introduction

The German criminal justice system is an inquisitorial system. The judge plays an important role in fact finding and in questioning. Trials are governed by the principles of oral proceedings and immediacy. The main source of legislation is the Code of criminal procedure (StPO) and the victim protection act. This act provides rules for using video equipment in court and extends the possibilities of legal counselling.⁸⁵

The distinction between felonies (Verbrechen) and misdemeanours (Vergehen) decides about the kind of court and the issuing of bail.⁸⁶ The German criminal code does contain special provisions concerning domestic violence. For compensating cases of domestic violence only general legislation on compensation is applicable. Rape in marriage is a crime, since 1997 in Germany.⁸⁷ With regard to this, it is fair to say that spousal rape was always punishable under German law but before 1997 only through coercion and assault.⁸⁸ These are both classed as misdemeanours. Since 1997 spousal rape is similar to sexual coercion and rape.⁸⁹ This has resulted in spousal rape now being upgraded to a crime meaning that there is a possibility to impose a higher sentence: up to 15 years.⁹⁰

⁸³ Lombard in: Compensating Crime Victims, p. 230

⁸⁴ *ibid.*, p. 230

⁸⁵ Crime Victims in the European Union (Wergens), p. 196

⁸⁶ art 12 of the criminal code

⁸⁷ answer to the questionnaire, provided by the Ministry of Justice

⁸⁸ art. 240, 223 ff. criminal code

⁸⁹ art. 177 criminal code

⁹⁰ Informationsvermerk zu Strafvorschriften gegen Gewalt in engen Lebensgemeinschaften

II Definition and legal status of a victim

Victims are regarded as third parties in legal procedures.

A victim acts in criminal procedures either as witness or as an injured party.

The Victim Protection Act introduced the possibility of becoming a joint plaintiff. This allows the victim to be active in the trial procedure; for slander, sexual offences or offences against personal freedom.⁹¹

III Rights and duties involved in a prosecution trial

The principle of legality is very strong in the German legal system. The method of prosecution is almost mandatory but the principle of opportunity is also applied, giving a possibility of discharging a case. The latter is possible if there is a minor degree of guilt or the offender pays damages to the victim.⁹²

If the prosecutor decides to terminate the case, then the victim must be informed about the possibility of an appeal. If a second prosecutor comes to the same conclusion as in the previous court decision and the court wants to have the case prosecuted, the victim acts as subsidiary prosecutor. Only minor defences and complaint offences are open for private prosecution, provided that there are sufficient financial means.⁹³

IV Rights and duties in the court

The victim acts mainly in the role of a witness and in that role the victim has to appear in court. The statement of the victim is most often complemented by means of questioning from the judge.

Information about rights, duties and assistance should be given, where the victim is concerned.⁹⁴

In Germany there are possibilities for the victim to testify outside the court procedures.⁹⁵

⁹¹ Crime Victims in the European Union (Wergens), pp. 201, 205

⁹² *ibid.*, p. 204

⁹³ *ibid.*, p. 204

⁹⁴ *ibid.*, p. 206

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

Compensation is based on civil law. Procedures for compensation are in both civil and criminal law procedures.⁹⁶

On the basis of the German legal system the victim has no formal standing in criminal proceedings regarding compensation. At the most, he may obtain a "one-off" payment from the offender as a "side-effect" of the criminal proceedings; this payment mainly amounts to little more than a symbolic or token payment, which falls far short of the "full" compensation to which the victim is entitled in civil law.⁹⁷

However, there is a procedure of adhesion similar to the procedure in Austria. ⁹⁸ In this procedure, the victim can introduce his civil claims for compensation into the criminal trial. The goals of this procedure are reasons of process economy and to give the victim an opportunity to obtain compensation, without being forced to initiate a civil trial. One precondition for the procedure of adhesion is that the claim is not pending in a civil court already. The procedure of adhesion is initiated by the assertion of a claim in the criminal proceedings, or prior to that. ⁹⁹ If the court comes to the conclusion that the claim is well grounded, then the court includes the compensation order in the judgement¹⁰⁰.

A draw back to this procedure is the possibility of the judges to refusing to decide about the civil claims. Art. 405 of the code of criminal procedure states that the court can decline to make a decision about the civil claims, when it is unsuitable for the proceedings; especially if it may delay the trial. For that reason the procedure of adhesion does not have practical importance. This is due to the attitude of the criminal judges, not to intro-

duce civil law issues and problems of evidence of the civil law claim into a criminal trial.¹⁰¹

II Obtaining compensation from the offender in civil proceedings

A victim can claim damages against the offender by instituting proceedings under German civil law. Such a claim is normally based on the law of torts, laid down in Arts. 823-853 of the Civil Code (BGB).¹⁰²

The general principle concerning the assessment of all damages is set out in Art. 249 of the Civil Code, which provides that the person who is bound to pay compensation must restore the situation, which would exist if the circumstances making him liable to compensate, had not occurred.¹⁰³

According to Art. 847 of the Civil Code, victims of sexual crimes can claim compensation for pain and suffering (Schmerzensgeld).

Difficulties for the victim, in carrying out civil proceedings for damages, are caused by the mainly the fact that the burden of proof generally falls on the victim i.e. the victim carries the full risk both of establishing that the perpetrator's conduct was unlawful and culpable and of proving the facts through evidence, which he himself must produce.¹⁰⁴

The victim is not given any support with regard to satisfying the demands of proof, either in its legal or factual respect. Thus, their position would be easier if there has been a criminal conviction.¹⁰⁵ The victim's injury is then deemed to be proved by the conviction of the offender in the criminal proceedings.

In Germany, a crime victim seldom recovers full compensation by means of civil proceedings.¹⁰⁶

⁹⁵ answer to the questionnaire, provided by the Ministry of Justice

⁹⁶ *ibid*

⁹⁷ see Kaiser / Kilchling in: *Compensating Crime Victims*, p.264

⁹⁸ art. 403 code of criminal procedure

⁹⁹ art. 404 of the code of criminal procedure

¹⁰⁰ *Otte Staatlich Entschädigung für Opfer von Gewalttaten in Österreich Deutschland und der Schweiz*, p. 136

¹⁰¹ *ibid*, p. 137; Kaiser / Kilchling in: *Compensating Crime Victims*, pp. 265, 266

¹⁰² see Kaiser / Kilchling in: *Compensating Crime Victims*, p. 259

¹⁰³ *ibid*, p. 259

¹⁰⁴ see *ibid*, p. 260

¹⁰⁵ see *ibid*, p. 261

¹⁰⁶ see *ibid*, p. 261

III Obtaining compensation from the State

The offender has the primary responsibility for paying compensation.¹⁰⁷ Since crime victims already enjoyed a certain amount of protection through the system of social security in Germany, the "compensation" provided by the Victim Compensation Act 1976 frequently assumes a subsidiary character, in practice.¹⁰⁸ A claim for compensation based on the state compensation scheme (Opferentschädigungsgesetz) presupposes that the victim was subjected to an intended illegal assault and that the health injury arose out of this assault.¹⁰⁹

Great Britain

A The position of a victim in legal proceedings

I Introduction

The British legal system is as a common law system, there are two different kinds of British Law: common or case law and statute law. The main legal source is the common law, formed by customs and precedents.

Neither a unified penal code nor a code of criminal procedure exists but a mixture of statutes and common law precedents.¹¹⁰

Special legislation on compensation in cases of domestic violence does not exist. However, there is the Protection from Harassment Act, which can be used in cases of domestic violence.¹¹¹ The victim can apply for a so called non-molestation injunction, even without filing a complaint to the police. In addition, there is the possibility of an exclusion order, which means that the violent partner has to leave the common flat and is not

allowed to return.¹¹² Rape in marriage has been officially regarded as a crime, since 1991.¹¹³

II Definition and legal status of a victim

A definition of a victim of a crime does not exist under British law, neither in statutes nor in common law.

A victim does not have the role of a party in criminal proceedings, the victim is only a witness with no formal status beyond this.¹¹⁴

III Rights and duties involved in a prosecution trial

In 1985 the CPS (Crown Prosecution Service) issued a code explaining the work and principles which prosecutors must follow and consider, before deciding to proceed with a case or to drop the charge. This code also sets standards for police officers and civil servants and explains how the interest of the victim may be taken into account.¹¹⁵

While considering the question of whether a charge should be brought or not, two elements are considered to be important: the question of evidence and the question of public interest including considerations about the victim.

If the CPS decides not to prosecute, individuals are able to prosecute privately but this option is fairly limited and might be risky for the individual, who is not entitled to legal aid for private prosecution.¹¹⁶

IV Rights and duties in the court

In criminal proceedings in Great Britain the prosecution is generally undertaken by the Crown and the victim is not a party to the case; the victim acts mainly in the role of a witness.

In general, witnesses give oral evidence in an open court and the defendant must be present.

¹⁰⁷ answer to the questionnaire, provided by the Ministry of Justice

¹⁰⁸ see Kaiser / Kilchling in: Compensating Crime Victims, pp. 266, 277

¹⁰⁹ see Otte in: Staatliche Entschädigung für Opfer von Gewalttaten in Österreich, Deutschland und der Schweiz, p. 89

¹¹⁰ Crime Victims in the European Union (Wergens), pp. 227, 228

¹¹¹ answer to the questionnaire, provided by the University of Leeds

¹¹² see Egger / Fröschl in: Gewalt gegen Frauen in der Familie, p. 181

¹¹³ answer to the questionnaire, provided by University of Leeds

¹¹⁴ Crime Victims in the European Union (Wergens), p. 233

¹¹⁵ *ibid*, pp. 238, 239

¹¹⁶ Crime Victims in the European Union (Anna Wergens), p. 237

The court has the inherent power to order the use of a screen, to prevent the witness from seeing the defendant.

Courts also have the power, by virtue of their general right to control procedure, to order that evidence be given via camera (in private), where the presence of the public would genuinely frustrate the administration of justice.

In addition, under section 23 of the Criminal Justice Act 1988, the judge has power in the interests of justice to admit a witness' statement made to a police officer, instead of the witness giving oral evidence where the witness "does not give oral evidence through fear" or is unfit to attend court due to a bodily or mental condition. However, anonymous statements would not be admissible as evidence.

The Youth Justice and Criminal Justice Bill which is currently before Parliament provides protection and support for witnesses in criminal trials. The Bill contains a range of special, practical measures that will help, amongst others, witnesses in cases of violence or sexual offences give their best evidence in court.

The special measures available include:

- screens, to ensure that the witness cannot see the accused;
- giving evidence by live television link;
- excluding people from the courtroom, or galleries, so that evidence can be given in a more private setting;
- allowing as witness` evidence-in-chief a video-recorded interview with the witness; and
- allowing as evidence pre-recorded video cross-examination.

Witnesses who have a disability and children will also be able to give evidence with the aid of:

- an approved intermediary; and
- with the use of communication aids, such as alphabet boards.¹¹⁷

The court will presume that victims of rape and other sexual offences will need assistance when giving evidence.

The bill imposes a mandatory ban on unrepresented defendants personally cross-examining complainants of rape and other sexual offences. It also restricts the circumstances in which evidence

or questioning about a complainant's sexual behaviour may be admitted. Such evidence may not be admitted if the purpose of the evidence is to denigrate her character. The courts will also be able to restrict the reporting of a witness's identity, if their fear or distress is so great that it affects the quality of their evidence or their co-operation with either party in the case.¹¹⁸

One peculiarity is the VIS (Victim Impact Statement), which makes it possible for the victim to describe "the physical and emotional harm or any loss or damage to property suffered by the victim by means of the crime or to, comment on the sentence. The VIS was introduced in 1996 with the aim to increase the satisfaction of the victim, but there are different opinions on the value of the VIS. What is considered to be positive is the possibility for the victim to express feelings about the offence and to reduce the feeling of powerlessness. On the other hand the VIS may raise victims expectations about the trial and the sentence. It involves a risk that may make the experience more traumatic, through the possibility of cross examination.¹¹⁹

Common problems with court facilities were improved in the late eighties, due to a charter for court users. Part of the charter sets out the quality a victim might expect, the court staff should be identifiable and should treat the victim in a courteous manner irrespective of age gender disability or religious conviction. Additionally, there is a complaints procedure if the victim is dissatisfied.¹²⁰

Furthermore the Court service developed a charter for court users which sets standards of service, a specific section devoted to witnesses in criminal cases introduced five point the court service must address. A victim should expect:

- to be shown the courtroom before the trial starts.
- to have a seat reserved in court for an accompanying relative or friend.
- to be able to wait separately from others involved in the case.
- not to be kept waiting for more than two hours.
- to have their expenses paid within ten days.¹²¹

¹¹⁸ *ibid*

¹¹⁹ Crime Victims in the European Union (Wergens), p. 242

¹²⁰ *ibid*, p. 244

¹²¹ *ibid*, pp. 244, 245

¹¹⁷ answer to the questionnaire, provided by the Home Office London

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

On the basis of the British legal system a victim has no formal claim for compensation which they can obtain through criminal proceedings.

When sentencing a person following conviction for any offence, a criminal judge has the general power to order the offender to pay the victim compensation for any personal injury, loss or damage resulting from the offence.¹²²

If the offender has insufficient means to pay both the compensation and the fine, priority must be given to the compensation.¹²³

II Obtaining compensation from the offender in civil proceedings

A person injured by a crime of violence, is almost always entitled to bring a claim of compensation in the civil courts against the offender. Crimes of violence against the person are also classed as torts.¹²⁴

The award of compensation by a criminal court, does not in any way prevent the victim from bringing a civil action against the offender in the civil courts.¹²⁵

III Obtaining compensation from the State

In Britain, a victim of violent crime can claim compensation from the State under the Criminal Injuries Compensation Scheme.

A part of this scheme deals especially with family violence¹²⁶:

Para. 8 states that where the victim and offender "were living in the same household at the time of the injuries as members of the same family", compensation will be paid where -

(i) The offender has been prosecuted in connection with the offence.

This requirement is intended both as a safeguard against collusion and an indication that the victim regards the crime as a matter of public concern. However, in recognition of the difficulties often faced by battered wives, the Board may dispense with this requirement where there are practical, technical or other good reasons why a prosecution has not been brought.¹²⁷

(ii) In the case of violence between adults in a family, the Board must be satisfied that the offender and the applicant stopped living together in the same household before the application was made and seem unlikely to live together again.

The concern here is that if the parties are still living together, the offender will benefit from the award made to the victim.¹²⁸

(iii) The Board must in all cases, be satisfied that there is no possibility that the offender will benefit from the award.

Compensation for offences causing non-material damages (e.g. psychological injuries) is available but only in cases where a violent offence is involved.¹²⁹ With regard to the State's Criminal Injuries Compensation Scheme (CICS), personal injury includes physical injury (incl. fatal injury), disease and mental injury. Mental injury is defined as psychiatric or psychological illness which has to be medically recognised. With regard to compensation in cases of mental injury due to domestic violence one has to pay attention to paragraph 9 of the CICS. It stated, that mental injury or disease may either result directly from physical injury or occur without any physical injury. Compensation will not be payable for mental injury alone, unless the applicant:

- (a) was put in reasonable fear of immediate physical harm to his own person or
- (b) had a close relationship of love and affection with another person at the time when that person sustained physical (including fatal) injury (...)

(c) was the non-consenting victim of a sexual offence (which does not include a victim who consented in fact but was deemed in law not to have consented); or (...)¹³⁰

¹²² see s. 67 of the Criminal Justice Act 1982; and: Greer in: *Compensating Crime Victims*, pp. 580/581

¹²³ *Crime Victims in the European Union* (Wergens), p. 245

¹²⁴ see Greer in: *Compensating Crime Victims*, p. 577

¹²⁵ *Crime Victims in the European Union* (Wergens), p. 245

¹²⁶ see for more details: Greer in: *Compensation Crime Victims*, pp. 602, 603

¹²⁷ Greer in: *Compensation Crime Victims*, p. 602

¹²⁸ *ibid*, p. 603

¹²⁹ answer to the questionnaire, provided by the Home Office London

¹³⁰ see at the annex part of "Compensation for Victims of Violent Crime; Possible Changes to the Criminal Injuries Compensation Scheme; A Consultation Paper" : Paragraph 9 of CICS

A time period cannot be placed, when attempting to judge the length of compensation procedures. There are no meaningful average times for settling claims under the Criminal Injuries Compensation Scheme, as these vary of course greatly in their complexity. However, the body, which administers the scheme (Criminal Injuries Compensation Authority) has a target of resolving 90% of applications within 12 months of receipt.¹³¹

IV United Kingdom: Northern Ireland

With regards to compensation from the offender in criminal and in civil proceedings there is no difference between the law of Northern Ireland and Britain.

However, the Northern Ireland scheme of State compensation is, together with the British scheme, the only European scheme which in the vast majority of cases seeks to provide to all victims of violent crimes "full" compensation as that concept is understood in the civil action for damages, involving personally injury and death.¹³²

With regards to State compensation in cases of domestic violence, the general rule in Northern Ireland is still that compensation may not be awarded where the victim was, at the time of the injury, living in the same household as the offender. However, on similar grounds as in Britain, this rule does not now apply where the compensation authority is satisfied that:

- (i) the offender has been prosecuted for the offence or there is sufficient reason why he has not been prosecuted;
- (ii) the offender and the victim have ceased to live in the same household and are unlikely to do so again and
- (iii) the offender will not benefit from any compensation which is paid to the victim.¹³³

¹³¹ answer to the questionnaire, provided by the Home Office London

¹³² see Greer in: Compensation Crime Victims, p. 668

¹³³ see for more details: *ibid*, pp. 661, 662

Greece

A The position of a victim in legal procedures

I Introduction

The Greek criminal procedure is influenced by the continental system. It has some adversarial features such as the principle of public trial, mandatory publicity and rules of direct testimony. Publicity can be excluded under certain conditions, such as in the case of a rape victim. Also the principle of oral proceedings and unity are set out in the Code of Criminal Procedure. Some procedural rights are outlined in the constitution, i.e. the right to be heard in trial and equal treatment of accused and victim.¹³⁴

The Greek criminal procedure emphasises the protection of the individual from abuse by the state and favours the victim, as well as the accused. Some of these features were lost in the military coup of 1967. The restoration has primarily concentrated on the rights of the accused. Provisions exist on the treatment of people, involved in a criminal case, i.e. provision for certain vulnerable groups, like children and rape victims.¹³⁵

In Greek law neither special provisions concerning domestic violence nor specific legislation on compensating cases of domestic violence do exist. Rape in marriage is not regarded as a crime.¹³⁶

II Definition and legal status of a victim

Under Greek criminal law, a victim must be a natural person harmed by a criminal act, whereas an injured person may be a natural or judicial person harmed by a criminal act. The role of a victim is merely that of a witness but a victim can become civil party or a civil claimant. This presupposes that a crime of bodily injury or harm has been committed.¹³⁷

The civil claimant is a person who has been directly harmed by physical injuries or loss of an

¹³⁴ Crime Victims in the European Union (Wergens), p. 268

¹³⁵ *ibid*, p. 268, 269

¹³⁶ answer to the questionnaire, provided by the University of Athens

¹³⁷ *ibid*; Crime Victims in the European Union (Wergens), p. 270

object. When a victim becomes a civil party, they have certain rights and are empowered to act as a party; such as the right to be present, to retain legal counsel, to put forward questions and comments, and to appeal the decision.¹³⁸

III Rights and duties involved in a prosecution trial

The prosecutor has the sole right to prosecute and has the complete freedom to decide on prosecution. If a charge is dismissed, the victim may appeal the decision. The pre-trial stage is a secret written procedure.¹³⁹

In cases of rape, the victim can argue that the publicity ensuing from the criminal prosecution will cause her severe mental harm and if this declaration is deemed to be sincere, the prosecutor can decide not to prosecute, which he would be otherwise obliged to do.¹⁴⁰

IV Rights and duties in the court

The victim is an active part in the court procedures.

The use of recorded evidence in the trial is excluded, in conformity with the principle of direct testimony.

The victim may be heard in matters concerning claims for damages, if the victim is a civil party. Matters regarding sentencing or penal sanctions are excluded. The judge has an obligation to explain the decision of the court and the parties must be informed of that decision.¹⁴¹

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

In Greece, it appears that in practice, victims have seldom become involved in criminal proceedings. Many victims, particularly those connected to sexual offences, may refrain from going to court in an attempt to protect their reputations. If a civil

claim for compensation is raised within the criminal proceedings, the criminal court tends to exercise its power to hand over the claim to the civil courts.¹⁴²

The person primarily responsible for paying compensation to the victim is the offender.¹⁴³

However, the principle is subject to the overriding public objective of criminal proceedings. This is reflected in Art. 1 of the Greek Correctional Code - the rehabilitation of the offender and his or her reintegration into society. The obligation of the offender to compensate the victim must always be secondary to the achievement of this primary objective.¹⁴⁴

With regards to compensation, Art. 77 of the Penal Code provides that if a pecuniary penalty or fine is imposed concurrently with an order for the payment of compensation to the victim and the offender's means are insufficient to satisfy both obligations, compensation of the victim takes precedence.¹⁴⁵

Compensation is based on civil as well as on criminal law. Prosecution in cases of domestic violence against women is not necessary, the injured party can also use civil court proceedings.¹⁴⁶

II Obtaining compensation from the offender in civil proceedings

The victim has also got the possibility to bring a claim for compensation in the civil courts. In a case where no public prosecution has been initiated or the criminal court refers the victim's claim to the civil courts, this is the only method of obtaining compensation from the offender.¹⁴⁷

The underlining principle upon which compensation is assessed by the civil court, is *restitutio in integrum* (Art.298 CC).¹⁴⁸

¹³⁸ Crime Victims in the European Union (Wergens), p. 270

¹³⁹ *ibid*, p. 272

¹⁴⁰ *ibid*, p. 272

¹⁴¹ *ibid*, p. 273

¹⁴² see Kalavros in: Compensating Crime Victims, p. 305

¹⁴³ answer to the questionnaire, provided by the University of Athens

¹⁴⁴ see Kalavros in: Compensating Crime Victims, p. 304

¹⁴⁵ *ibid*, pp. 304, 305

¹⁴⁶ answer to the questionnaire, provided by the University of Athens

¹⁴⁷ see Kalavros in: Compensating Crime Victims, pp. 305, 306

¹⁴⁸ *ibid*, p. 306

The compensation payable by a person found liable by the civil courts covers both pecuniary loss and moral damage.¹⁴⁹

III Obtaining compensation from the State

The primary responsibility for paying compensation to the victim lies with the offender. In principle, a State compensation scheme for victims of violent crimes does not exist. However, in certain cases, the victim can obtain legal aid, social assistance, psychological support, etc. if she addresses herself to private women's associations or to the general secretariat of equality.¹⁵⁰

Ireland

A The position of a victim in legal proceedings

I Introduction

The main source of criminal procedure is the constitution of 1937, which lays down general principles of fair trial and due process of law. The Irish criminal procedure is typically accusatorial and it features the presumption of innocence and the protection of the accused from unduly prejudicial evidence. Additionally, the possibility exists for the accused to cross examine the witnesses which may affect the situation of the victim.¹⁵¹

There is no code of criminal procedure in existence but a framework of common law statutes, constitutional provisions and subordinate legislation exists. An act concerning domestic violence which sets out provisions about barring orders, was enacted in 1996 and has been seen as a milestone in terms of protection for victimised women.¹⁵²

II Definition and legal status of a victim

The Charter for Victims of Crimes defines a victim as "any person who has suffered harm of any

kind, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their capacity to function within the society through acts or omissions which are in breach of the criminal laws of the country".

If the victim is not an injured party, the victim will act as a state witness or as prosecution witness and will not be afforded a special legal status.¹⁵³

The above mentioned charter sets out the standards that should be met by public servants in dealing with victims of crime but does not confer any additional legal rights to crime victims.¹⁵⁴

III Rights and duties involved in a prosecution trial

The prosecution service is an independent body and its monopoly to trial indictment is based on the constitution. The prosecution system is similar to that of England. For the most part the right to prosecute privately has been abolished and in practice most offences are prosecuted officially. There is no mandatory prosecution, the prosecutor has power of discretion when making decisions on the initiation and termination of prosecutions.¹⁵⁵

No means are available for the victim to influence the decision, to terminate a charge, nor a possibility to appeal against the decision.

It is possible to terminate the prosecution, by proving that insufficient evidence exists or that there is a lack of resources and severity in the crime.¹⁵⁶

IV Rights and duties in the court

The crime victim has the status as a prosecution witness in the trial, which means that the victim does not have any special rights, except those conferred on witnesses. The judge has the limited power to interrogate the witness. Evidence is given orally under oath and the accused will have a copy of all witnesses.¹⁵⁷

¹⁴⁹ see Kalavros in: *Compensating Crime Victims*, p. 306

¹⁵⁰ answer to the questionnaire, provided by the University of Athens

¹⁵¹ *Crime Victims in the European Union* (Wergens), p. 281

¹⁵² *ibid*, p. 282

¹⁵³ *Crime Victims in the European Union* (Wergens), p. 285

¹⁵⁴ *ibid*, p. 285

¹⁵⁵ *ibid*, p. 290

¹⁵⁶ *ibid*, p. 290

¹⁵⁷ *ibid*, p. 292

While deciding about a case dealing with rape or other sexual offences, the court is required to take into account the impact that the offence has on the victim. The court is also obliged to hear evidence pertaining to the effects of the offence.¹⁵⁸

There is also the possibility to hear evidence through an intermediary. Adults who are victims of physical or sexual offences are allowed to give testimony by means of television. This is stated in the Criminal Evidence Act (1992). The charter for victims of crime includes public information, specifically targeted towards crime victims.¹⁵⁹

B Compensation practices

I Obtaining compensation from the offender in criminal and civil proceedings

In Ireland there is no provision for the compensation of victims within the criminal law. A victim may proceed with an action against the offender in civil law, for compensation and it will then depend on the merits of the case and the ability of the offender to pay compensation.¹⁶⁰

II Obtaining compensation from the State

The compensation paid by the State, is less than the amount paid in civil courts. A reason for that is that the scheme today does not include compensation for pain and suffering. Entitlement for compensation, under the State's compensation scheme, pre-supposes that the injury was directly caused by a crime of violence.¹⁶¹

¹⁵⁸ Crime Victims in the European Union (Wergens), p. 292

¹⁵⁹ *ibid*, p. 292

¹⁶⁰ answer to the questionnaire, provided by Victim Support Dublin

¹⁶¹ Crime Victims in the European Union (Wergens), p. 297

Italy

A The position of a victim in legal proceedings

I Introduction

Roman Law forms the basis of Italian Criminal Procedural law. Therefore it is a mixed inquisitorial and adversarial system. The main rule of mandatory prosecution, is laid down in the constitution and most offences are still complaint offences. In accordance with the principle of a fair trial and a public hearing within a reasonable time, Italian procedural law stresses the principle of maximum simplification.¹⁶²

The code of criminal procedure is the only legislation directly concerned with crime victims and after a few amendments, the code was finally replaced. The new code has given the crime victim a more active role in the procedure. The investigating judge has to assist the victim in matters concerning damages.¹⁶³

II Definition and legal status of a victim

The victim is given an independent status and provided with certain procedural rights during the course of the criminal procedure act. The role of the victim is either status of a civil party or a qualified witness. The victim is defined as the holder of the interest, protected by the violated penal norm.¹⁶⁴

The victim as a claimant of damages is classified as the "damaged party". The victim can also act as private prosecutor. In this role, the victim has the right to be heard, to examine witnesses, to bring evidence and to inspect files.¹⁶⁵

III Rights and duties involved in a prosecution trial

The public prosecutor leads the investigation and is party to the proceedings. A mandatory duty to prosecute is imposed by the constitution. Criminal acts which cannot be prosecuted without a

¹⁶² *ibid*, p. 310

¹⁶³ *ibid*, pp. 310, 311

¹⁶⁴ *ibid*, p. 312

¹⁶⁵ *ibid*, p. 313

complaint from the victim include: assault, battery, and a number of sexual offences. In such cases, the prosecutor may prosecute but he is not obliged to do so.

The prosecutor is under no legal obligation to take into account any possible claims for economic compensation.¹⁶⁶

As a party, the victim has the right to see the documentation of the case and upon request, the prosecutor must inform the victim about the dismissal of the case. If the victim does not accept the decision about the termination of the charge, a hearing will take place.¹⁶⁷

IV Rights and duties in the court

Victims who must testify, are reminded to do so truthfully and cross examination is part of the trial. Victims who are not considered as injured parties also have the right to submit documents to the judge but a victim can only appeal the judgement if they are party to it.

Specific procedures for protecting victims of rape or assaults do not exist.¹⁶⁸

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

According to Art. 185 of the Penal Code (*Codice Penale*), "any act which constitutes a criminal offence imposes an obligation upon the actor, to compensate any private person who has suffered injury or loss as a result of the offence."¹⁶⁹

Art. 185 also provides that such compensation shall be assessed in accordance with the rules of civil law.¹⁷⁰

II Obtaining compensation from the offender in civil proceedings

The civil liability of the offender must be founded on the principles contained in the Civil Code. Such liability presupposes a sufficient causal link between the crime and the injury suffered by the victim. If the injury does not result from the voluntary act of the offender in this legal sense, then the victim is not entitled to compensation.¹⁷¹

Civil law damages are usually paid in the form of a lump sum.¹⁷²

III Obtaining compensation from the State

In Italy, a general provision for compensation from the state does not exist.

The Netherlands

A The position of a victim in legal proceedings

I Introduction

The Dutch criminal procedure system is both inquisitorial and adversarial. Out of court settlements in which the offender is offered the possibility of voluntary compensation to avoid court procedures are frequently used. Legislation concerning crime victims is found in the penal code (1886) and the code of criminal procedure (1926).¹⁷³

The Dutch criminal code does not contain any special provisions concerning domestic violence and there is no specific legislation concerning compensation in cases of domestic violence either. Rape in marriage is officially regarded as a crime.¹⁷⁴

II Definition and legal status of a victim

The term 'victim of a crime' is not used in legislation. Instead of victim, in some contexts, the term 'interested party' is used. A victim as well as an injured party, is considered to be a person against

¹⁶⁶ Crime Victims in the European Union (Wergens), pp. 314, 315

¹⁶⁷ *ibid*, p. 315

¹⁶⁸ Crime Victims in the European Union (Wergens), p. 316

¹⁶⁹ see Piva in: Compensating Crime Victims, p. 387

¹⁷⁰ *ibid*, p. 387

¹⁷¹ Piva in: Compensating Crime Victims, pp. 388, 389

¹⁷² *ibid*, p. 388

¹⁷³ Crime Victims in the European Union (Wergens), pp. 335, 336

¹⁷⁴ answer to the questionnaire, provided by the University of Tilburg

whom an offence has been committed. They are defined as a person of 18 years or more, who has suffered an injury as a result of a criminal offence and who may participate in criminal proceedings. A victim or injured party is also referred to as disadvantaged party.¹⁷⁵

III Rights and duties involved in a prosecution trial

In the Netherlands, there is a state monopoly on prosecution and there is no possibility for a victim to file a charge; neither a subsidiary right to prosecute nor a right of private prosecution. Consequently, a victim does not have a right to be heard in the trial either.¹⁷⁶

According to the principle of opportunity, the prosecutor may decide not to prosecute by means of his discretion but the injured party can appeal this decision.¹⁷⁷

The examining magistrate, who is similar to the examining magistrate in the French criminal procedure, has in certain respects wider powers than the prosecutor. The examining magistrate may call witnesses and hear them under oath where it is preferable that they do not testify during the trial. This procedure is used for juvenile victims and victims of rape.¹⁷⁸

An effective victim support structure as well as certain duties towards the victims are set out in a policy plan, "Criminal law and Policy".¹⁷⁹

IV Rights and duties in the court

At the court the role of the victim is that of a witness. Cross examination is not used in court. A person summoned to the court as a witness is required to participate in the trial, and as mentioned above the victim has no possibility to be heard except when being interrogated. Witnesses can remain anonymous in the trial.¹⁸⁰ In the Netherlands, the victim has possibilities to testify out-

side the court procedures without having to face the offender.¹⁸¹

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

Compensation and the procedures for compensation are both based on civil as well as on criminal law.¹⁸²

In April 1995, new legislation and new guidelines for victims of crime were introduced in the Dutch legal system (Terwee Law), extending the victim's right to achieve compensation within the criminal proceedings.¹⁸³

With regards to compensation, the most important changes are the introduction of restitution orders and the removal of the existing limits on the civil party procedure.

The introduction of restitution orders means that restitution may be ordered alone or together with an existing sanction. There are no limits on the amount of restitution that can be ordered and the prosecutor is responsible for enforcing payment.

Restitution within the criminal justice process is more straightforward, usually takes less time and is often less expensive than a civil law claim.¹⁸⁴

II Obtaining compensation from the offender in civil proceedings

In Dutch civil law a victim has to be represented by a lawyer, has to pay court fees and runs the risk of being ordered by the judge to pay the costs of the other party.¹⁸⁵

However, civil law offers mainly three important advantages¹⁸⁶:

¹⁸¹ answer to the questionnaire, provided by the University of Tilburg

¹⁸² *ibid*

¹⁸³ see Wemmers / Beer in: *Compensating Crime Victims*, p. 419

¹⁸⁴ see *Crime Victims in the European Union* (Wergens), p. 349

¹⁸⁵ see Wemmers / Beer in: *Compensating Crime Victims*, p. 418

¹⁸⁶ see for more details: Wemmers / de Beer in: *Compensating Crime Victims*, p. 418

¹⁷⁵ *Crime Victims in the European Union* (Wergens), pp. 339, 340

¹⁷⁶ *ibid*, pp. 343

¹⁷⁷ *ibid*, pp. 342, 343

¹⁷⁸ *ibid*, p. 434

¹⁷⁹ *ibid*, p. 344

¹⁸⁰ *ibid*, p. 347

First of all it provides a big variety of remedies, e.g. monetary compensation but also court orders, which oblige the offender to do certain things immediately; furthermore the civil judge can prohibit the offender from doing certain things in the future. Such restraints can be imposed together with a penalty for their breach.

An example of such a restraint, is the possibility to forbid the offender to enter the direct surrounding of a house, the working place or even a whole district of a city. This barring order can be issued within one week or in urgent cases within one day. This order normally lasts for half a year. In case of a breach, the offender has to pay a fine or can be imprisoned for three days.¹⁸⁷

Secondly, under civil law the victim has the initiative and is not dependent on the decision of the public prosecutor in the criminal case.

A third advantage is the fact that in civil law there are no limits to the amount of the monetary claim that a victim can make.

A kind of "drawback" is the fact that the victim has to take action in order to secure compensation from the offender.

Nevertheless, the flexibility of civil law is an attractive option for some victims, especially for female victims of rape and incest.¹⁸⁸ They may in this way achieve large awards for non-pecuniary loss (i.e. pain and suffering) and at the same time ask the judge to forbid the offender from contacting them or entering the victim's neighbourhood.¹⁸⁹

III Obtaining compensation from the State

In the Netherlands, the offender has the primary responsibility to pay the compensation to the victim.¹⁹⁰

State compensation for victims of a crime, is only provided if it was impossible to get compensation from the offender or any other source. Only victims of intentionally violent crimes are within the scope of the state compensation scheme. The

compensation is assessed on the basis of the victim's financial situation and equity.¹⁹¹

Portugal

A The position of a victim in legal proceedings

I Introduction

The Portuguese legal system is primarily inquisitorial but has accusatorial features in the strong and active role of the accused and the victim as an assistant of the prosecution.

The rules for criminal procedure are to be found in the constitution as well as in the code of criminal procedure. Additionally rules concerning damages for the victim are included in the civil and the criminal code.¹⁹² In Portugal, spousal rape is officially regarded as a crime. The Portuguese criminal code contains special provisions concerning domestic violence and there is not only general legislation concerning compensation in cases of domestic violence but specific legislation for this area, as well.¹⁹³

II Definition and legal status of a victim

In the Portuguese criminal procedure law, the victim is referred to as an assistant and the victim is considered to be a collaborator of the prosecutor. An assistant is described as "a representative of the interests to which the law wishes to give special protection in its definition of a criminal offence". In the role of an assistant, the victim is entitled to participate in the criminal as well as in the civil part of the trial. The victim has a capacity to influence the trial and is an active subject in the proceedings.¹⁹⁴

The assistant is entitled to give testimony in the court, be notified of the progress of the proceedings, attend proceedings, request the start of an instruction phase, appeal to a higher court, make

¹⁸⁷see Driem van G. in: Frauen kämpfen in anderen Ländern, ZIF-Info 1990 p. 243; see Egger / Fröschl in: Gewalt gegen Frauen in der Familie, p. 180

¹⁸⁸ Wemmers / Beer in: Compensating Crime Victims, pp. 418 / 419

¹⁸⁹ *ibid.*, p.419

¹⁹⁰ answer to the questionnaire, provided by the University of Tilburg

¹⁹¹ Crime Victims in the European Union (Wergens), p. 350; Wemmers / Beer in: Compensating Crime Victims, pp. 411, 412

¹⁹² Crime Victims in the European Union (Wergens), p. 365

¹⁹³ answer to the questionnaire, provided by the Apoia a Vitima

¹⁹⁴ Crime Victims in the European Union (Wergens), p. 367

his own accusation and demand civil compensation for his losses.¹⁹⁵

Any person who has suffered injury or damage as a result of the crime, can take part in the trial, in the role of an injured party and is able to claim for damages for compensation.¹⁹⁶

III Rights and duties involved in a prosecution trial

According to the principle of legality, the prosecutor has to prosecute all cases but the principle of opportunity plays a role, as well, to a certain extent. The Portuguese prosecutor has an exclusive right to prosecute but a number of "private crimes" are open for private prosecution, i.e. rape.¹⁹⁷

IV Rights and duties in the court

As mentioned above the victim has a strong position in the trial as well. The assistant can appeal decisions which affect his position. It is possible to hold the trial without publicity if the dignity of the victim is at stake. A victim is not obliged to testify under oath.¹⁹⁸

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

In Portugal, compensation for personal injury resulting from a criminal offence is in general determined during the criminal trial against the offender, mostly through the procedure of adhesion of civil claims to criminal proceedings. Claims for compensation are based on civil as well as on criminal law.¹⁹⁹

The decision to seek civil compensation is a matter for the victim (Art. 74-1 of the Code of Criminal Procedure) or of the public prosecutor at the

victim's request (Art. 76-1 of the Code of Criminal Procedure).

An award of compensation by the criminal court is not characterised as a criminal sanction; Art. 128 of the Criminal Code provides that the making of such an award is governed by the civil law.²⁰⁰

II Obtaining compensation from the offender in civil proceedings

There are two main exceptions to the rule of pursuing the civil claim for compensation in the criminal proceedings. Firstly, cases considered as complex cannot be handled in the criminal trial and secondly, when it is impossible from a particular point of view to determine the grounds for the damages, these must be referred to a civil court.²⁰¹

III Obtaining compensation from the State

The primary responsibility to pay compensation to the victim lies with the offender. In general, compensation is available for offences which cause non-material damages. However, this general rule does not apply to requests delivered to the state compensation board.²⁰²

In Portugal, however, members of the same household as the offender are not eligible for state compensation (Art.3-2).²⁰³

Spain

A The position of a victim in legal proceedings

I Introduction

The Spanish criminal procedure system is primarily inquisitorial and aims to avoid discretion, as much as possible. The principles of concentration, oral proceedings, publicity and constitutional rights are important during the trial. Some

¹⁹⁵ Crime Victims in the European Union (Wergens), p. 367

¹⁹⁶ *ibid*, p. 368

¹⁹⁷ *ibid*, p. 372

¹⁹⁸ *ibid*, p. 373

¹⁹⁹ answer to the questionnaire, provided by the Apoio a Vitima; see Antunes in: Compensating Crime Victims, p. 497

²⁰⁰ see Antunes in: Compensating Crime Victims, pp. 497, 498

²⁰¹ see: Crime Victims in the European Union (Wergens), p. 374

²⁰² answer to the questionnaire, provided by the Apoio a Vitima

²⁰³ see Antunes in: Compensating Crime Victims, p. 502

of the constitutional rights affect the victims position directly, such as: the right to prosecute privately. The right of the parties to remain silent in the trial, as well as the rights of fair trial and equality.²⁰⁴

Local variations may affect the situation of crime victims, due to the fact that there are 17 regions which are almost autonomous.²⁰⁵

An offender making a voluntary payment of compensation may derive benefits²⁰⁶.

II Definition and legal status of a victim

There is no legal definition of a crime victim under Spanish laws. The role of victim is either as a party or a witness. As a party, the victim is called an 'interested' or an 'offended' party becoming a party is necessary in order to influence the trial.

A victim has wide powers to prosecute privately.²⁰⁷

III Rights and duties involved in a prosecution trial

The obligations of the prosecution are based on constitutional law, such as a duty for the prosecutor "to ensure respect for the procedural guarantees of the accused and protect the rights of victims and those wronged by an offence". The interests of the victim play a vital role as well when considering whether to drop the charge, as per the principle of opportunity.²⁰⁸

There is a division between public, semi-public and private offences. Types of domestic violence and rape are examples of semi-public offences and they require a complaint by the victim, but the prosecutor may proceed regardless of whether the victim wishes to do so or not.²⁰⁹

Victims of crime are provided with information concerning their rights through a document, which is called an "offer of action". Victims should be provided with this document as soon as

possible, preferably at the time of they report the crime.²¹⁰

IV Rights and duties in the court

During the legal process, all witnesses are legally obliged to participate in the proceedings. All witnesses have to testify under oath but this does not include the victim. As far as the appeal of decisions is concerned, a victim has the same rights as the prosecutor.²¹¹

As a party in the trial, the victim has the right to information which includes information on how to bring charges himself and how to claim restitution from the victim services.

A lack of facilities in the courts may lead to a situation where the victim has to face the offender, close at hand.²¹²

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

The Spanish legal system adopts the principle of accumulation, which favours the treatment of criminal and civil liability not as separate proceedings but as a single process.²¹³ Civil liability is regulated by the Penal Code (Arts. 19 et seq. and 101 et seq.). Art. 19 states that any person who commits a crime is also liable under civil law.²¹⁴

In the Spanish system, the consideration of the victim's interests is of prime importance. The victims are represented by a public prosecutor and they do not need to have the recourse of private lawyers.²¹⁵

II Obtaining compensation from the offender in civil proceedings

Art. 112 of the Code of Criminal Procedure provides that the victim can postpone a civil action

²⁰⁴ Crime Victims in the European Union (Wergens), pp. 384, 385

²⁰⁵ *ibid*, p. 384

²⁰⁶ Crime Victims in the European Union (Wergens), p. 393

²⁰⁷ *ibid*, pp. 387, 388

²⁰⁸ *ibid*, p. 391

²⁰⁹ *ibid*, p. 392

²¹⁰ *ibid*, p. 392

²¹¹ *ibid*, p. 394

²¹² *ibid*, pp. 394, 495

²¹³ Torio-Lopez in: Compensating Crime Victims, p. 522

²¹⁴ *see ibid*, p. 521

²¹⁵ *see* Crime Victims in the European Union (Wergens), p. 395

for a later date a and separate civil process. However, this action is seldom used.²¹⁶

III Obtaining compensation from the State

In Spain, there was no domestic legislation providing a general system of State compensation, for the victims of crime, until 1995. During that year, the government introduced a form of compensation by awarding public assistance to victims of traditional crimes.

The procedure for filing an application differs somewhat from that of other countries. In Spain, the application must be made to the Ministry of Economy and Finances and the decisions are taken by the Ministry's civil servants.²¹⁷

Additional compensation for mental injury arising from a sexual offence, is provided for victims; and this may then cover therapeutic treatment.²¹⁸

Sweden

A The position of a victim in legal proceedings

I Introduction

The main provisions concerning victims of crime are in the code of criminal procedure. Attention is paid to the principles of oral proceedings; concentration and immediacy and the free evaluation of evidence. Other important principles are those of consideration; stating that no one should be unduly subjected to inconveniences in the proceedings and the principle of transparency and openness, including the right of public access to documents which is constitutionally based.²¹⁹

The Swedish criminal code does not contain special provisions with regards to domestic violence. There are no special provisions for compensation in cases of domestic violence.²²⁰

²¹⁶ see Torio-Lopez in: *Compensating Crime Victims*, pp. 522 / 523

²¹⁷ *Crime Victims in the European Union* (Wergens), p. 397

²¹⁸ see *ibid*, p. 397

²¹⁹ *ibid*, p. 409

²²⁰ answer to the questionnaire, provided by Folksam Insurance Group

However, the Commission on violence against women proposed the introduction of a new offence, "gross violation of woman's integrity" including abuse, sexual harassment and threats. It is deemed be more appropriate to assess the overall harassment process, rather than treating the crimes as a series of disturbances and domestic assaults. This would give the court the possibility to address the process as a whole and it would be possible for the court to issue a more severe punishment than when treating each offence separately.²²¹

II Definition and legal status of a victim

A definition for a victim of a crime does not exist in Swedish law. The term used in a legal context is injured party. The crime victim is only a party in the criminal trial, in so far as he brings the action to trial.

The injured party has some rights in the trial, such as: suing for damages, prosecuting or supporting the prosecutor and questioning to the accused.²²²

The identity of injured party is defined by assessing of the victim from a material point of view and on the code of judicial procedure. This results in a definition of the injured party as the bearer of the interests which the penal provision in question, serves to protect.²²³

III Rights and duties involved in a prosecution trial

A lawsuit may be brought either by the public prosecutor or by the injured party. However, most offences are subject to public prosecution. If there is enough evidence, prosecution is mandatory with the consequence that once the injured party has reported the offence they cannot withdraw the complaint.²²⁴

Although the principle of legality prevails, there are ways to terminate charges but the opinion of the injured party should be taken into account, when the prosecutor makes the decision to withdraw the investigation. Special attention should

²²¹ *Crime Victims in the European Union* (Wergens), p. 412

²²² *ibid*, p. 414

²²³ *ibid*, p. 414

²²⁴ *ibid*, p. 418

be paid if the injured party wishes to make claims for damages.²²⁵

The prosecutor, principally, has a legal obligation to investigate and prepare the claim for damages caused by an offence. He also has the duty to inform the victim about relevant information and about the possibility of claiming for damages in the criminal proceedings.²²⁶

IV Rights and duties in the court

The injured party is generally not party to the procedure, unless he brings a suit or supports the prosecution. The injured party may question the accused during a court hearing and the injured party also gives testimony before the accused.²²⁷

In cases of sexual assault, it is possible to deviate from the principle of openness, if there is a risk that the publicity in the courtroom may influence the victim in a negative way. In these cases, a court hearing via camera (non-public) is possible. The court may also order that the injured party is heard in a separate room and may introduce an order of confidentiality to the proceedings.²²⁸

Information is provided for victims and witnesses through leaflets, which are issued: on criminal procedure, legal aid and the role of the witness.²²⁹

B Compensation practices

I Obtaining compensation from the offender in criminal proceedings

In Sweden, the claim for compensation is in most cases handled by the court together with the criminal charges against the offender. The criminal court decides both the sentence to be imposed on the offender and the compensation to be paid to the victim.²³⁰

Compensation does not include any punitive element.

It is the obligation of the public prosecutor to represent the victim and act on their behalf with regards to the claim of compensation. If the victim's claim is considered as complicated, the court may decide that it should be separated from the criminal proceedings and be continued as a civil case.²³¹

II Obtaining compensation from the offender in civil proceedings

Damages can always be claimed in civil proceedings.²³²

If the criminal court decides to transfer the claim for damages to a civil court, the victim has to act without the assistance of the prosecutor. Instead, they are in many cases assisted by another lawyer paid for the State.²³³

III Obtaining compensation from the State

The offender has the primary responsibility to pay compensation to the victim. State compensation is subsidiary which means state compensation is only provided if there are no other means for the victim to achieve compensation.²³⁴

Claims are considered only where the offence has been reported to the public prosecutor or to the police. An exception to this requirement may be made, if the applicant can show good reason why he failed to notify the relevant authorities.²³⁵

²²⁵ Crime Victims in the European Union (Wergens), pp. 418, 419

²²⁶ *ibid*, pp. 420, 421

²²⁷ *ibid*, p. 424

²²⁸ *ibid*, pp. 424, 425

²²⁹ *ibid*, p. 425

²³⁰ see Romander in: Compensating Crime Victims, pp. 554, 555

²³¹ see Crime Victims in the European Union (Wergens), p. 426

²³² see Romander in: Compensating Crime Victims, p. 555

²³³ see *ibid*, p. 555

²³⁴ answer to the questionnaire, provided by the Folk-sam Insurance Group

²³⁵ Romander in: Compensating Crime Victims, p. 557