

„Victim Protection in Criminal Proceedings Legislation: A pan-European Comparison“

Country Report: Sweden

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The questions in the Guidelines are answered briefly as follows below, concerning Swedish law. Relevant acts or parts of acts are enclosed, where available in the official translations to in English. Some Swedish legal terms are given in notes to mark the fact that the English terms often not apply perfectly well to the legal institutes described.

Does your country's legal structure differentiate between the civil and criminal legal consequences of an offence?

Yes.

If so:

What consequences are laid down by civil law (e.g. damages, compensation for pain and suffering)?

The Tort Liability Act (SFS 1972:207, consolidated version 2001:732, appendix 1) states, as a general principle, that a person who causes material damage or personal injury shall compensate the damage. The injured party is entitled to full compensation for his or her losses. A person who causes economic loss without connection with material damage (pure economic loss) shall compensate such damage if it has a criminal action as its cause, e.g. fraud. Where someone is seriously violated in an immaterial sense through a crime against his or her person, freedom, peace or honour, the offender shall compensate the violation.

Where perpetrators below 18 years have to pay damages, the Court should consider the perpetrators' age and maturity. The amount of damages to be paid can be moderated, e.g. because of compensation through insurance or because the victim has contributed to the injury. There is a certain responsibility for the state, the communities and employers for damages caused by the employees within service.

The tort liability is part of the civil law, also in cases where tort liability has a criminal action as its cause. The brief sections of the act are interpreted and defined by the Supreme Court in several precedents.

What consequences are laid down by criminal law (e.g. fine, custodial punishment)?

See the Penal Code, chapter 29 and 30, appendix 2. There are two types of punishment: fine and imprisonment. Two other types of sanction, related to the personal circumstances of the perpetrator, are probation and conditional sentence. Special sanctions are in use for youths and persons with psychiatric diseases.

The general principle is that the punishment should be related to the damage, violation or danger caused by the criminal act and to the knowledge and motives of the perpetrator.

Aggravating circumstances, most of them relating to the victim, should be considered when the penal value is decided: ruthlessness, exploitation of the victim's vulnerable position, and violation of the victim's ethnic origin, religion, or sexual orientation. Also mitigating circumstances should be considered, e.g. when the crime was caused by strong human compassion. When the punishment is determined, reasonable consideration is given to e.g. whether the accused to the best of his or her ability has attempted to prevent, remedy or limit the harmful consequences of the crime.

Are there mixed forms (e.g. higher damages, compensation ordered as a sanction, symbolic compensation)?

In Industrial Property Law, e.g. the Patent Act, 58th §, and the Trade Mark Act, 38th §, it shall be considered when the damage to be paid is decided, besides other circumstances, the interest of the owner of the infringed right that no further infringements are made. This regulation does not set aside the common principles in tort law, but it gives room for consideration of other than strictly economic circumstances, e.g. the degree of negligence on the infringing party.

What form do the procedural means of enforcing civil and criminal legal consequences take?

The Code of Judicial Procedure provides two different sorts of procedure: civil procedure and criminal procedure. The cases start, with some rare exceptions, on the District Court level. The main rule is that the public prosecutor prosecutes offences. All offences, unless those expressly excepted, fall within the domain of public prosecution. The public prosecutor has a general duty to prosecute such offences. If the prosecutor decides not to prosecute the offence, e.g. where the prosecutor finds that sufficient evidence is lacking, the victim has a right to institute prosecution or take over prosecution that is already instituted.

What are the decisive differences for instance in the procedural position of the victim or in the courts duty to discover the facts?

The judicial procedure is governed by the accusatorial principle. In both criminal and civil proceedings, the parties are responsible for submitting the circumstances and present the evidence. The Court has the right to present evidence on its own motion, if necessary, but this happens very rarely. In both civil and criminal cases, the Court shall make certain that the case is investigated according to what its nature requires. This gives the judge a possibility to lead the process, but the use of this possibility is in general practise more restricted in criminal than in civil cases.

In criminal cases, the prosecutor should prove beyond reasonable doubt that the accused is guilty. The burden of proof lies on the prosecutor. In civil cases, the burden of proof is decided according to other principles, e.g. the principle that the party that with least effort could have secured evidence in different respects also has the burden of proof in those respects.

Are there mixed forms? If so: what procedural model do they have?

Chapter 20 and 22 of the Code of Judicial Procedure, appendix 3, concern the rights of the victim. Chapter 22 provides for a mixed form of process: The civil consequences of a crime can be tried within the criminal proceedings. This is the most common form of proceedings where compensation relating to a crime is demanded. The prosecutor can submit the action of the injured party, but even if he does not, and the victim submits his or her action, the main rule is that the civil action is tried in the criminal case. The possibility to disjoin the private claim from the criminal case is used only when the trial concerning the private claim would cause major inconvenience in the criminal process.

The difference between a claim in consequence of an offence and a claim based upon an offence should be noted. The first phrase is wider and contains the meaning of the second. The first phrase but not the second contains claims that relate to the crime but are based on the common rules on negligence.

In the civil part of a mixed case, the rules of evidence of the civil procedure apply, and in the criminal part of the case, the rules of evidence of the criminal procedure apply. A defendant, who is found innocent because criminal intent was not proven, can be found to have no right to certain property (e.g. when he was accused of receiving stolen goods) or be liable to pay damages because of negligence.

The injured party can also have a counsel, who is appointed by the court in e.g. cases concerning sexual crimes, assault, or robbery. When it is to be decided whether a counsel is to be appointed, the Court should consider the penal value of the crime as well as the personal circumstances of the victim. The counsel for the injured party is paid by the state. The Court should, if the defendant is sentenced, decide that he or she should pay back to the state – in whole or in part – the cost of the defence and the cost of the counsel for the injured party.

Does your country's legal order take efforts by the perpetrator which aim to provide personal conciliation with the victim (mediation) or compensation for the material or immaterial damage done to the victim into account? Will it acknowledge symbolic acts of compensation?

When a punishment is determined, reasonable consideration is given to e.g. whether the accused to the best of his or her ability has attempted to prevent, remedy or limit the harmful consequences of the crime (see also above).

There is a rather new Act (SFS 2002:445) concerning mediation in criminal cases. The National Council for Crime Prevention is responsible for economic support during 2003 to communities, which organise mediation. The aim is that every community should organise mediation, but the communities are not obliged to do so. Since mediation is something new in the Swedish legal system, we are not able to describe its results yet.

In civil cases, the Court has a duty to try to reconcile the parties, if that is not inappropriate. Thus, an agreement between the victim and the perpetrator can be reached before the Court, although conciliation characteristically occurs mostly in commercial disputes.

If so:

General Questions

Which perpetrator efforts to mediate or compensate will be considered (please give an overview in key-words)?

Does it make a difference whether the legal rights of a natural person or those of another holder of legal rights (e.g. a company, the general public, the state) are concerned?

In detail:

Does your country's legal system support a perpetrators efforts which are aimed at providing conciliation with the victim (mediation) or compensation for the damage caused,

before formal criminal investigation is initiated (e.g. in mediation or restitution proceedings initiated or accompanied by the state),

before the formal criminal court procedure begins,

as part of the formal criminal court procedure,

as part of the execution of punishment stage?

If so:

By which means does your legal system support these efforts?

Which factual conditions (e.g. seriousness of the offence, confession by the perpetrator) are associated with these means?

What rights and obligations do the victim and perpetrator have in these proceedings?

Can these proceedings be forced against the victim and/or perpetrator's will?

The above said act concerning mediation stipulates, that mediation should take place in the interest of both parties, and it should aim to diminish the negative consequences of the crime. Mediation is voluntary for both parties, and the victim can ask for compensation and the perpetrator can apologise. The mediator should only cooperate to an agreement on compensation if the agreement is not unreasonable. If mediation has taken place, it will not affect the Court procedure except that, of course, where compensation has been paid, that question will not occur before the Court.

What consequences do the perpetrator's efforts to provide for personal conciliation with the victim (mediation) or compensation for the damage caused have in relation to criminal proceedings in general and in particular to the criminal sanction?

Do mediation or compensation efforts negate criminal culpability (always or only as long as other conditions are fulfilled)?

No, but this should be considered when the punishment is determined.

Is it possible for the investigative authorities to (finally) drop criminal proceedings after successful mediation or compensation efforts?

Does the failure of such efforts act as an impediment to proceedings being dropped by the investigative authorities?

The public prosecutor has a general duty to prosecute most offences. However, the prosecutor may waive prosecution, e.g. if it is manifest by reason of special circumstances that no sanction is required to prevent the suspect from engaging in further criminal activity and that, in view of the circumstances, the institution of a prosecution is not required for other reasons.

When the victim has promised not to report the crime or institute a prosecution, or when he has withdrawn his accusation or prosecution, he may not report the crime or institute a prosecution. If the offence falls within the domain of public prosecution only upon accusation by the victim, public prosecution may not take place when such a promise has been made.

After successful mediation or compensation efforts can the courts drop proceedings without a judgement, can it refrain from punishment within a judgement or give a milder sentence?

Such circumstances should, as mentioned, be considered when the punishment is determined. The Court also has the possibility to grant exemption from sanction; see the Penal Code, chapter 29 6th § in appendix 2. Exemption from sanction can be granted if it is manifestly unreasonable to impose a sanction, e.g. when the accused to the best of his or her ability has attempted to prevent, remedy or limit the harmful consequences of the crime.

Does, on the other hand, a failure of such efforts act as an impediment to the procedural possibilities described or can it even lead to the perpetrator being punished more severely?

No.

Can successful mediation and compensation efforts by the perpetrator have an effect on the actual form of punishment (e.g. priority given to restitution rather than a fine, early release from penal custody, more relaxed or „open“ execution of a custodial sentence e.g. the prisoner is permitted to leave the prison during daytime to go to work)?

Can, alternatively, the failure of such efforts lead to more severe sentencing or execution of punishment (e.g. refusal to accept instalment payments for fines, the refusal to grant early-release from prison, the refusal of privileges in prison)?

No.

Can the investigative authorities or the criminal courts require personal conciliation between victim and perpetrator (mediation) or compensation for the material and immaterial damage done?

No. Concerning compensation, see above.

Is it possible to (preliminarily) drop proceedings on condition that the perpetrator attempts to achieve personal conciliation with the victim or that he (completely or in part or symbolically or excessively) compensates for the damage caused?

No.

If a punishment is put out on probation can this be done with the condition that the perpetrator is required to attempt to achieve personal conciliation with the victim

or that he compensates (completely, in part, symbolically, excessively) for the damage caused?

No.

Can personal conciliation between the perpetrator and victim or (complete, partial, symbolic, excessive) compensation for damage caused be ordered as part of a criminal court's judgement?

Conciliation cannot be ordered in the judgement. However, the normal procedure is that economic compensation for criminal actions is ordered within the judgement in the criminal case.

If so:

How do these orders affect the type and severity of the punishment?

The aim of the compensation is to restore the victim, but the punishment is in the interest of society. However, on occasions the punishment can be made somewhat milder than usual when a heavy compensation is to be paid.

Are they an addition to the real punishment or do they replace it?

The compensation is in addition to the punishment.

Can the victim require the investigative authorities or the courts to make an order as described in questions 1-3?

Economic compensation relating to a crime is required by the victim, on his or her own initiative or on the initiative of the prosecutor.

What consequences does a failure on the perpetrators part to fulfil the conditions and orders described in questions 1-3 lead to?

The Court orders in civil cases and in civil parts of criminal cases can be enforced through the enforcement authorities.

Can criminal legal or criminal procedural mechanisms be used to secure a claim against the perpetrator's assets for the victim's benefit?

If so: does the victim have a right to such mechanisms?

Yes. In both criminal and civil cases, the Court may order provisional attachment of so much of the defendant's property that the claim may be assumed to be secured on execution. In criminal cases, provisional attachment may be requested by the investigation leader, the prosecutor, or the victim.

The Court may also, when prosecution has been initiated, consider provisional attachment on its own motion, but the Court may not order provisional attachment without a request.

In civil cases, the victim can act as a plaintiff. If he or she shows probable cause to believe that he or she has a claim, which can be tried in a judicial proceeding or similar order, the Court may order provisional attachment of so much of the defendant's property that the claim may be assumed to be secured on execution.

In both cases, it is required that it is reasonable to suspect, that the defendant by absconding, removing property, or other action, will evade payment of the debt.

What consequences do the conciliatory or compensatory efforts a perpetrator makes have on the rights of the victim under civil law (e.g. on damages or compensation for pain and suffering) or on potential civil law litigation?

Do successful conciliatory or compensatory efforts on the perpetrators part nullify the victim's rights under civil law (automatically or under particular conditions, completely or in part)?

According to general principles of civil law, a victim, who already has been fully compensated for the damage by the perpetrator, can have no success in Court if claiming further compensation.

Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for the victim's rights under civil law?

No; however, if part of the damage has been compensated, the victim can claim compensation only as to the rest of the damage.

Do successful conciliatory or compensatory efforts on the perpetrators part settle (i.e. end) civil law litigation?

If the perpetrator proves, that he has fully compensated the victim, the Court would have to reject the action. The action would thus have to be tried on its merits. The action would only be dismissed – because of res judicata – if a civil case conciliation has been agreed in Court and confirmed in a judgement.

If so:

Does this require a special declaration by the victim or the perpetrator?

Does a court decision follow?

In a civil case, a Court decision follows on a conciliation only when the parties require that the conciliation is confirmed in a judgement. If the conciliation is not confirmed in a judgement, the case will be dismissed.

Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for civil law proceedings?

No.

Do successful conciliatory or compensatory efforts on the perpetrators part have consequences for the execution of judgements already made under civil law or for the execution of other declarations (e.g. documents providing for immediate rights, in-court agreements)

Do unsuccessful conciliatory or compensatory efforts on the perpetrators part have consequences for the execution?

The aim of the execution is that the ordered compensation should be paid. When that is done, there is no room for further execution.

Which position does the legal system in your country grant victims?

What informational rights do they have?

(e.g. reports on the progress of investigations, concerning the investigative authority's interview dates, court dates, concerning the outcome of proceedings, as to the upcoming release of the perpetrator from prison; rights to view files)

The victim should notify the investigation leader or the prosecutor if he or she wants his or her claim to be entertained together with the prosecution. The prosecutor should inform the victim about this possibility. If the victim should come to Court to be interrogated or, when the prosecutor has decided not to institute the victim's action, to submit his action, the Court summons the victim. In other cases, the victim should be asked whether he or she wishes to be informed about court dates, when decisions are made etc. If a person who is taken into custody escapes, the victim should be informed, if necessary.

The victim should be asked whether he or she wishes to be informed about in which prison the perpetrator is, if he serves part of his sentence outside prison, when he is

released, if he escapes, etc. This information is not given, however, if it is obviously unnecessary to give it or if it would endanger the prisoner's life.

The Court sends the judgement to the parties, and also to a victim who is not a party if the victim has required a copy of the judgement. The Court files are principally open to the public, unless special rules state that information therein is secret, e.g. medical certificates concerning mentally diseased persons.

What opportunities do they have to influence the development of criminal proceedings or to actively participate in them?

(e.g. criminal prosecution only if they request it, i.e. press charges; requirements that they be heard or give their consent before proceedings are dropped; right to be present, to ask questions and to make formal requests during the investigative and court proceedings; possibility of making appeals against decisions made by the investigative authorities or the court)?

In most cases, the prosecutor has a duty to prosecute crime. In certain cases, such as defamation, the prosecutor may initiate an action only if it is in the public interest. If the prosecutor decides not to prosecute the offence, e.g. where the prosecutor finds that sufficient evidence is lacking, the victim has a right to institute prosecution or take over prosecution that is already instituted. During the process, the victim, if being a party, has the right to ask questions. The victim has the right to support the prosecution and to appeal to a superior Court. If the prosecutor decides not to initiate a prosecution, the victim may request that a superior prosecutor reviews the decision.

Do crime victims have the opportunity to use the assistance of a lawyer and to be represented by one? Do they have a right to have a lawyer paid for by the state?

Yes. The court can appoint a counsel for the injured party. See above. The counsel for the injured party is paid by the state, and the Court should, if the defendant is sentenced, decide that the defendant should pay back the whole or part of the cost to the state. The victim and his or her counsel sit next to the prosecutor in the courtroom.

In how far is the position of the „victimised witness“ different to that of other witnesses?

Witnesses swear, with some exceptions, an oath, but victims do not. In cases concerning traffic accidents, where the alleged crime is only a breach of a traffic rule and not manslaughter etc., the victim does not fall within the first hand scope of the rule. The victim therefore can be summoned as a witness. If the victim has a claim for compensation, it is a claim in consequence of the offence and not a claim based upon the offence. However, the victim is then a party, and acts as such and not as a witness.

What further legal and practical mechanisms are used to help protect the victim or reduce the stress caused to him/her by criminal proceedings?

(e.g. a lawyer or other person is paid by the state to accompany him/her; exclusion of the public; taking of evidence without the accused being present; evidence taken only by the judge or another specified person; the use of video-technology in the investigative and court stage; rights to refuse to make a statement; the right to refuse examinations or evaluations)

See above concerning counsels for victims. Court hearings are open to the public, unless secret information is to be discussed, e.g. medical certificates concerning mentally diseased, or the defendant is young and can be distressed by the public. Evidence is taken by the Court, but when children are to be questioned, the evidence can be taken by the Court through a videotaped interrogation. Telephone is used when remote witnesses are to be heard, and some Courts also use video-technology. If there is ground to believe that a witness or a victim cannot speak openly because of the presence of a party or a listener, the Court may order the party or listener to be excluded from the courtroom. The party will then, during the interrogation, listen to the proceedings through a loudspeaker in another room.

On the other hand: what obligations are placed on crime victims?

The victim and other persons who may know something about the crime have an obligation to allow the police to interrogate them. If they do not fulfil this, they can be subject to pay a fine or the police may bring them to the police station.

If a victim has reported an offence to the police, and the offence falls within the domain of public prosecution, it has no legal effects if the victim later withdraws his or her report. It is therefore not uncommon that e.g. cases concerning

violence within a family are tried in a situation where the victim appears to no longer want the case to be tried.

Are there state or private institutions in your country that grant crime victims compensation for damage caused and support independent of efforts on the perpetrators part?

See appendices 4 and 5.

What is the current factual situation regarding the use, acceptance and success of the possibilities your country's legal system offers for personal conciliation between victim and perpetrator (mediation), compensation of the damage caused to the victim and symbolic compensatory acts on the perpetrator's part?

As stated above, mediation in criminal cases is something new in Sweden, and therefore we cannot evaluate it yet. In criminal cases, claims for compensation are often tried.

Which particular aims are part of the legal political debate in your country to improve and increase victim protection?

Particularly:

Is there a desire to provide for simpler and faster means of satisfying crime victims' interest in mediation or compensation?

Probably, the effects of the new act on mediation will be evaluated before further steps are taken.

Is there a desire to provide for or to further develop a unitary process which simultaneously satisfies the states interest in punishment as well as the victim's conciliatory and compensatory interest?

Since the common form of procedure is such, that the criminal and civil effects of a crime are tried in the same process, this interest is already satisfied.

Appendices:

Tort Liability Act (consolidated version SFS 2001:732) in Swedish, to be translated.

Penal Code, chapter 29 and 30, official version in English.

Code of Judicial Procedure, chapter 20 and 22, official version in English.

Criminal Injuries Compensation Act (consolidated version as of SFS 1999:253), unofficial version in English

Information from the Crime Victim Compensation and Support Authority:

5:1 Extract from Julia Mikaelsson and Anna Wergens, *Repairing the Irreparable. State Compensation to Crime Victims in the European Union*, Umeå 2001, pp. 133-146.

5:2 Information to Victims of Crimes against the Person

5:3 Information to Crime Victims