

## IMPROVING PROTECTION OF VICTIMS' RIGHTS IN LATVIA – ACCESS TO LEGAL AID AND MEDIATION AS A TOLL TO SETTLE THE CONFLICT

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Latvia is quite a small country with approximately 2 million inhabitants and does not have a comprehensive victim support system, nor is there a single policy that might lead to assume that the development of such a system would be seen as a priority in a nearest future. According to the research made by Centre for Public policy PROVIDUS, the victim is not the central figure in the criminal proceedings in Latvia. However, it does not mean there is a total disregard of the victim's needs. Today, the needs of the victim are subordinated to general interests of the criminal proceedings – obtaining and examining information, as well as terminating the criminal proceedings within a reasonable timeframe, free from prolonged delay. Nevertheless, not paying sufficient attention towards the victim's interests it is not possible to regulate criminal legal relations in a fair manner<sup>1</sup>.

The number of initiated criminal proceedings in Latvia is rather high – for instance, in 2011 there were 49'528 criminal proceedings initiated, in 2012 the number decreased to 45'018 and in 2013 it was 45'096.<sup>2</sup> As for a specific number of crime victims – the latest available statistics are from 2011 and 2012 with 15'403 and 12'600 officially recognized victims respectively<sup>3</sup>. Within the context of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA<sup>4</sup>, these numbers indicate the approximate target group of its implementation.

In 2012, Victimization Survey of the Latvian Population was carried out<sup>5</sup>. Survey showed that the most crucial need of crime victims is that of legal aid 39% of crime victims mentioned this as their first priority.

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<sup>1</sup> [http://www.providus.lv/upload\\_file/Projekti/Kriminalitesibas/Victim%20support/ANG\\_105\\_finishdoc.pdf](http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/ANG_105_finishdoc.pdf), 80 pp

<sup>2</sup> Annual reports of State Police, [http://www.vp.gov.lv/faili/sadalas/2013.\\_gada\\_publicais\\_parskats.pdf](http://www.vp.gov.lv/faili/sadalas/2013._gada_publicais_parskats.pdf)

<sup>3</sup> Dzenovska I, Judins A., Zavackis A. "Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā", [http://www.providus.lv/upload\\_file/Projekti/Kriminalitesibas/Victim%20support/Noziedz%C4%ABgos%20nodar%C4%ABjumos%20cietu%C5%A1o%20vajadz%C4%ABgu%20nodro%C5%A1in%C4%81jums\\_PK.pdf](http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Noziedz%C4%ABgos%20nodar%C4%ABjumos%20cietu%C5%A1o%20vajadz%C4%ABgu%20nodro%C5%A1in%C4%81jums_PK.pdf).

<sup>4</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF> (last visited on 19 June 2014).

<sup>5</sup> Victimization Survey of the Latvian Population. Centre for Public Policy PROVIDUS, SIA Fieldex, 2012. Available at: [http://www.providus.lv/upload\\_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizācijas\\_petijums\\_Fieldex\\_2012\\_Final.pdf](http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizācijas_petijums_Fieldex_2012_Final.pdf) (last visited on 19 June 2014).

## 1. How needs of victims addressed within Latvian legal system?

Criminal Procedure Law of Latvia includes a specific chapter dedicated to victims and the representation thereof – a chapter which also includes procedural rights and obligations of the victims. Victim's (or representative thereof) right to invite a sworn advocate or an assistant of a sworn advocate<sup>6</sup> for the provision of legal assistance is indicated as one of the general principles of the rights of a victim.<sup>7</sup> However, there are several questions to be asked before one can assure that the main need of victims – need for legal aid, is ensured.

Firstly, the importance of status “a victim” must be stressed. In Latvia, the mere fact of harm that has been caused to a person is not sufficient to be recognized as a victim within the understanding of Criminal Procedure Law (CPL). Section 95 of CPL states that a victim in criminal proceedings may be a natural person or legal person to whom harm was caused by a criminal offence, that is, a moral injury, physical suffering, or a material loss. Section 96 CPL stipulates that a person shall be recognised as a victim by an investigator, a public prosecutor, or a member of an investigative group, with a decision thereof, which may also be written in the manner of a resolution. Taking into consideration the above mentioned, the process of being recognized as a victim within the understanding of CPL consists of four steps. First of all, **criminal procedure must be initiated** which, among other aspects, requires reporting the crime to police. It must be noted that in Latvia the level of unreported crime is rather high – depending on the type of crime, it can reach 40%-80% of all crimes<sup>8</sup>, which gives an approximate impression on the number of victims excluded from the Criminal justice system at its first stage. Secondly, there must be information obtained that allows to assume that **as a result of an offence, a harm has been caused to the person**. Thirdly, the **person who has suffered from harm must agree to become a victim within criminal proceedings**. Finally, the person leading the criminal proceedings recognizes the person as a victim within understanding of CPL. Undergoing these steps leads the victim to have rights to have legal assistance. It must be noted that different conditions apply in case a minor needs legal aid but due to the limitations of this article, this aspect will be left out of overall description and analysis.

When evaluating access to legal aid after person has been recognized as a victim of crime, the second question to consider is to how many victims legal aid is actually accessible. Expenses paid for legal assistance can be reimbursed from the offender, nonetheless the victim has to be able to cover these expenses at the moment they occur. In accordance with the Victimization Survey of the Latvian Population, for more than a half of victims the average income (per family

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<sup>6</sup> Criminal Procedure Law, Section 79.pantu.

<sup>7</sup> Criminal Procedure Law, Section 97 General Principles of the Rights of a Victim.

<sup>8</sup> Kornberga I., Judins A., Zavackis A. Noziedzīgos nodarījumos cietušo vajadzību nodrošinājums: atbalsts viktimizācijas prevencijai Latvijā. Rīga: PROVIDUS, 2013.

member) in 2012 did not exceed EUR 285 per month.<sup>9</sup> For comparison – EUR 285 also corresponds to the minimal monthly wage for 2012.<sup>10</sup> This data leads to founded doubts as to whether the majority of victims will be able to afford legal aid.

For those who cannot afford legal aid, State ensured legal aid should be available. In accordance with State Ensured Legal Aid Law (SELAL), person has to meet rather strict conditions to be entitled for state's help. As stated in Section 3 of SELAL, person has the right to request legal aid if: (1) one has obtained the status of a low-income or a person in need, in accordance with the procedures specified in the regulatory enactments regarding the recognition of a natural person as a low-income or needy person<sup>11</sup>; or (2) one finds oneself suddenly in a situation where the material conditions prevent them from ensuring the protection of one's rights (due to a natural disaster or *force majeure* or other circumstances beyond one's control), or are on full support of the State or local government.<sup>12</sup>

Conditions for receiving State ensured legal aid are also considered as fairly restrictive by the vast majority of stakeholders in the field. As shown in Figure 1, 39% of all stakeholders consider the conditions fairly restrictive while 18% of all stakeholders think that the conditions are very restrictive. Only 4% of stakeholders assess the conditions as very open and only 7% - as fairly open.

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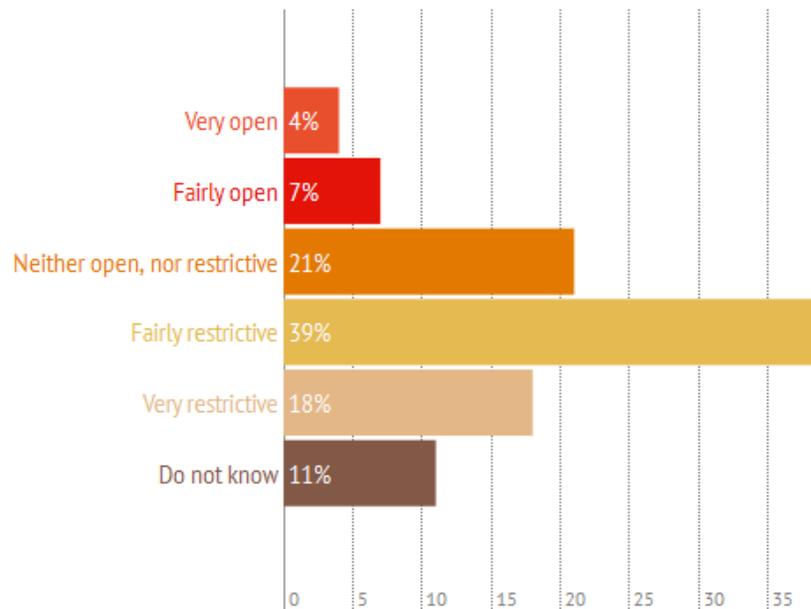
<sup>9</sup> Victimization Survey of the Latvian Population. Centre for Public Policy PROVIDUS, SIA Fieldex, 2012. Available at: [http://www.providus.lv/upload\\_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizacijas\\_petijums\\_Fieldex\\_2012\\_Final.pdf](http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizacijas_petijums_Fieldex_2012_Final.pdf) (last visited on 19 June 2014).

<sup>10</sup> <http://www.lm.gov.lv/news/id/2983>.

<sup>11</sup> Author's note: in accordance with national rules, person's average income of last three months cannot exceed EUR 128 EUR per month (per family member). <http://likumi.lv/doc.php?id=207462>

<sup>12</sup> State Ensured Legal Aid Law, Section 3. Available at: <http://likumi.lv/doc.php?id=104831> (last visited on 19 June 2014).

**Figure 1. Assessment of the conditions that a person has to meet to qualify for state-provided legal aid**

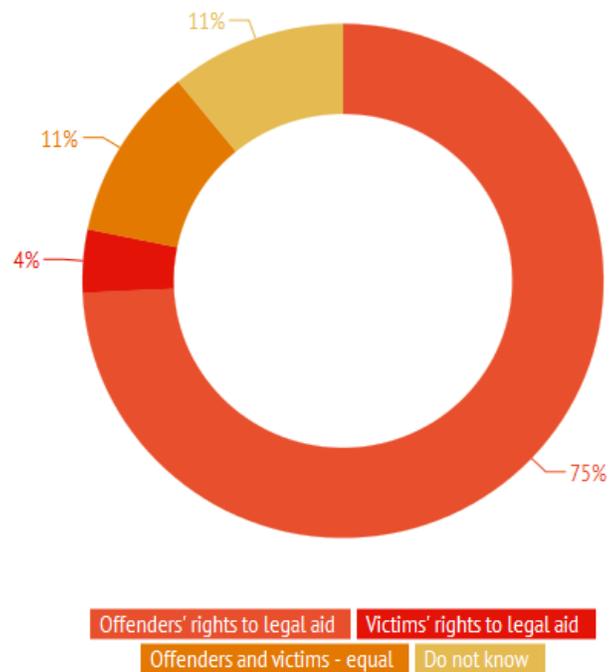


**Source: Survey of stakeholders within the project Improving Protection of Victim’s Rights: Access to Legal Aid (2013).**

For comparison – Section 20 of CPL states the conditions that has to be met by a person who has the right to defense, namely: “If a person may not invite a defense counsel due to his or her financial situation, the State shall ensure assistance of a defense counsel for such person and decide on the remuneration of the defense counsel from State resources, completely or partially discharging such person from payment.” Generally, in case of offender there are only two aspects to consider – whether the person has been recognized as a person who has the right to defense within the understanding of CPL (a) and whether this person cannot afford defense council (b) in which case the solution is ensured by the state by providing a state ensured defense council.

As for the victims of crime, the main difference is not in the number of aspects for consideration but in the consequences of the fact that person cannot afford legal aid – a very limited group of victims is entitled to additional help form state. This also leads to the opinion the majority of stakeholders have – when evaluating the broadness of safeguarding rights to legal aid of offenders and victims, 75% of all respondents indicated that offenders’ rights to legal aid are broader and better safeguarded. Only 11% of respondents thought that the offenders and victims are in equal circumstances while as little as 4% if respondents indicated that victims’ rights to legal aid are broader and better safeguarded.

**Figure 2. Whose rights to legal aid are broader and better safeguarded?**



**Source: Survey of stakeholders within the project Improving Protection of Victim's Rights: Access to Legal Aid (2013).**

It must be noted however, that the issue of victims' access to legal aid and defence councils should be looked at from several viewpoints. It is stressed out that the presence of a defence council on victim's part contributes to timely execution of criminal procedure and, in a way, disciplines the person directing the proceedings to fulfil one's obligations.<sup>13</sup> It might be necessary to address this problem otherwise – by changing the attitude of persons directing the proceedings, among other things. In many cases victims do not need defence – they need information and explanations. This was also confirmed by participants in Victimization Survey of the Latvian Population as 26% (the third priority of all needs) of respondents indicated a need for information about their further actions in specific situation.<sup>14</sup>

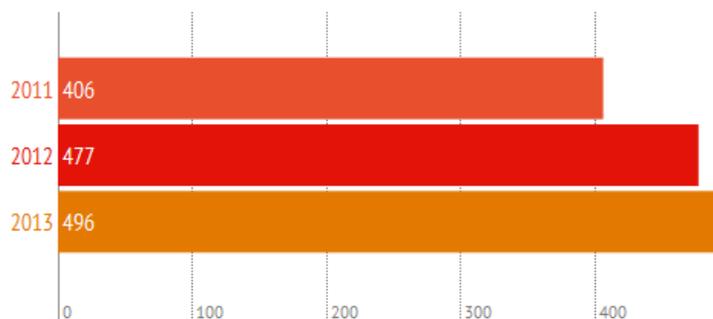
As the next aspect to be analyzed within this article is compensation to victims, an example that is directly linked with the topic that can be used to highlight the importance of information as well. In case of state compensation for victims, the most common grounds for refusing the request for compensation was the fact that the deadline of one year after the offence was missed. However, as the persons directing the proceedings are obliged to inform victims about

<sup>13</sup>Litvins G., „Improving protection of victims' rights: access to legal aid”, Latvian National Report, available at: [http://www.providus.lv/upload\\_file/Publikacijas/Kriminalt/Report\\_Latvia.pdf](http://www.providus.lv/upload_file/Publikacijas/Kriminalt/Report_Latvia.pdf), (last visited on 19 June 2014)

<sup>14</sup>Victimization Survey of the Latvian Population. Centre for Public Policy PROVIDUS, SIA Fieldex, 2012. Available at: [http://www.providus.lv/upload\\_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizacijas\\_petijums\\_Fieldex\\_2012\\_Final.pdf](http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/Viktimizacijas_petijums_Fieldex_2012_Final.pdf) (last visited on 19 June 2014).

their rights and obligations within criminal proceedings (including the right to request compensation), there has been a steady increase of granted requests.

**Figure 3. Granted requests of State compensation for victims of crime.**



Source: Annual report of Legal Aid Administration<sup>15</sup>

To continue the analysis of victims rights to compensation in Latvia, it must be stressed out that the right to receive compensation is another general principle of the rights of a victim and it is viewed as an important component within the context of victims' rights to legal aid.

Section 97 of CPL states that: "A victim, taking into account the amount of financial loss, physical suffering, and moral injury caused to him or her, shall submit the amounts of such harm, and use his or her procedural rights for acquiring moral and material compensation." Chapter 26 of CPL provides further framework on receiving the compensation for harm caused by a criminal offence. Firstly, victim can receive compensation from the offender and it can be paid voluntarily or on the basis of a court adjudication. Victim has the right to submit an application regarding compensation for a caused harm in any stage of criminal proceedings up to the commencement of a court investigation in a court of first instance and the application can be submitted both in writing or expressed orally. If a victim believes that the entire harm caused to him or her has not been compensated with the compensation, he or she has the right to request the compensation thereof in accordance with the procedures laid down in the Civil Procedure Law. In determining the amount of consideration, the compensation received in criminal proceedings shall be taken into account.<sup>16</sup>

If the offender does not fulfil the court adjudication regarding the compensation to the victim, writ of execution is sent for compulsory execution by the court of first instance. There are however, several practical difficulties regarding compulsory execution in Latvia – in addition to vertical and horizontal problems of bailiffs' system in Latvia, from the victim's point of view the

<sup>15</sup> Annual Report of Legal State Administration. Available at : [http://www.jpa.gov.lv/uploads/filedir/jpa\\_2013\\_publiciskais\\_parskatspdf.pdf](http://www.jpa.gov.lv/uploads/filedir/jpa_2013_publiciskais_parskatspdf.pdf), last visited 19 June 2014.

<sup>16</sup> Author's note: to see more on the procedure of receiving the compensation and determining the amount of compensation etc., please see Chapter 26 of Criminal Procedure Law „Compensation for Harm Caused by a Criminal Offence”.

writ of execution does not ensure receiving the compensation. This is due to the fact that offenders' level of income is often below the minimum against which compulsory execution can be applied and this issue is even more topical in case of imprisonment of the offender.<sup>17</sup>

Victims of certain type of crimes are also entitled to state compensation for their moral injury, physical suffering or financial loss - conditions are foreseen in Law On State Compensation to Victims<sup>18</sup>. Namely, a victim is entitled to state compensation in case of intentional criminal offence, if the criminal offence has resulted in the death of the person or caused severe bodily injuries to the victim or the criminal offence has been directed against sexual inviolability of the person, person has been a victim of trafficking in human beings or the victim has been infected with human immunodeficiency virus, Hepatitis B or C.

The victim has the right to the State compensation also if a perpetrator of a criminal offence or a joint participant thereof has not been identified or he or she in accordance with the Criminal Law shall not be held criminally liable.

In 2014, the maximum amount of state compensation is five minimal monthly wages<sup>19</sup>. In accordance with Law On State Compensation to Victims, in case of person's death, 100% of maximum amount is granted - EUR 1600. If the criminal offence has caused severe bodily injuries to the victim or the criminal offence has been directed against sexual inviolability of the person or the person has been a victim of trafficking in human beings, 70% of maximum amount is granted – EUR 1120, but if the victim has been infected with human immunodeficiency virus, Hepatitis B or C, he or she receives 50% of maximum amount – EUR 800.

Even though the number of granted requests for state compensation increases over the last few years (please see Figure 3), stakeholders are still of an opinion that the victims could be better informed about their possibilities to receive state compensation. When asked to evaluate the sufficiency of information about possibilities to obtain state compensation, only 14% indicated that the information is completely sufficient and 21% thought that information is sufficient. Majority of all respondents think that the information is not very sufficient or is not at all sufficient (25% and 32% respectively).

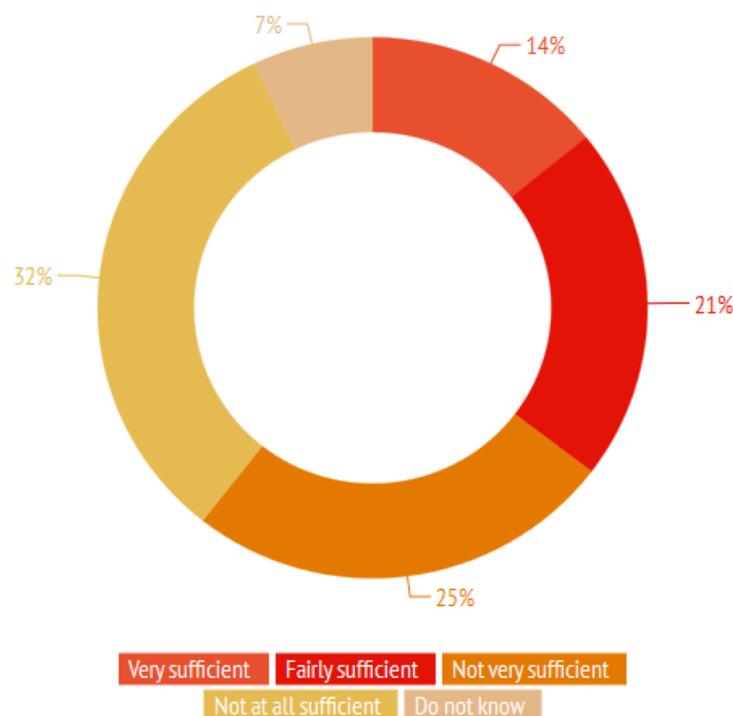
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<sup>17</sup> Kronberga I., Litvins G. et.al. Mehānismi cietušo kompensācijai kriminālprocesā Eiropas Savienībā. Rīga, 2013. Available at: <http://www.providus.lv/public/27819.html> (last visited on 25.06.2014.).

<sup>18</sup> Law on State Compensation to Victims. Available at: <http://likumi.lv/doc.php?id=136683> (last visited on 25.06.2014.)

<sup>19</sup> Author's note: in 2014, the minimal monthly wage in Latvia is EUR 320.

**Figure 4. How would you evaluate sufficiency of information available to victims about possibilities to obtain state compensation?**



Source: Survey of stakeholders within the project **Improving Protection of Victim’s Rights: Access to Legal Aid (2013)**.

## 2. Mediation process in criminal cases

Since 2005 victim-offender mediation in criminal cases is available in Latvia and is carried out by the State Probation Service. Article 381 of Criminal Procedure Law stipulates that in case of a settlement, an intermediary trained by the State Probation Service may facilitate the conciliation of victim and the offender. A person directing the proceedings (police office, prosecutor or a judge) may invite specialist from State Probation Service to start the mediation process.

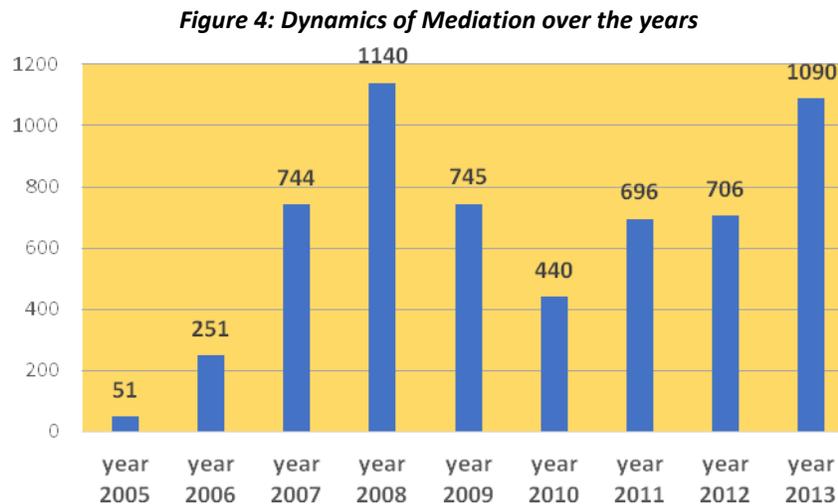
Article 13 of State Probation Law stipulates that specialists from State Probation Service (SPS) shall ensure that the victim and a probation client can voluntarily engage in the process of mediation. SPS is also responsible for training volunteer mediators. Article 13 also indicates that Cabinet of Ministers of Republic of Latvia must determine the procedure of volunteer probation officers’ certification and qualifying as intermediaries in cases of settlement.

In general, mediation practice is based on principles of Restorative Justice where crime is defined as a conflict between members of society, not a law-breaking instance. It is available for all types and all stages of criminal proceedings in Latvia and can be described by the

following principles:

- Participation in the process has to be voluntary;
- There needs to be an indication that the involved parties wish to resolve the conflict;
- The offender admits that a crime was committed;
- No minor victims participate, if their wellbeing might be at risk as a consequence of the mediation process;
- A legal representative participates when a minor is involved;
- Parties are allowed to withdraw from mediation at any given time;
- Process is facilitated by a trained mediator;
- Mediator adheres to ethical principles and confidentiality;
- Mediation is possible in all types of offences and all stages of criminal proceedings;
- Participation in mediation process is free of charge.

The first training for mediators in Latvia was organized in 2005 in cooperation with National Mediation Service of Norway and during the first year when this opportunity was provided, 51 mediation cases took place. Currently, there are 73 trained mediators at the SPS and 25 volunteer mediators in Latvia and the number of mediation cases has risen to 1090 in 2013. (Figure 4).



According to the law, mediation can be initiated by a police officer, a prosecutor, a judge and both parties – victims and offenders. However, in 2013 there were 39 cases for mediation initiated by victims.

**Figure 5: Dynamic of referred mediation cases**

	<b>year 2008</b>	<b>year 2009</b>	<b>year 2010</b>	<b>year 2011</b>	<b>year 2012</b>	<b>year 2013</b>
<b>Police</b>	187	79	83	185	166	244
<b>Procecutor</b>	83	64	69	53	71	76
<b>Court</b>	68	7	0	0	0	22
<b>Judge</b>	0	0	4	3	7	4
<b>Both parties</b>	28	41	9	11	4	17
<b>Offender</b>	743	539	239	433	445	688
<b>Victim</b>	31	15	36	11	13	39
	<b>1140</b>	<b>745</b>	<b>440</b>	<b>696</b>	<b>706</b>	<b>1090</b>

The majority of offenders, who are involved in mediation process have committed crimes that have to do with property – thefts, robberies and fraud; while offenders of more serious crimes participate less frequently.

**Figure 6: Type of crime<sup>20</sup>**

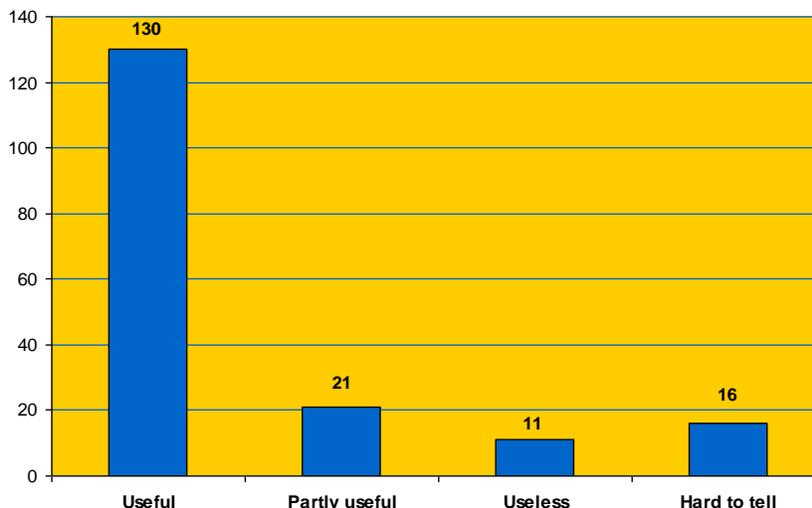
Type of crime	
<b>Different types of theft</b>	306
<b>Destruction of property of another person</b>	84
<b>Different types of bodily injury, including cases with serious consequences</b>	74
<b>Violations of road traffic</b>	26
<b>Hooliganism</b>	11
<b>Other</b>	25

Starting from 2009, mediators offer the involved parties to fulfil a questionnaire on the process they are involved in. In 2013 there were 484 questionnaires filled - 208 from offenders, 178

<sup>20</sup> Kronberga I. “Restorative Justice in Latvia: Advancement, Perspectives and Challenges in Future” available at: [http://www.providus.lv/upload\\_file/Publikacijas/Kriminalt/Restorative\\_Justice\\_Latvia\\_Report.pdf](http://www.providus.lv/upload_file/Publikacijas/Kriminalt/Restorative_Justice_Latvia_Report.pdf)

from victims and 98 from support persons of both parties on measuring the usefulness of the mediation process. In most cases, parties agreed that the process was very useful for them.

**Figure 7: Was it useful to meet other party in mediation?**



From 2009 the SBS organizes a public activity called “Mediation week”, where members of general public are informed about the constructive resolving of the conflicts and values of Restorative Justice. In addition, the SBS also organizes discussions and seminars for police officers, prosecutors and judges about Restorative Justice Principles and mediation. Mediators, on the other hand, can improve their expertise via regular educational activities, which are provided by SPS.

### 3. Conclusions

As it has been highlighted in previous studies<sup>21</sup>, Latvia has series of important components of victim support system in place, but not a comprehensive system in its own right as a task-oriented body of measures.

The state compensation and legal aid to victims of criminal offences are only two small elements of what such system should entail. The victim compensation system as described in the Criminal Procedure Law and in the Criminal Law is only a part of the compensation mechanism and support provided to certain groups of victims does not mean that Latvia has a victim support system. Similarly, financing assigned annually for payment of the state guaranteed compensation from the state budget is not to be considered a victim compensation fund.

The support system for victims of crime is comprised of horizontal and vertical directions of

<sup>21</sup> Kronberga I., Litvins G. et.al. Mehānismi cietušo kompensācijai kriminālprocesā Eiropas Savienībā. Rīga, 2013. Available at: <http://www.providus.lv/public/27819.html> (last visited on 25.06.2014.).

activities. The vertical directions of activities are related to financing, administration and management of the system, including identification, quality management, analysis and monitoring of services provided to victims. The horizontal victim support system concerns itself with the accessibility of services provided to victims, including rural regions of Latvia, range of services that would suit the needs of victims, and legal regulation of inter-authority cooperation at the local level (the place where a victim receives the respective support) and at the state level, where decisions are met, financing is assigned and regular evaluation of the system performed.<sup>22</sup>

Without a doubt, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA<sup>23</sup> (Directive), will be of significant relevance when it comes to improvement of both legal framework and the general attitude towards the victims of crime. Transposition of the Directive is still an ongoing process, nevertheless it is already quite certain that, among other changes, the circle of persons that are entitled to the status of a victim (if the criminal offence has resulted in a death of a person) will become broader; more attention will be paid to specific needs of victims and, most importantly, the issue of victims' support services will be addressed providing all victims with a possibility to receive initial legal and psychological help.

Even though it still might be too early to affirm that a victim support system is finally being built in Latvia, several new components, such as the increased use of mediation process for settlement, are being added to the already existing ones and serve as a positive indicator of support system developing, the relevance of which should not be underestimated.

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<sup>22</sup> Kronberga I., Litvins G. et.al. Mehānismi cietušo kompensācijai kriminālprocesā Eiropas Savienībā. Rīga, 2013. Available at: <http://www.providus.lv/public/27819.html> (last visited on 25.06.2014.).

<sup>23</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:-PDF> (last visited on 19 June 2014).