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Legal Aspects of Review of Valid Rulings in Criminal Proceedings in Connection with Significant Violations of Substantive or Procedural Provisions of the Law

INESE BAIKOVSKA

Inese Baikovska, Ph.D. in Law, is a Lecturer of Criminal Procedure at the Turiba University (Latvia). She is author of several publications (articles) in Criminal Proceeding and author of the monography *The Problem of Renewal of Criminal Proceedings in Connection with Newly Disclosed Circumstances* (Turiba University, 2021). She practices as Sworn Advocate (The Latvian Collegium of Sworn Advocates).

@ baikovska@inbox.lv
0000-0002-3812-8179

ABSTRACT

The aim of this article is to review the existing discipline of legal institutes in connection with significant violations of substantive or procedural legal norms and its significance in criminal proceedings in the Republic of Latvia and the Republic of Lithuania, their common and different features, problems and case law. The basis of the research is the analysis of regulatory enactments, court rulings, findings and opinions. The research is based on analytical and synthesis methods study of the correlations and differences in the legal regulation of criminal procedural law, comparative method comparison of specific legal regulations in the criminal procedural law of the Republic of Latvia and the Republic of Lithuania. The analytical method has been used to research, clarify and then evaluate the content of legal principles, terms, legal norms. The method has also been used to analyse court decisions. This method makes it possible to identify the main issues at stake in the content of specific legal provisions and to highlight their novelty, relevance or shortcomings. Statistical data processing methods have also been used in the research to collect and analyse data on a specific category of criminal cases in the Republic of Latvia and the Republic of Lithuania. The study analyses the case law of the Republic of Latvia and the Republic of Lithuania in cases where rulings have been re-examined after their entry into force. Data on such cases are summarised in four illustrations (figures). During the study, it has been established that the regulation of criminal procedure for the review of a judgement after its entry into force is similar in both countries, but the results of the reviewed cases are different. The criminal procedure regulations of the Republic of Latvia and the Republic of Lithuania, which provide for a new review of existing rulings if there exist significant violations of substantive or procedural law, are important to reach a fair decision by eliminating such significant violations committed by courts of first instance or appellate courts. Consequently, justice is achieved and the person's right to a fair trial is ensured.

However, a balance must also be struck between how to ensure the legal force of a valid judgement in accordance with the principle of res judicata, and how to guarantee the rights of individuals to a fair trial. When reviewing an existing decision, the Supreme Court must consider the balance between ensuring the legal force of a valid court judgement in accordance with the principle of *res judicata*, and guaranteeing the rights of individuals to a fair trial if significant violations of substantive or procedural norms of law come to the fore after the judgement has entered into force.

KEYWORDS

Criminal Proceedings; Valid Court Ruling; Review of Court Judgements; Fair Trial; Persons Involved in Criminal Proceedings

TABLE OF CONTENTS

INTRODUCTION

This article focuses on the topicalities of criminal procedure regulation, which is related to the review of a valid ruling due to a significant violation of substantive and procedural law. In doing so, the author also focuses on the study of criminal procedure regulation and case law in the Supreme Courts of the Republic of Latvia and Lithuania in a comparative context.

The aim of the article is to study the review of existing rulings of legal institutes in connection with significant violations of substantive or procedural legal norms and its significance in criminal proceedings in the Republic of Latvia and the Republic of Lithuania, their common and different features, problems and case law.

The basis of the research is the analysis of regulatory enactments, court rulings, findings and opinions. The research is based on analytical and synthesis methods – study of the correlations and differences in the legal regulation of criminal procedural law, comparative method – comparison of specific legal regulations in the criminal procedural law of the Republic of Latvia and the Republic of Lithuania. Statistical data

processing methods have also been used in the research to collect and analyse data on a specific category of criminal cases in the Republic of Latvia and the Republic of Lithuania.

The research context is the legal relations regarding the new review of valid rulings of criminal proceedings. In turn, the object of the research is the legal regulation of a new review of valid rulings due to significant violations of substantive and procedural law.

The tasks of the article are to study the definition of criminal procedure in the Republic of Latvia and the Republic of Lithuania, to review of valid rulings due to significant violations of substantive or procedural law and to study the views expressed by legal researchers, as well as the relevant case law.

The principle of legal stability (*res judicata*) guarantees the non-appealability of a decision which has entered into force. A multi-instance court is provided for in criminal proceedings allowing the convicted person to appeal against a court decision that has not entered into force, thus preventing any mistakes made by the lower court. However, there are cases where the court's judgement has not been appealed at the court of appeal or cassation and has entered into force, but is erroneous. As the rulings have already entered into force, they are considered to be unappealable. However, such judgements cannot be considered lawful.

In certain cases, both in the Republic of Latvia and the Republic of Lithuania, the Supreme Court retains the power to review a ruling which has already entered into force if there are doubts about its legality. In the event of such a new review of a ruling, the right of individuals to a fair trial is considered to take precedence over the principle of legal stability, thus achieving a fair settlement of criminal relations.

The criminal procedural regulation must be such as to ensure that the convicted or acquitted person and the victim have equal opportunity to apply for a new review of an existing decision because of a material violation of the material or procedural laws.

1. REVIEW OF VALID RULINGS DUE TO SIGNIFICANT VIOLATIONS OF SUBSTANTIVE OR PROCEDURAL LEGAL NORMS IN CRIMINAL PROCEDURAL LAW

A judgement which has entered into force is presumed to be enforceable and to have the force of law.[1] The opinion expressed in legal literature is that legal stability is a component of the rule of law and requires not only a regulated legal process, but also a legally sustainable conclusion.[2] Consequently, a court judgement that has entered into force cannot be appealed.

The general principle of *res judicata* is enshrined in international law as one of the general principles of law recognized by civilised nations.[3] The practice of national courts pays close attention to the principle of a fair trial. For example, the Constitutional Court of the Republic of Latvia has recognized that the principle of *res judicata* constitutes the right to a fair trial, where according to this principle no one has the right to review a valid judgement with the aim of obtaining a retrial.[4]

The public as well as the individual expect from the competent authorities that the solution of the criminal relations is fair and the procedural regulations ensure that justice is delivered, i.e., a fair solution (result) is not possible without a fair process.[5] Thus, an essential component of the rule of law is a fair outcome of criminal proceedings, and the state must respect the constitutional right to a fair trial by creating an effective legal mechanism to prevent violations arising from the conduct of criminal proceedings.[6] The author agrees with the above-mentioned opinion and points out that an effective legal mechanism can be manifested through the creation of such criminal procedure regulations - norms of law, which foresee procedural provisions to correct mistakes made by a court.

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[1] On Judicial Power Section 16, in Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs [Rep. of the Supreme Council and Government of the Republic of Latvia], no. 1/2 (14/01/1993). Retrieved from https://likumi.lv/ta/en/en/id/62847.

[2] *See* Pāvels Gruziņš, *Spēkā esošu nolēmumu jaunas izskatīšanas krimināl procesuālā regulējuma attīstība pēc 1990. gada 4. maija, [Development of the criminal procedure regulation for re-examination of valid rulings after May 4, 1990]*, Krimināl procesa likumam-10 Pagātnes mācības un nākotnes izaicinājumi [Criminal Procedure Law - 10 Lessons of the past and challenges of the future] 409-418 (Rīga: Latvijas Vēstnesis, 2015).

[3] *See* Theofanis Rosa, *The doctrine of Res Judicata in International Criminal Law*, 3 International Criminal Law Review 195–216 (2003).

[4] Constitutional Court of the Republic of Latvia, Judgement Jan 9, 2014, Case Nr. 2013-08-01, [7]. Retrieved from https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2013-08-01_Spriedums.pdf.

[5] *See* Kristīne Strada-Rozenberga, *Krimināltiesības: tiesiskā drošība krimināltiesībās un krimināl procesā, [Criminal law: legal certainty in criminal law and criminal procedure]*, in Vispārējie tiesību principi: Tiesiskā drošība un tiesiskā paļāvība [General principles of law: Legal certainty and legitimate expectations] 83, 74-98 (Rīga: Tiesu namu aģentūra, 2017).

[6] *See* Sandra Kaija, *Prokurora loma krimināl procesa atjaunošanā jaunatklātu apstākļu dēļ [Prosecutor's Role in the Resumption of Criminal Proceedings Due to Newly Discovered Facts]*, 2(5) SOCRATES 18, 17-26 (Rīga: Rīgas Stradiņa Universitāte, 2016).

However, there may also be cases where, after the judgement has entered into force, it becomes apparent that there has been a court error in the application of certain legal provisions. The court error may be in the form of incorrect application or interpretation of a substantive rule, or the breach of a procedural rule. When judges interpret a legal norm, an important aspect is the essence of the purpose and spirit of the law, observing that "*errare humanum est*".[7] In turn, in order to be able to eliminate such errors even after the court judgement has entered into force, the legislators have provided for a special procedure, which extends the possibility to review a court judgement that has entered into force to correct an obviously incorrect judgement based on a court error.[8]

Even if a ruling has entered into force in the criminal proceedings presumed as not subject to review, but where after its entry into force, it becomes apparent that there has been a court error in the application of certain legal provisions, any person involved in the criminal proceedings whose rights or legal interests have been adversely affected in the particular criminal proceeding, must have a guaranteed right to a retrial. This means that the right to apply for the initiation of proceedings for review of valid rulings due to significant violations of substantive or procedural legal norms must be guaranteed. In order to initiate such a process, however, there must be a framework of criminal procedure providing for a fair and lawful procedure, respecting well-established human rights standards. Ensuring human rights is a fundamental principle of a democratic state and one of the cornerstones of the rule of law, and these safeguards should also aim at the application of fair rules of criminal procedure, guaranteeing everyone involved in criminal proceedings the right to a fair and lawful decision.

The right of every person to a fair trial is governed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter the Convention].[9] Existing rulings may be reviewed only in exceptional cases where there is reason to believe that the ruling is not legal, because there have been significant violations of substantive or procedural law that have affected the legal interests of the person involved in the criminal proceedings – the convicted person.

[7] Kiril V .Kamchatov, Irina V. Chashchina, Ekaterina V. Velikaya (Камчатов Кирил В., Чащина Ирина В., Великая Екатерина В.), Vozobnovleniye proizvodstva po ugolovnomu delu (Возобновление производства по уголовному делу) [Resumption of criminal proceedings], (Moskva, Rossiya: Akademiya general'noy prokuratury Possiyskoy Federatsii (Москва, Россия: Академия генеральной прокуратуры Российской Федерации) [Moscow, Russia: Academy of the Prosecutor General of the Russian Federation], 2016), pp 9, 139.

[8] *See* Pāvels Gruziņš, *Spēkā esošu nolēmumu jaunas izskatīšanas krimināl*procesuālā *regulējuma attīstība*, *[Development of the criminal procedure regulation for re-examination of valid rulings]*, 12(04) Latvijas Republikas Augstākās tiesas biļetens [Bulletin of the Supreme Court of the Republic of Latvia] 28, 25-28 (2016).

[9] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950.

Chapter 63 of the Criminal Procedure Law of the Republic of Latvia - the review of valid rulings in relation to a significant violation of substantive or procedural law norms, regulates those special cases when it is possible to review rulings that have already entered into force but there are reasonable doubts regarding their legality.[10] The above mentioned criminal procedure provision must be considered in the context of Article 92 of the Constitution of the Republic of Latvia,[11] which guarantees the right of every person to a fair trial. The scope of the aforesaid provision includes not only the right of persons to address the court to appeal decisions of the appellate or cassation instance, but also the guarantees of a new review of valid rulings. In addition, there is no time limit for the submission of such an application or protest.[12] In the event of such an application or protest, it is permissible to infringe the principles of legal certainty and stability, primarily, in order to ensure a person's right to a fair trial, i.e. fair judgement.

In cases where it is likely that court decisions that have entered into force are considered unfair, the principle of justice prevails over the principle of legal stability, and the re-examination of decisions that have entered into force due to a significant violation of substantive or procedural law is a legal institute that has been constituted to guarantee a fair trial in cases specified by the law.[13]

However, only a court can ensure balance in the event of a conflict between the principle of *res judicata* and the principle of fair trial, as the right to a fair trial is guaranteed by a court.[14]

The Supreme Court of the Republic of Latvia has acknowledged that the norms included in Chapter 63 of the Criminal Procedure Law as a favorability principle are special for a convicted person and deterioration of the person's position is not allowed.[15] Thus, this means that when reviewing a court decision, the convicted person may trust that he or she will not be subject to a more severe punishment, even if the court, upon review of the case, recognizes that the applied law has been misinterpreted and was supposed to impose a more severe punishment.

[10] *See* Criminal Procedure Law of the Republic of Latvia (Apr. 21, 2005), Latvijas Vēstnesis, no.74, 11.05.2005 (63). Retrieved from https://likumi.lv/ta/en/en/id/107820.

[11] *See* The Constitution of the Republic of Latvia (Feb. 15, 1922), Latvijas Vēstnesis, no.43, 01.07.1993. (92) Retrieved from https://likumi.lv/ta/en/en/id/57980 (last visited Feb. 5, 2022).

[12] *See* Criminal Procedure Law of the Republic of Latvia (Apr. 21, 2005), Latvijas Vēstnesis, no.74, 11.05.2005, (667) Retrieved fromhttps://likumi.lv/ta/en/en/id/107820 (last visited Feb. 5, 2022).

[13] *See* Constitutional Court of the Republic of Latvia, Judgement Apr. 29, 2016, Case Nr.2015-19-01, (12.3.) Retrieved from https://www.satv.tiesa.gov.lv/wp-content/uploads/2015/08/2015-19-01_Spriedums.pdf (last visited Feb. 5, 2022).

[14] *See Id.;* Separate opinions of judges Osipoava S., Ziemele I. at [9]. Retrieved from https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2015/08/2015-19-01_Atseviskas_domas.pdf#search= (last visited Feb. 5, 2022).

[15] *See* Republic of Latvia Supreme Court, Decision Dec. 19, 2017, Case Nr.15830029512, SKK-605/2017. Retrieved from https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi (last visited Feb. 5, 2022).

The criminal procedure regulation in the Code of Criminal Procedure of the Republic of Lithuania is similar to that in Latvia; Chapter XXXIV of the Code of Criminal Procedure[16] states that a valid ruling may be re-examined if there are grounds to believe that the Criminal Law has been incorrectly applied.

The criminal procedural regulation of the Republic of Latvia stipulates that an application for review of a valid ruling may be submitted by a lawyer – on behalf of a convicted and acquitted person or a person against whom criminal proceedings have been terminated by a court decision, but the Prosecutor General or the Chief Prosecutor of the Criminal Justice Department of the Prosecutor General's Office may file a protest both on his own initiative and at the request of the above-mentioned persons.[17] It is evident from the above-mentioned regulation that the convicted or acquitted person cannot submit such an application to a court, but may do so only through a lawyer or apply to the Prosecutor General's Office for the submission of such an application to the Supreme Court.

The legislator has deliberately established the right of a lawyer to submit such an application on behalf of certain persons, because it must be sufficiently substantiated and motivated. Moreover, the application must clearly indicate the legal assessment of a substantive violation of a particular norm or several norms of the law and how such violation could have led to an unlawful decision.

Essentially, the criminal procedural regulation of the Republic of Lithuania stipulates that an application for review of a valid decision may be submitted by the convicted person himself, his representative or defence counsel, or a protest may be submitted by the Prosecutor General of the Republic of Lithuania.[18]

Comparing the criminal procedural regulations of both countries, it can be seen that the Lithuanian criminal procedural regulations are broader and allow a convicted person or his/her representative to apply to the Supreme Court without the assistance of a lawyer. However, the question which then arises is whether a person without the assistance of a lawyer would be able to give sufficient legal wording on the interpretation or application of norms by the court. Legally unfounded applications for a review may be rejected, so it is important that such an application is made by a person competent in law.

[16] *See* Code of Criminal Procedure of the Republic of Lithuania (Mar. 14, 2002), valstybės žinios, no.37-1341, 09.04.2002. Retrieved from https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.163482/asr (last visited Feb. 5, 2022).

[17] *See* Criminal Procedure Law of the Republic of Latvia (Apr. 21, 2005), Latvijas Vēstnesis, no.74, 11.05.2005, (663.2.) Retrieved from https://likumi.lv/ta/en/en/id/107820 (last visited Feb. 5, 2022).

[18] *See generally* Code of Criminal Procedure of the Republic of Lithuania (Mar. 14, 2002), valstybės žinios, no.37-1341, 09.04.2002. (452.1.) Retrieved from https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.163482/asr (last visited Feb. 5, 2022).

In turn, both Latvian and Lithuanian criminal procedural regulations do not provide an opportunity for an acquitted person to submit such an application.

Similarly, the criminal procedural regulations of both countries do not provide that the victim or his/her representative, themselves or through a lawyer, are guaranteed the right to apply for a review of a valid decision due to a significant violation of substantive or procedural law. While the opinion expressed in legal literature is that the principle of equality of all persons involved in criminal proceedings declared in Section 8 of the Criminal Procedure Law is formally observed, there may be situations in practice where the victim is not in an equal position with the accused and the victim is not always able to fully defend his/her interests.[19] The author shares this opinion and considers that the opportunity to submit an application for re-examination of existing rulings due to a significant violation of substantive or procedural law is such a case where the victim is in an unequal position with respect to the convicted person.

As the author previously highlighted, the first part of Article 6 of the Convention establishes the right of every person to a fair trial. The term "any person" could be understood to include all persons involved in criminal proceedings, i.e. a convicted or acquitted person, as well as a victim. In addition, the definition in Article 6 of the Convention also includes the right to appeal against court decisions, including the right to appeal rulings that have entered into force, based on a significant violation of substantive or procedural legal norms. The Constitutional Court of the Republic of Latvia has also interpreted the notion of "fair trial" in its judgements. As per this jurisprudence, fair trial includes such an element as a fair result of legal proceedings, namely, a fair judgement and procedural laws set out such requirements as the principle of equality of parties, impartiality and neutrality of court and the correct application and interaction of these requirements leading to a fair judgement.[20]

In the author's opinion, the criminal procedural guarantee to submit an application for review of an existing decision due to a significant violation of substantive or procedural law should also be given to a victim, thus ensuring both the principle of equality and the right to a fair trial guaranteed by Article 6 of the Convention.

The author has studied criminal procedure laws existing in other Member States of the European Union and concluded that this legal institution – revision of final rulings due to a material violation of substantive or procedural rules – is rather rare in the

[19] *See, e.g.*, Rolands Siliņš, *Cietušā statusa krimināl*procesā pilnveides aktualitātes *[The status of a victim in criminal proceedings]*, 3(84) Admin. and crim. justice 22, 21-41 (2018).

[20] *See* Constitutional Court of the Republic of Latvia, Judgement Feb 4, 2003, Case Nr.2002-06-01 (3.) Retrieved from https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-06-01_Spriedums.pdf (last visited Feb. 5, 2022).

legislation governing criminal procedure in other countries. It is mostly prevalent in post-Soviet countries. For instance, Articles 622 to 626 of the Criminal Procedure Code of the French Republic refer to "revision of decisions".[21]

However, circumstances referred to as "newly discovered", which have other goal and grounds both in fact and in substance, may be a reason for revising final rulings, namely: a criminal case with a final judgement may be reopened in the event of discovery of any new circumstances that actually existed but were not known to the court. Likewise, the German Code of Criminal Procedure (Part 4 – Reopening of proceedings concluded by a final judgement)[22] defines the procedure for reopening criminal cases based on newly discovered circumstances, while it is not provided that final rulings may be revised due to a material violation of substantive or procedural rules.

Meanwhile, the Criminal Procedure Code of the Russian Federation (Chapter 481 – Proceedings in the supervision court instances)[23] stipulates that rulings may be revised in situations when a material violation of substantive or procedural laws is established. According to this Code, a final ruling may be revised if it is established that the ruling is not legal, there has been a material violation of any provisions, i.e. provisions of the Criminal Code have not been applied correctly, or procedural rules set out in the Criminal Procedure Code have been breached. This is mainly to secure a convicted person's right to a revision of a judicial ruling. It should be noted that, pursuant to the criminal procedure legislation of the Russian Federation, an application for revision of a judicial ruling may be filed not only by convicted or acquitted persons but also by victims. This shows that the legislation governing criminal procedure is based on the principle of equality, which is in line with generally accepted rules of human rights.

In this context, it is also important to emphasise conformity with the principle of *ne bis in idem*.

The rationale of the *ne bis in idem* principle is manifold and traditionally it was linked to the sovereignty and legitimacy of the state and its legal system, as well as respect for the *res judicata* (*pro veritate habetur*) of final judgements.[24]

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[21] Code de procédure pénale [Criminal Procedure Code of the French Republic]. Retrieved from https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154 (last visited Feb. 5, 2022).

[22] *See generally* The German Code of Criminal Procedure (1987), Bundesgesetzblatt [Federal Law Gazette], Part I p. 1074, 1319. Retrieved from https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p0025 (last visited Feb. 5, 2022).

[23] *See* Criminal-Procedural Code of the Russian Federation (Уголовно-процессуальный кодекс Российской Федерации) (2001). Retrieved from http://pravo.gov.ru/proxy/ips/?docbody=&nd=102073942.

[24] *See* John A.E. Vervaele, *Ne Bis In Idem: Towards a Transnational Constitutional Principle in the EU?*, 9 Utrecht L. rEV 211-212 (2013).

It should be acknowledged that both international documents dealing with human rights and national criminal procedure laws strictly define that no one may be tried or punished again for an offence for which they have already been convicted or acquitted by a ruling in a criminal case which has been delivered according to the statutory procedure and has become final. It is however laid down that the double jeopardy rule is not applicable in situations when a criminal case is reopened, or a material violation of substantive or procedural rules is detected in a ruling. Accordingly, the principle of *ne bis in idem* will indeed not be infringed in situations where a final ruling delivered by a court in a criminal case is revised due to a material violation of substantive or procedural rules.

2. COURT PRACTICE IN CRIMINAL CASES REGARDING RE-EXAMINATION OF VALID RULINGS DUE TO SIGNIFICANT VIOLATION OF SUBSTANTIVE OR PROCEDURAL NORMS OF LAW

In the Republic of Latvia, in accordance with the provisions of Chapter 63 of the Criminal Procedure Law,[25] the Supreme Court examines applications and protests regarding a new review of a valid ruling due to a significant violation of substantive or procedural norms of the law. During the period from 2015 to 2020, the Supreme Court of the Republic of Latvia has reviewed 273 criminal cases[26] in accordance with Chapter 63 of the Criminal Procedure Law of the Republic of Latvia.[27]

In order to evaluate the trends, the author has prepared a summary of the criminal cases reviewed by the Supreme Court of the Republic of Latvia in accordance with Chapter 63 of the Criminal Procedure Law (see Figure 1).

[25] *See* Criminal Procedure Law of the Republic of Latvia [hereinafter C.L.] (Mar 21, 2005), Latvijas Vēstnesis, no.74, 11.05.2005, (63.) Retrieved from https://likumi.lv/ta/en/en/id/107820.

[26] Republic of Latvia Supreme Court, Division of Case-law and Research July 10, 2020, Nr.40-1/11-921nos (unpublished material).

[27] Republic of Latvia Supreme Court, Archive of case-law decisions. Retrieved from http://at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs.

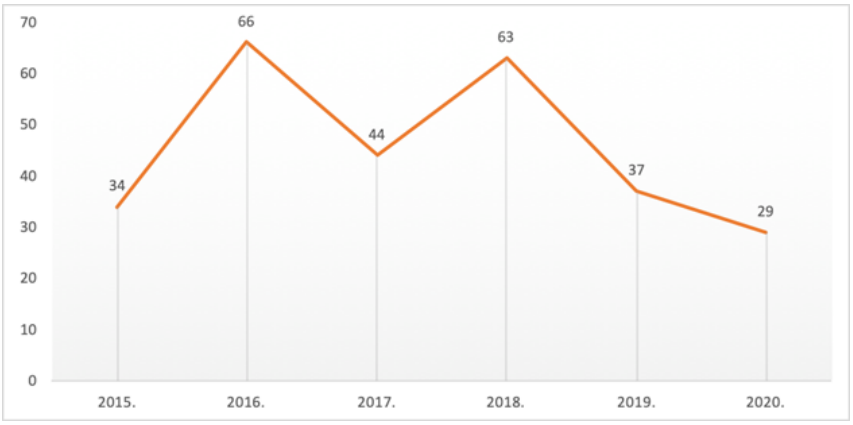

Figure 1: Criminal cases reviewed by the Supreme Court of the Republic of Latvia in accordance with Chapter 63 of the Criminal Procedure Law. [Designed by the author based on data retrieved from: Republic of Latvia Supreme Court, Archive of case-law decisions;[28] *Republic of Latvia Supreme Court, Division of Case-law and Research, 2020, Nr.40-1/11-921nos*[29]]

Examining the case law of the Supreme Court of the Republic of Latvia on cases relating to Chapter 63 of the Criminal Procedure Law, it can be concluded that there is a relatively large number of such rulings (court judgements) for which applications or protests have been submitted for review indicating possible erroneous final judgements.

However, the Supreme Court has not upheld such applications or protests in all cases. In order to assess trends, it is important to examine in how many of these cases the rulings have been left unchanged (i.e. the application or protest has been rejected) and in how many cases breaches of substantive or procedural law have been found (i.e. the court decision has been set aside in whole or in part, the decision has been amended or proceedings have been terminated).

The author has prepared a summary of the rulings adopted by the Supreme Court of the Republic of Latvia in accordance with Chapter 63 of the Criminal Procedure Law (see Figure 2).

[28] *Id.*

[29] Republic of Latvia Supreme Court, Division of Case-law and Research July 10, 2020, Nr.40-1/11-921nos (unpublished material).

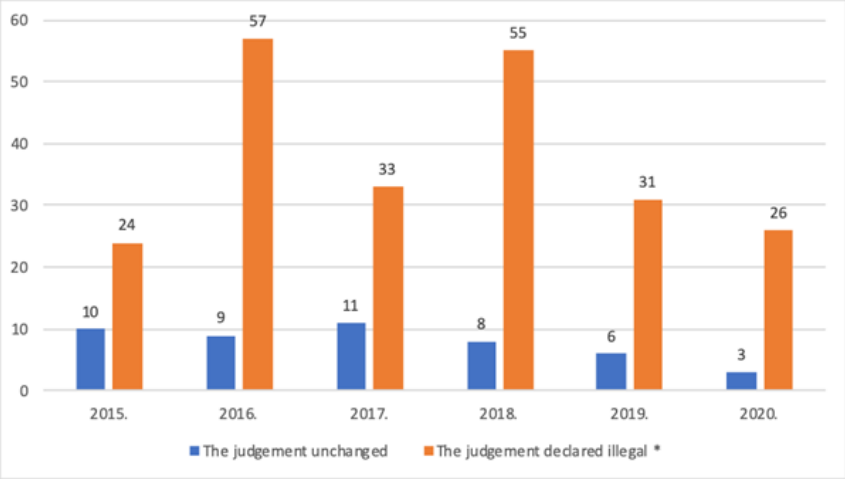

Figure 2: Rulings adopted by the Supreme Court of the Republic of Latvia in accordance with Chapter 63 of the Criminal Procedure Law [Designed by the author based on data retrieved from: Republic of Latvia Supreme Court, Archive of case-law decisions;[30] *Republic of Latvia Supreme Court, Division of Case-law and Research, 2020, Nr.40-1/11-921nos*[31]]
* "*The judgement declared illegal*" – *When reviewing the criminal case in accordance with Chapter 63 of the Criminal Procedure Law, the Supreme Court annulled the ruling in full or in part, amended the ruling, terminated the proceedings or addressed the case to a lower court.*

As can be seen, from the reviewed cases, in most cases the Supreme Court annulled the decisions in full or in part, amended them or terminated the proceedings, thus, the earlier decisions were declared illegal, establishing significant violations of substantive or procedural legal norms.

Article 451 of Chapter XXXIV of the Code of Criminal Procedure of the Republic of Lithuania[32] regulates that an existing ruling may be re-examined if there are grounds to believe that the provisions of the Criminal Law have been incorrectly applied.

Over the five-year period from 2015 to 2019, the Supreme Court of the Republic of Lithuania reviewed 1,721 criminal cases[33] in accordance with Chapter XXXIV of the Code of Criminal Procedure of the Republic of Lithuania.

In order to evaluate the trends, the author has prepared a summary of the criminal cases reviewed by the Supreme Court of the Republic of Lithuania in accordance with Chapter XXXIV of the Code of Criminal Procedure (see Figure 3).

[30] Republic of Latvia Supreme Court, Archive of case-law decisions, Retrieved from http://at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs.
[31] Republic of Latvia Supreme Court, Division of Case-law and Research July 10, 2020, Nr.40-1/11-921nos (unpublished material).
[32] *See* Code of Criminal Procedure of the Republic of Lithuania (Mar. 14, 2002), valstybės žinios, no.37-1341, 09.04.2002. Retrieved from https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.163482/asr.
[33] *See, e.g.*, The Supreme Court of Lithuania, 26.08.2020. No. (1.15)5F-2, not published.

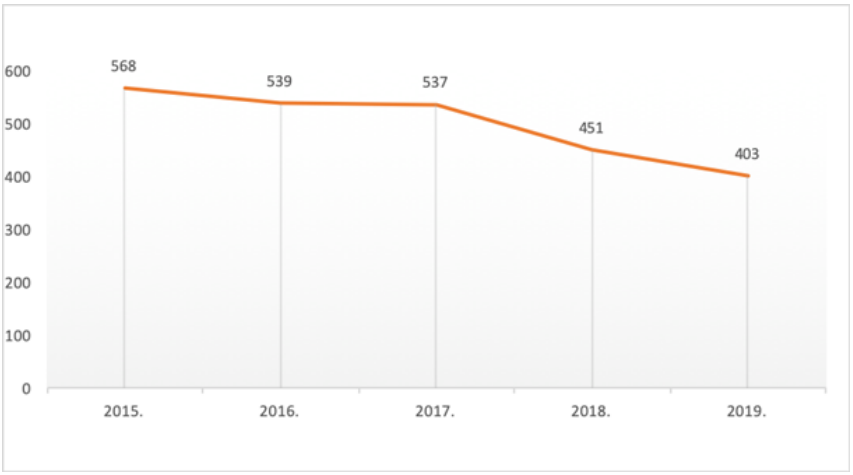

Figure 3: Criminal cases heard by the Supreme Court of the Republic of Lithuania in accordance with Chapter XXXIV of the Code of Criminal Procedure [Designed by the author based on data retrieved from: *The Supreme Court of Lithuania, 2020., No. (1.15)5F-2*[34]*]*

A sharp difference can be seen in the volume of cases reviewed when comparing the practice of the Supreme Court of the Republic of Lithuania with the cases of a similar category reviewed by the Supreme Court of the Republic of Latvia. The large number of judgements reviewed clearly indicates possible erroneous final judgements. On the other hand, the extent to which the final decisions in criminal cases have been erroneous can only be inferred from the rulings adopted by the Supreme Court.

The author has prepared a summary of the rulings adopted by the Supreme Court of the Republic of Lithuania in accordance with Chapter XXXIV of the Code of Criminal Procedure (refer Figure 4).

[34] *See, e.g., Id.*

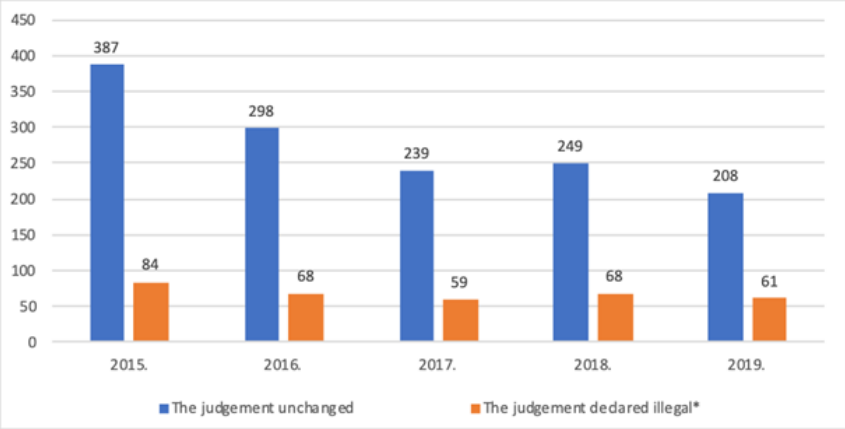

Figure 4: Rulings adopted by the Supreme Court of the Republic of Lithuania in accordance with Chapter XXXIV of the Code of Criminal Procedure [Designed by the author based on data retrieved from: *The Supreme Court of Lithuania, 2020., No. (1.15)5F-2*[35]*]*
* "*The judgement declared illegal*" - *the Supreme Court, upon hearing the criminal case in accordance with Chapter XXXIV of the Code of Criminal Procedure, annulled the decision in full or in part, amended the decision or terminated the proceedings.*

As can be seen from the data in Figure 4, it could be concluded that the Supreme Court of the Republic of Lithuania ruled in most cases in this category that the previous rulings should be left unchanged, and the applications of persons or protests of the Prosecutor General were rejected, indicating that the earlier rulings were legal and justified.

From the information available on the Latvian Court Portal[36] on the rulings published on the thirty-one cases reviewed by the Supreme Court of the Republic of Latvia in accordance with Chapter 63 of the Criminal Procedure Law in 2019, it can be seen that the main subjects of the application are those provided for in Section 663, Paragraph 2 of the Criminal Procedure Law (the Prosecutor General or the Chief Prosecutor of the Criminal Law Department of the Prosecutor General's Office submitting a protest) where in six criminal cases the applications were submitted by lawyers, ensuring defence of the interests of the convicted person and in only one out of those cases the application was upheld and the court judgement was declared illegal. On the other hand, in criminal cases where protests had been filed, only in one case the protest was rejected and the decision upheld, and in all the other cases the decision of the court of first instance or the court of appeal was found to be unlawful in full or in part.

The erroneous rulings were primarily based on the incorrect application of Articles of the General Part of the Criminal Law[37] specified in Section 574, Paragraph 1 of

[35] *See, e.g., Id.*
[36] *See* Latvian Court portal e-service website https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi.
[37] *See* The Criminal Law of the Republic of Latvia [hereinafter C.L.] (June 17, 1998), Latvijas Vēstnesis, no.199/200, 08.07.1998. Retrieved from https://likumi.lv/ta/en/en/id/88966.

the Criminal Procedure Law (For example: Section 50, Paragraphs 2[38] and 5,[39] Section 51,[40] Section 52, Paragraph 5,[41] Section 55, Paragraph 5[42] etc.) – the final decisions Republic of Latvia Supreme Court Senate in the criminal cases: SKK-J-870/2019,[43] SKK-J-817/2019,[44] SKK-J-761/2019.[45]

Thus, the erroneous application of the Criminal Law provisions are mainly related to the determination of the punishment for several criminal offences after several judgements, as well as the incorrect application of the provisions regarding the addition and substitution of punishments.

In several criminal cases, the Supreme Court has also determined significant violations of the Criminal Procedure Law (for example: violation of Section 25[46] of the Criminal Procedure Law, which has led to unlawful deterioration of the situation of a convicted person by applying Section 575, Paragraph 3 of the Criminal Procedure Law) – judgements of the Republic of Latvia Supreme Court Senate in the criminal cases SKK-J

[38] (C.L. 50.2) If all criminal offences constituting the aggregation of criminal offences are criminal violations or less serious crimes, the final punishment shall be determined including the lesser punishment within the more serious or also completely or partially adding together the punishments imposed. In such case, the total amount or period of the punishment may exceed the maximum amount or period of the punishment provided for the most serious of the committed criminal offences, but not more than a half of the maximum amount or period of the punishment provided for the most serious of the criminal offences committed. In drawing up a penal order the public prosecutor may not determine the total amount or period of the punishment which exceeds the maximum amount or term of the punishment provided for the most serious of the criminal offences committed.

[39] (C.L. 50.5) The court shall determine the punishment in accordance with the same procedure if, after a judgement has been rendered or a public prosecutor's penal order has been drawn up, it is established that the person is also guilty of another criminal offence which he or she had committed prior to entering into effect of the judgement or the public prosecutor's penal order in respect of the first matter. In such case, the period of the punishment shall include the punishment which has already been totally or partially served after the first judgement. If the period of deprivation of liberty determined conditionally in a judgement exceeds the period of deprivation of liberty determined in another judgement, the period of deprivation of liberty determined conditionally shall be completely or partially added to the period of deprivation of liberty.

[40] (C.L. 51.1) If, after the judgement has entered into effect, but, prior to serving the full punishment, the convicted person has committed a new criminal offence, a court shall add, completely or partially, the punishment which has not been served after the previous judgement to the punishment determined in the new judgement.

[41] (C.L. 52.5) Arrest, detention, and a part of a served punishment shall be counted as part of the period of a punishment in accordance with the provisions of Paragraph 1 of this Section.

[42] (C.L. 55.5) In imposing a suspended sentence, additional punishments may be imposed. Additional punishment - probationary supervision - shall be executed only if the court decides to execute the basic punishment determined in the judgement.

[43] *See* Republic of Latvia Supreme Court Senate, Decision Dec. 23, .2019, Case Nr.11092021017, SKK-J-870/2019 Retrieved from https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi (last visited Feb. 6, 2022).

[44] *See* Republic of Latvia Supreme Court Senate, Decision Nov. 26, 2019, Case Nr.11181160416, SKK-J-817/2019 Retrieved from https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi (last visited Feb. 6, 2022).

[45] *See* Republic of Latvia Supreme Court Senate, Decision Nov. 4, 2019, Case Nr.13800010718, SKK-J-761/2019 Retrieved from https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi (last visited Feb. 6 2022).

[46] (C.P.L. 25.1) Nobody shall be tried or punished again for an offence for which he or she has already been acquitted or punished in Latvia or in a foreign country by a ruling made in accordance with the procedures laid down in law and in effect in a criminal case or a case of administrative violation.

-610/2019,[47] SKK-J-0613-19.[48] Namely, violations of the *ne bis in idem* principle have been determined.

In several criminal cases, the Senate of the Supreme Court of the Republic of Latvia has established a violation of Section 25 of the Criminal Procedure Law - inadmissibility of double punishment. For example, in criminal case no. 11110005019 (SKK-J-610/2019), it was established that the court of first instance, when making a judgement, had allowed additional penalty to be added to the penalty imposed on a person by another judgement of the court of first instance - deprivation of the right to drive a vehicle - to be applied twice. The Court acknowledged that in imposing a final sentence in accordance with Paragraph 1 of Section 51 of the Criminal Law, and adding the unserved additional sentence to the sentence already imposed on him by another earlier judgement of the court of first instance, unreasonably applied Section 51, Paragraph 1 of the Criminal Law, thus committing a violation of Criminal Law specified in Section 574, Paragraph 1 of the Criminal Procedure Law, as well as committing a violation of the principle of inadmissibility of double punishment (*ne bis in idem*) established in Section 25 of the Criminal Procedure Law, which in turn led to an unlawful deterioration of the convicted person's situation. The Senate of the Supreme Court indicated that a violation of Section 25 of the Criminal Procedure Law shall be recognized as a significant violation within the meaning of Section 575, Paragraph 3 of the Criminal Procedure Law, which led to an illegal ruling.[49]

The enrichment of content of the *ne bis in idem* principle defined in Section 25 of the Criminal Procedure Law of the Republic of Latvia stems from very important sources of international law, including Protocol No. 7 to the Convention on Human Rights. These sources of law define the principle of inadmissibility of double jeopardy both as an element of the principle of justice and as an independent principle of law.[50]

Analysing the case law, the author concludes that the criminal procedural regulations of both the Republic of Latvia and the Republic of Lithuania on the review of valid rulings due to significant violations of substantive or procedural law are not empty rules, but are applied in practice to reach a fair decision, preventing serious infringements committed by courts of first instance or courts of appeal. As can be seen

[47] *See* Republic of Latvia Supreme Court Senate, Decision Nov. 5, 2019, Case Nr. 11110005019, SKK-J-610/2019 Retrieved from https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi (last visited Feb. 6, 2022).

[48] *See* Republic of Latvia Supreme Court Senate, Decision Aug. 27, 2019, Case Nr.11380039617, SKK-J-0613-19 Retrieved from https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi (last visited Feb. 6 2022).

[49] *See* Republic of Latvia Supreme Court Senate, Decision Nov. 5, 2019, Case Nr. 11110005019, SKK-J-610/2019 Retrieved from https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi (last visited Feb. 6, 2022).

[50] *See* Zeppa-Priedīte Violeta, Krimināprocesa likuma komentāri A daļa [Part A of the Criminal Procedure Law] 112-115 (Latvijas Vēstnesis ed., 2019).

from the case law and statistical data, every year the Supreme Courts of both countries recognize a number of court rulings that have already entered into force as illegal, as a result of which errors made by the courts are eliminated. Thus, the convicted person can be sure that such a final decision (by reviewing the decision again) by the Supreme Court is fair, lawful and justified by law.

The author has analysed the above information and aggregated statistical data and concluded that a tendency can be observed in both the Republic of Latvia and the Republic of Lithuania that final judicial rulings may occasionally be recognised as unlawful by the Supreme Court because laws have been misapplied by courts when giving their judgements. Moreover, such cases are considered only on the basis of applications filed by certain persons, i.e., the right to the revision of a ruling is guaranteed only for convicted persons. Meanwhile, no such right is granted to victims, which implies the unequal treatment of parties to criminal proceedings.

As recognised in legal literature, the reopening of criminal cases due to a material violation of substantive or procedural rules is occasionally referred to as "delayed cassation".[51] The author believes that this assertion is underpinned by criminal procedure legislation of both the Republic of Latvia and the Republic of Lithuania, because substantially similar matters – conformity with and construction of substantive rules, including the Criminal Law, and criminal procedure rules – are reviewed as part of cassation proceedings and revision of final rulings due to a material violation of substantive or procedural rules. In addition, it is set forth in criminal procedure legislation that applications concerning final judgements are revised by the Supreme Court, which is also the cassation court.

It can be concluded that denying a victim's right to file an application concerning a final ruling which is substantially unlawful and impairs the victim's legitimate interests infringes the victim's right to a fair trial and a fair final ruling in a case. Moreover, a fundamental principle of law – the principle of equality – is not observed in a situation when the victim is denied the right to seek revision of a court judgement due to a material violation of substantive or procedural rules. Even though the principle of equality of arms is not explicitly expressed in any of the human right treaties, it is clear from European Court of Human Rights case law that the principle falls within the right to a fair hearing. Moreover , the equality of arms principle obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case.[52]

[51] Gruziņš, *supra* note 2, at 409, 414.

[52] *See* Mark Klamberg, Evidence in International Criminal Trials: Confronting Legal Gaps and the Reconstruction of Disputed Events 56-57 (2013).

As recognized in legal doctrine, the government must respect the constitutional right to a fair trial by designing an effective legal tool that would prevent violations in criminal proceedings. Moreover, a court cannot be independent and fair without successful proceedings, which ensure the ability not only to deliver justice but also to correct unlawful or unreasonable rulings, even if they have already become final.[53]

In the author's opinion, a state governed by the rule of law must ensure that any offender is held criminally liable, meanwhile preventing situations where innocent persons may be convicted or erroneous rulings may be delivered in criminal cases. In this context, a state's duty is to formulate a policy that would strengthen the efforts of law-enforcement bodies in terms of the enforcement of criminal remedies, thereby minimising the likelihood of erroneous rulings. Accordingly, criminal proceedings should lead to a final ruling that would conform to consistent principles – the fundamental principles of lawfulness and the rule of law – and would be fair and not open to appeal.

Accordingly, the legal framework dealing with criminal procedure should secure equal possibilities to seek revision of final rulings due to a material violation of substantive or procedural rules not only for convicted or acquitted persons but also for victims, regardless of whether criminal proceedings have resulted in conviction or acquittal or have been terminated.

Therefore, the author believes that the legislation governing criminal procedure in both the Republic of Latvia and the Republic of Lithuania should be supplemented with a provision whereby the victim would also be allowed to file an application concerning a final ruling due to a material violation of substantive or procedural rules. This would ensure that not only convicted or acquitted persons but also victims may enjoy their right to a fair trial, and a uniform procedure would be guaranteed for persons whose rights or legitimate interests have been impaired in specific criminal proceedings, namely the principle of equality is observed.

[53] *See* Sandra Kaijia, *Prokurora loma krimināl*procesa *Atjaunošanā Jaunatklātu Apstākļu Dēļ* [*Prosecutor's Role in Criminal Proceedings in Connection with the Renewal of Newly Discovered Facts*], 2 Socrates, no. 5, 2016, at 17-18.

CONCLUSIONS

Summarizing the above stated, the author concludes that the criminal procedure regulations of the Republic of Latvia and the Republic of Lithuania provide for a new review of valid rulings, in cases where significant violations of substantive or procedural legal norms are revealed after the entry into force of the judgement. However, certain criteria, which are strictly defined by law, must be met on when or not such a review of an existing decision is permissible.

When reviewing an existing decision, the Supreme Court must consider the balance between ensuring the legal force of a valid court judgement in accordance with the principle of *res judicata* and guaranteeing the rights of individuals to a fair trial if after the entry into force of the judgement significant violations of substantive or procedural norms of law have been discovered.

The criminal procedural regulations of the Republic of Latvia and the Republic of Lithuania, which provide for a new review of valid rulings in connection with significant violations of substantive or procedural legal norms, are not just empty provisions. These regulations are applied in practice in order to reach a fair decision by eliminating significant violations committed by the courts of first instance or appellate instance. Thus, justice is achieved and the person's right to a fair trial is ensured.

The criminal procedural guarantees to apply for a review of a valid decision in connection with significant violations of substantive or procedural law should be available not only to the convicted person but also to the victim, thus ensuring both the principle of equality and the right to fair trial guaranteed by Article 6 of the Convention.

According to the criminal procedure legislation of the Republic of Latvia and the Republic of Lithuania, a victim may not file an application concerning a final ruling due to a material violation of substantive or procedural rules. At present, this right is granted only to convicted or acquitted persons. If a ruling is substantially unlawful, a victim's right to a fair trial and a fair final ruling is infringed.

To this end, the criminal procedure legislation should be supplemented, and Article 663(1) of the Criminal Procedure Law of the Republic of Latvia should be restated as follows: "[1] An advocate may submit an application for revision of a court ruling under the assignment of the following persons:

1. the convicted and acquitted person, or the person against whom criminal proceedings have been terminated with a court decision;
2. the victim, the victim's representative or legal representative".

The author also believes that Lithuania's criminal procedure legislation should be supplemented and the first sentence of Article 452 of the Code of Criminal Procedure of the Republic of Lithuania should be restated as follows:

> "[1] The convicted or acquitted person, the person's legal representative or defence lawyer, and the victim and the victim's legal representative, and the prosecutor general of the Republic of Lithuania may seek reopening of a criminal case through the Supreme Court of Lithuania, referring to Article 451 of this Code [. . .]".

Supplementing the criminal procedure legislation of the Republic of Latvia and the Republic of Lithuania as mentioned above would mainly secure the right of parties to criminal proceedings (not only convicted or acquitted persons but also victims) to a fair trial and guarantee a uniform procedure for all parties to criminal proceedings whose rights or legitimate interests have been impaired in specific proceedings.