

Victims of the crimes of genocide, war crimes and terrorist acts

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Abstract

In the literature and legal acts of states and various international organizations, there are many explanations and definitions regarding the meaning of victim.¹

Definition of victims for the purposes of the Statute and the Rules of Procedure and Evidence: "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court, victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.²

In the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985, Victims of crime, "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.³

When we talk about the victims of crimes against humanity, war crimes and terrorist acts, we usually think of people who are victimized in the circumstances of the violation of basic human rights and freedoms, which are related to the violation, violation and non-respect of the norms of conventions, laws and international agreements. These victimizations occur more during political conflicts, during local wars, during the rule of autocratic regimes, during terrorist actions and other conflicts around the world.⁴

Keywords: victims, crime of the genocide, war crimes, terrorists acts.

¹ Victimology, Dr.Ragip Halili, Pristina, 2007, pg.46.

² The Rules of Procedure and Evidence are reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (ICC-ASP/1/3 and Corr.1), part II.A. (International Criminal Court – faqja zyrtare <http://www.icc-cpi.int>).

³ Declaration of Basic Principles of Justice for Victims of Crime ... <https://www.ohchr.org>.

⁴ Ibid, pg..82.

Victims and victimization

The problem of the victim and victimization has become an object of interest due to the fact that today in the world the number of victims is very large, there is a great fear of victimization among citizens, the causes of victimization are often treated in an unscientific and unprofessional manner and in the means of public communication the cases of the victims are presented in a sensational way and without objective criteria, and large sums of money are spent to remedy the position of the victims.⁵ The word victim means the specific person or group that has suffered, that has been damaged. Punishment or victimization is related to deprivation of life, damage to bodily integrity, destruction of physical and mental health, and being left with short-term and long-term serious physical and psychological consequences. Injury and damage also means the destruction of property and other moral and material goods, violation, violation and jeopardy of individual and collective human rights and freedoms.⁶ Compared to the treatment of the perpetrator, the treatment of the victim is very new. Of course, even in the past, the victim of crime was known as a notion, as the subject of the criminal act, but her need for a necessary protection or compensation was not taken into consideration. The difficult position of the crime victim has been known since the early justice systems. The Code of Hammurabi in the eighteenth century (AD) provided that victims of street robbery should be compensated for their losses from the mayor's treasury.⁷ While throughout the world the interest in crime, the perpetrator has been very early, treating it extensively in theory, issuing laws, the interest and treatment of the victim of crime is relatively new.⁸ The concept of the victim dates back to ancient times. In ancient cultures and civilizations, it had the meaning of sacrifice, i.e. taking the life of a person or animal to fulfill an obligation to the gods. (Karmen, 1990) Over the centuries, the word victim took on other meanings, including any person who has suffered injury, loss or suffering for whatever reason. Today the word victim is used and interpreted in many different contexts. It is not uncommon for the word victim to convey a multitude of human experiences such as: cancer victim, holocaust victims, accident victims, injustice victims, natural disaster victims, crime victims, etc. Each of these is depicted with suffering, and destruction, and often with heroism or individual resistance to face the destructive forces. (Carmen, 1990).⁹ In the historical aspect, the effort of various authors to contribute, to highlight the necessity of knowing the needs of the victim who has suffered from the crime, to know her relationship with the perpetrator and the need for protection.¹⁰ Among the authors who are also known as pioneers of the science of victimology, the contribution of Hans V. Hentig is distinguished, who in 1948 published his

⁵ William, G.Doerner&Stiven, P.Lab: Victimology, Cincinnati, Ohio, 2000, pg.1.

⁶ Gerard.Lopez,S.Bornstein, Victimologie Clinique Paris, 1995,pg.3-6.

⁷ Adler, Freda dhe të tjerë: Criminology, New York, 1995, pg. 397.

⁸ A.Puka, Legal protection of the crime victim, Albanian Journal of Legal Studies, Meeting IV, Albanian-Science Institute, 2009.

⁹ <https://knowledgecenter.ubt-uni.net> › Victim Protection and Assistance - UBT Knowledge Center.

¹⁰ A.Puka, Legal protection of the crime victim, Albanian Journal of Legal Studies, Meeting IV, Albanian-Science Institute, 2009.

book "Crime and its victim". In this book, he emphasizes that crime mostly harms someone. Therefore, he thinks that in the context of avoiding criminality against the state, order, health and others, it should be taken into account that there are always two participants, the perpetrator and the victim.¹¹ In recent times, namely towards the end of the 1970s and the beginning of the 1980s, in many countries, there has been a general rise in awareness of the need to focus attention on crime victims and to provide a comprehensive system of justice.¹² In this direction, the contribution of the Council of Europe and the UN to the protection of crime victims has been very important, which mainly consists in issuing a large number of legal acts for this purpose. Among the non-governmental organizations, it is worth mentioning the role of "The World Society of Victimology" (WSV) which during its activity has organized several international symposia every three years starting from 1973 and has initiated a series of legal acts for the protection of victims. This association has several associations in different countries, among them also in Croatia and Bosnia and Herzegovina.¹³ The position of the victim of crime has historically changed a lot, from the position when her rights were not protected by law, she was only recognized as the subject of the crime and was used as a source of evidence, until now her rights have been fully counted with her human rights as a whole. In view of this, many legal acts have been approved and strengthened. However, the need to improve the legal status of crime victims remains very current, especially in countries that have not done enough in this regard.¹⁴

Victims of the crime of genocide

The definition of genocide was introduced a few years later, in 1948 when the UN adopted the Convention on the Prohibition and Punishment of the Crime of Genocide. According to this convention, genocide is defined very clearly and very strictly: The complete or partial disappearance of an ethnic, national, religious or racial group is called genocide. At the time when this convention was brought, not much importance was given to the number of victims, but importance was given to the genocidal intent, i.e. the intent to make a certain group disappear and cease to exist. Over time, subsequent tribunals became less concerned with intent and more concerned with numbers, and so, by the 1990s, it was the numbers that determined whether or not there was genocide. When we talk about the establishment of responsibility, it is the intentions and motives of the perpetrators that matter, while the numbers are of secondary importance. The Genocide Convention speaks of the killing and extermination of a member of the group, not of a significant number of victims. Because it is hypocritical to differentiate between crimes based on the number of victims. Each victim is an individual in itself, pain in itself, loss in itself.

¹¹ Henting, Hans Von: *The criminal and his victim*, Archon Books, 1967, pg. 383.

¹² Guidelines for the protection of victims - How to work with victims of crime, OSCE, Mission in Kosovo, Pristina, 2001, pg. 44.

¹³ www.worldsocietyofvictimology.org, viewed on dt.14.02.2023, on 10.04 a.m.

¹⁴ A.Puka, Legal protection of the crime victim, Albanian Journal of Legal Studies, Meeting IV, Albanian-Science Institute, 2009.

Every victim is a life ended prematurely just because of belonging to a certain group, every victim is much more than a number. Therefore, the crime of genocide must be named correctly whenever it happens, because it is the intention that defines this crime, not the numbers.¹⁵ When we talk about the establishment of responsibility, it is the intentions and motives of the perpetrators that matter, while the numbers are of secondary importance. The Genocide Convention speaks of the killing and extermination of a member of the group, not of a significant number of victims. Because it is hypocritical to differentiate between crimes based on the number of victims. Each victim is an individual in itself, pain in itself, loss in itself. Every victim is a life ended prematurely just because of belonging to a certain group, every victim is much more than a number. Therefore, the crime of genocide must be named correctly whenever it happens, because it is the intention that defines this crime, not the numbers. Throughout history, there have been many victims of the crime of genocide, but they have not been recognized as such and have not been accepted by the states, also due to the fact that the crime itself as such has not been recognized and not accepted by the states themselves. Only after the end of the Second World War with the adoption of the Convention on the Prohibition and Punishment of the Crime of Genocide by the UN, states began to realize the importance of punishing this crime, which when it is found that it has been committed many consequences, the most serious of which are the loss of many lives. From the very definition of the notion of the crime of genocide, we can conclude that in order to fulfill the elements of the legal form of the crime of genocide, the crime must have been committed with the aim of the complete or partial disappearance of an ethnic, national, religious or racial. And from here it appears that at the moment of fulfilling the legal forms of the notion of the crime of genocide, it is inevitable that the crime was committed against more people belonging to a certain group. Therefore, whenever we talk about the crime of genocide and the finding that it was committed, we always associate it with many victims. As for the acceptance and definition of this crime in the legal acts of the states and in international law, it has been a more difficult process, for many reasons and factors. Numerous factors are mentioned in the literature that have influenced the reluctance and procrastination of states to accept this crime in their legal systems and also in international law, but the political reasons have been very important, because the political motives in it in most cases, they were also the main reason for the states to commit this crime. The killing and extermination of the members of a certain ethnic, religious, national or racial group is irreparable because their lives cannot be returned, but the responsibility and punishment of the perpetrators of such acts at least represents a satisfaction for the family members of these victims. As the process of recognizing the crime of genocide has become difficult, bringing the perpetrators of this crime to justice, the process of compensating the victims of the crime of genocide is even more difficult, because often states hesitate and are not ready to take action. in the direction of facilitating this process. In many countries, there are still many victims of this crime who crawl through the labyrinths of justice,

¹⁵ Besa Arifi, article published in Portalb “Crime without name”, dated 20.01.2022, viewed on 14.02.2023 at 09.44, Crime without name - PORTALB, <https://portalb.mk> >.

making it difficult and in some cases even impossible to compensate them, which often stigmatizes such victims a second time, and in this case by themselves their state, which is supposed to protect, recognize and advance their rights.

Victims of war crimes

War crimes are traditionally associated with serious violations committed during an international armed conflict. However, nowadays, in most legal systems it is provided that a person can be held criminally responsible for violations committed during the internal armed conflict (Murphy, 2006:420). Such a position was provided for in the Geneva Conventions of 1949 and in the additional protocol of 1949, according to which serious violations classified as war crimes were conditional on the fact that such actions must have been committed during the development of a international armed conflict. The ICTY Appeals Chamber in the Tadić case, while examining whether the actions of the accused can be classified as war crimes, considered that although in the Geneva Conventions of 1949 and the additional protocol of 1977 the existence of armed conflict international was conditional, the ICTY Appeals Chamber considered that such provisions were in the process of being created and that serious violations could be committed even during internal armed conflict (Cassese, 2003, 88).¹⁶ During the development of armed conflicts, whether internal or international, many actions are carried out that constitute the figure of war crimes. The complexity of the actions that make up the picture of war crimes and the exact determination that an action constitutes a war crime or not, for a long time has been a dilemma in the international criminal legal doctrine. This has finally been resolved with the establishment of the International Criminal Court, whose Statute enumerates in a taxing manner the actions that constitute the figure of war crimes and for which this court has jurisdiction. Another problem is the unwillingness of the states to hand over the persons responsible for trial and punishment before this court. Such was the case with Serbian President Slobodan Milosevic, who not only ignored the new global norms, but was unaffected by them when he used violence against civilians, first in Croatia, then in Bosnia, and finally in Kosovo. The establishment by the UN of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 did not stop the violence in Bosnia, including the genocide in Srebrenica, when over 8,000 Bosnian Muslim men and boys were killed in a few days in July 1995. . Even Milosevic himself was one of the signatories of the 1995 Dayton Agreement, which ended the war in Bosnia and established cooperation with the ICTY, certain that this court was dead from the start. Likewise, the Hague Court's indictment against Milosevic with accusations of war crimes in the middle of the Kosovo War in 1999, seemed not at all compelling. But Milosevic was wrong. Despite many attempts to avoid international criminal justice by many representatives of the Serbian authorities, Milosevic was handed over to the ICTY for trial in June 2001. The same happened to the political and military executioners in Bosnia, Radovan Karadjic and Ratko Mladic.¹⁷ The last

¹⁶ Arta Mehmeti Ademi, Doctoral Thesis - International Criminal Responsibility, Tirana, 2017, pg.281-282.

¹⁷ Lessons from the Balkans: How justice can be done for victims of war crimes in Ukraine - Tetova Sot, Denisa Kostovicova, associate professor of global politics at the European Institute at

30 years in the Balkans have been characterized by the search for justice. At best, the record in this regard remains mixed. The radical evolution of international criminal jurisprudence has undoubtedly brought a kind of justice to some. But many others remain unsatisfied, even feeling betrayed. The search for justice and reparations in the Balkans will continue as a complex and messy process of dealing with the legacy of war crimes, atrocities and genocide. Despite the fact that war crimes are committed during hostilities, which cause many victims, from the practice so far we can see that initially such crimes were not sufficiently documented, sufficient evidence was not collected even after a long time from the end of armed conflicts. We can see such a fact from many researches and statistics that have been done in Kosovo and Bosnia and Herzegovina. About 13,500 people were killed during the last war in Kosovo (1999). These data are provided by various institutions in Kosovo, but they are best evidenced by the organization Fund for Humanitarian Law, presented in the Book of Remembrance of Kosovo (LKK) on all victims of the war in Kosovo from all ethnicities. According to this organization, a total of 13,535 people were killed or disappeared during the war in Kosovo. This figure was derived based on the analysis of 31,600 documents from various sources, including a large number of statements of victims and witnesses of war crimes.¹⁸ During the monitoring of trials for war crimes, it is observed that even in cases where the decisions include prison sentences, the compensation of the victims remains an unknown area. The Kosovo Institute for Justice also monitored the Crime Victim Compensation Program and found that there were no applications from victims of war crimes. Meanwhile, victims who have kept their identity secret in order to be protected during criminal proceedings are unable to seek compensation in civil proceedings, because there is no legal mechanism in civil cases that allows them to keep their identities secret. They must reveal their names in order to file a civil lawsuit, which could seriously endanger their lives. Based on this and the monitoring of judicial processes, it is observed that the number of people convicted of war crimes is very small compared to the number of victims and crimes committed.¹⁹ Many survivors of the Balkan conflicts were left completely disillusioned and felt betrayed by the war crimes trials at the ICTY and those held in local courts. Even when they did go to trial, some of the accused got off with a relatively light sentence or were acquitted on acquittal.²⁰

the London School of Economics and Political Science. Rachel Kerr, lecturer in warfare at King's College London.

¹⁸ Crime and Punishment: Factography of the Kosovo War | The Balkans DW | 26.12.2020, viewed on 18.02.2023, 15.31.

¹⁹ Victims of war crimes in Kosovo are losing hope for compensation - Region (gazetatema.net), viewed on 18.02.2023, 15.38.

²⁰ Lessons from the Balkans: How justice can be done for victims of war crimes in Ukraine - Tetova Sot, Denisa Kostovicova, associate professor of global politics at the European Institute at the London School of Economics and Political Science. Rachel Kerr, lecturer in warfare at King's College London.

Victims of terrorist acts

Terrorism as a violent act that causes the loss of human life on a large scale, as well as causing significant material damage and its long-term consequences, is very current in the international arena. Terrorism is a global problem, which, although it is fought by states and other international entities with different means and methods, it is still very difficult to prevent.²¹ This legal mechanism, the States and international organizations have created a legal mechanism that somehow tries to prevent the undertaking of terrorist acts, although it is very difficult to achieve such a thing, but at least by criminalizing acts such as in international conventions, as well as in national legislation, the perpetrators of these acts will be held accountable and punished. Public opinion around the world is constantly witnessing various attacks that take place across the globe, acts that involve a local territory or some larger space. The international community is constantly committed to detect and prevent such acts and terrorist attacks, but unfortunately such a thing is very difficult and in some cases even impossible, because now compared to the past, the opportunities offered by The technical and technological tools used are very sophisticated and are normally intended to improve people's well-being, but unfortunately such discoveries are misused to achieve criminal goals. It is very disturbing the fact that recently, the number of terrorist attacks and especially in urban centers, frequented by a large number of people, has intensified a lot, so a large number of innocent people lose their lives. The range of objects that can be the target of terrorist attacks is very wide, but usually the most frequently attacked in practice are those objects that are frequented by a very large number of people, in order to cause as many as possible great loss of life and considerable material damage.²² The number of victims of terrorist acts is very large, because the very purpose of committing terrorist acts is to cause a large number of victims, which aims to instill fear and uncertainty in the people and opinion. The most victims that have been caused by terrorist organizations, during the period 2000-2015, are: Al-Qaeda in 289 terrorist acts has attacked citizens and their private properties, in 520 terrorist acts it has attacked the government-police-military forces, in 35 terrorist acts have hit educational and religious institutions, 81 terrorist acts have been other. The Taliban in 622 terrorist acts attacked citizens and private property, in 1612 terrorist acts they attacked the government-police-military forces, in 133 terrorist acts they attacked educational and religious institutions and in 390 terrorist acts they were other. Boko Haram in 156 terrorist acts were citizens and private property, 307 terrorist acts were the government-police-army, in 150 terrorist acts were educational and religious institutions, 137 terrorist acts were others. ISIS, in 219 terrorist acts were citizens and private property, in 158 terrorist acts the governors-police-army, 30 terrorist acts were educational and religious institutions, in 85 terrorist acts there were others.²³ Terrorism continues to remain one of the main

²¹ Arta Mehmeti Ademi, Doctoral Thesis - International Criminal Responsibility, Tirana, 2017, pg.281-282.

²² Ibid,pg.307.

²³ Targets-objectives in terrorist acts in the world, in the years 2001-2011 - Gjergj Albania-Skender Jashari (wordpress.com), viewed dt. 18.02.2023, 4:38 p.m.

threats to local and global security, threatening not only life and property, but also democratic values and the very way of life of society. An efficient response to terrorism requires the involvement and cooperation of all public institutions, civil society, international organizations, but also citizens.²⁴ From all that we elaborated above, we can see that in the current circumstances the prevention, capture and bringing to justice the perpetrators of terrorist acts represents a challenge in itself, while the compensation and rehabilitation of the victims of terrorist acts is a challenge in itself, and which for now is hardly feasible.

Conclusions

Today, in the whole world, it has been proved as a necessity that, in addition to the rights of the perpetrator, at the same level and with an even greater feeling, the rights of the victim of the crime should also be legally regulated. Guaranteeing the rights and treating the victims of crime in accordance with them, in addition to being a function of the principle of humanity and protection from re-victimization, this is also of great importance for the prevention of crime. When we talk about the rights of the victim, starting from the basic right to life, to property for health protection or other protection, compensation, etc., we have in mind her legal rights. For the promotion of the rights of crime victims so far there are a number of legal acts issued by the UN at the general level and by the Council of Europe at the regional level.²⁵ While there is no universal convention on the rights of victims of ordinary crimes, the United Nations General Assembly approved, in 1985, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the text of which was approved by consensus from the seventh United Nations congress on the prevention of crime and the treatment of offenders.²⁶ At the European level, a series of documents have also been approved with the aim of legal advancement of the victim's position, among them it is worth mentioning: the European Convention on compensation for victims of crime of 1983, recommendations such as: Recommendation No. (85) 11 on the position of victims in the framework of the criminal law and criminal procedure, which regulates the position of the victim from the moment of suffering, during the interrogation for the first time as well as her protection in all stages of the criminal procedure. Other acts that define the rights of crime victims at the European level are: Recommendation No. 4/85 on the protection of victims in the family; Recommendation no. 21/87 On Victim Support and Prevention of Victimization; Recommendation no. 8/2006 On assistance to crime victims, etc.²⁷ All persons who have suffered from crime, first of all, need adequate protection. Here, we are primarily referring to victims who have suffered for the first time from crime, the so-called primary victimization. These victims may have suffered directly or indirectly, the damage they suffered may

²⁴ Feasibility Study (rks-gov.net), State Strategy against Terrorism and Action Plan 2018 – 2023.

²⁵ Albanian Journal for Legal Studies, Meeting IV, Albanian-Science Institute, 2009, Microsoft Word - 2. A.Puka_Protection of Victims of Crime.doc (ajls.org).

²⁶ Human Rights in the Administration of Justice: A Human Rights Handbook for Judges, Prosecutors and Lawyers, United Nations Publication, New York and Geneva, pg. 735-736.

²⁷ Microsoft Word - 2. A.Puka_Protection of Victims of Crime.doc (ajls.org).

be of a physical, psychological, moral and material nature. In a word, as persons to be offered protection are considered all those persons who at the same time are considered as victims according to international acts and are in need of such a thing.²⁸ Efforts so far at the international level to improve the position of victims in the administration of justice are an acknowledgment of the fact that national justice systems have often focused on the perpetrator and his/her relationship with the state, to the exclusion of the rights, needs and interests of victims.²⁹ A problem in itself in the case of victim protection is taking measures to prevent their re-victimization or so-called secondary victimization. Crime survivors can feel victimization again when they decide to go one step further and talk about the crime. This can happen through intensive and inadequate treatment by actors within the criminal justice system and the social welfare sector, and also during participation in the investigation and trial process. Depending on the nature of the crime and its position in the event, the resulting consequences, often the victims have experienced a second victimization by the justice system. The position of the victim is delicate and difficult in cases of such crimes, such as: injury, murder of family members, sexual abuse, robbery, etc. Often the victim has to face the perpetrator and recall the most difficult moments of the past. The treatment of the crime victim, in particular the issue of her legal protection, is one of the biggest problems of the criminal justice system and preoccupation of the professional opinion in general. The rights that belong to the victims of crime with their provision in international and national documents have been raised to the level of legal rights and as such are considered an integral part of human rights in general. However, at the national level, in many countries, the need to issue legal norms from this field remains very current in order to guarantee that the victim of the crime has adequate legal protection from the moment of suffering until the end of the criminal case related to him. The various studies and researches that have been done show that for an efficient fight against criminality, in addition to the trial and punishment of the perpetrator, it is necessary that the other subject of the criminal act be offered adequate help. When taking measures to ensure the necessary legal protection, the specific needs and delicate position of the victim as a result of the impact of victimization must be taken into consideration.³⁰ In general, it can be said that the position of victims of crimes is not in a satisfactory position, much less the position of victims of war crimes, genocide and crimes against humanity. In the Balkan countries where wars have been fought, as a result of the secession of the states from the former RSFJ, and as a result, many war crimes, crimes of genocide and crimes against humanity have been committed, even three decades after their end, there are still crimes that are not have been documented, there are very few people who have been convicted of such crimes, even fewer victims who have been compensated or received any kind of satisfaction.

²⁸ Albanian Journal for Legal Studies, Meeting IV, Albanian-Science Institute, 2009, Microsoft Word - 2. A.Puka_Protection of Victims of Crime.doc (ajls.org).

²⁹ Ibid.

³⁰ Ibid

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