



Research Article

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Victims of criminal offenses: Their needs, rights and respect in practice

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Abstract

While the situation of crime victims is analyzed by law enforcement officers, victims of human rights violations deserve special attention due to the very fact that these violations were 'performed' by the state, through its official employee or a person who acts in the capacity of an official. This fact does not in any way change the right of the victims to be treated with kindness and respect, nor does it affect their right to benefit from justice mechanisms and to have immediate solutions.

It should be understood that such a violation of individual rights committed by or with the consent of a state official, can seriously damage the relationship between citizens and the State. The outcome of law enforcement, in terms of the current condition of law and order, depends on the existence of good relations with the public. When law enforcement officers carry out practices that contradict the rights and freedoms of the individual, the very link between the organism as a whole and the community is endangered.

Trust and security are two conditions for fruitful communication and cooperation between the community and the law enforcement body. When trust and security are weakened due to the illegal and arbitrary behavior of law enforcement officers, the quality of cooperation and communication is also weakened. Special care should be taken for the victims of such violations so that the occasional incidents do not have devastating consequences on the image and work of the entire law enforcement organization.

Keywords: cooperation, resocialization, community, power, victim.

1. Introduction

All over the world, the interest in crime has been very primeval, treating it widely in theory through the issuance of laws, but the interest and treatment of crime victims are relatively new. The treatment of this problem is justified by the actuality itself, society's concern for the victim, and his protection. On the other hand, it is presented as a need of the time to study in relation to the issues related to the crime victim and

in particular to his position in the criminal justice system. The treatment of the crime victim, in particular the issue of protection of his legal status is one of the biggest problems of the criminal justice system and the preoccupation of the professional opinion in general.

Despite the opportunity to be informed about the rights of the victim, they are presented as a modern and contemporary movement, they have not always been forced to realize their rights in this way, since until recently the victim himself had the right and responsibility to follow and persecute himself the person who caused the damage, and it was the victim who held the burden of proof of the guilty person. This reality was evident everywhere until the early Middle Ages. From this time the reality in question continued to exist in countries with an Anglo-Saxon system where the victim was provided with a fairly active role in the criminal process, thus turning the prosecution of a crime into a "mainly private relationship between the victim and the perpetrator of the criminal offense".

In the 19th century, a new doctrine was introduced according to which the criminal offense cannot be treated as a private matter between the victim and the perpetrator because it deeply affects and damages the public interest of the state. This approach was evident in countries with a continental legal system since the initial appearance of the inquisitorial system. But in the 19th century, this approach gained general support even in countries with an Anglo-Saxon system, thus placing the victim in a position indifferent to the public interest, and treating the perpetrator with the aim of resocializing him.

In every crime committed, there are at least two victims. Society suffers as a result of the violation of its rules, while the victim suffers actual damage to his person or property (Kennard, 1973). Moreover, for a century the victim represents no more than "a passive party, whose role is limited only to suffering damage", being almost completely excluded from criminal proceedings, the victim usually becomes the subject of victimization which results in not reporting crimes. Although it is clear that the State's response to the perpetrator of a criminal offense is initially inspired by the injustice caused to the victim, but not only.

2. The concept of the victim in criminal law

International documents which provide the concept of human rights and individual protection such as; "The Universal Declaration of Human Rights", "International Covenant on Civil and Political Rights", "International Convention on the Elimination of All Forms of Racial Discrimination", "Convention against Torture and Other Forms of Cruel and Inhuman Treatment", The "Convention on the Rights of the Child" as well as the "European Convention for the Protection of Human Rights and Fundamental Freedoms", "American Convention on Human Rights", "African Charter on Human and People's Rights", promote few rights for victims. With the exception of the European and American Convention, other documents do not speak about the right of an individual to compensation for the damage caused by a criminal

offense. Apart from the fact that these conventions were adopted a long time ago, it is intolerable that these documents have not been supplemented with amendments regarding the issue of ensuring the dignified protection of the victim's rights.

The notion of the victim is given in the declaration of the basic principles of justice "On victims of crime and victims of abuse of power", approved by the General Assembly of the United Nations, on November 29, 1985. In this declaration, it is determined that; "...victims are understood as people who, individually or collectively, have suffered damage, a violation of their physical or mental integrity, a moral or spiritual suffering, material loss or serious violation of their rights, due to actions or non-actions that violate applicable laws, including laws prohibiting criminal abuse of power" (KSHH, 1993)". The declaration requires the dignified treatment of the victim, the strengthening of judicial and administrative mechanisms, which would enable compensation for the damages caused to the victim, better informing of the victim about the possibilities offered by the legislation, the use of extrajudicial means, when this is possible, in order to mitigate the conflicts between the parties.

There is no definition of the term "victim" in Albanian criminal and criminal procedural legislation. In the Juvenile Criminal Justice Code, the term is defined as "Minor victim". The only source in which we find a legal definition of the term "victim" is the international instruments related to the protection of crime victims ratified by the Republic of Albania.¹ It is worth noting the fact that the legislator has replaced the term harmed by a criminal offense with the term victim of a criminal offense to guarantee the harmonization of the terminology of the internal legislation with the *acquis communautaire*. Despite the negative connotation that the term victim has in everyday life.

In today's dictionary of the Albanian language, "victim" is defined as a person who is harmed or loses his life in an accident, who is harmed or loses his life by natural phenomena (earthquakes, floods, etc...), or a person who unjustly suffers bad deed from someone. So, this term does not mean only the person who loses his life from an event but also the person who is harmed by it.

In university studies in the field of criminology in Albania, the definition of the term victim relies on a comprehensive approach. Victimology is defined as the science that studies the occurrence, causes, and conditions of victimization, the consequences of crime on the person involved, social behavior, and especially the response of the criminal justice system and professionals in the field to victims of crime (Hysi, 2005).

3. The rights of the victim according to the criminal law

The Criminal Code of the Republic of Albania contains a series of provisions dedicated to the special protection of certain categories of victims of criminal offenses such as: minors, people unable to defend themselves, public employees, members of ethnic,

¹ EU Directive of the Parliament and the European Commission dated October 25, 2012 "On determining the minimum standards for the rights, support and protection of the victim of criminal offenses and the replacement of the Framework Decision of the Commission" (Directive 2012/29/BE), in which is based on the change made by law no. 35/2017.

racial, religious groups, etc. The relevant provisions provide for the punishment of no less than 20 years of imprisonment for the criminal offense of murder committed against a minor, a person with a physical or mental deficiency, or against a pregnant woman, when the qualities of the victim are obvious or known, as well as the punishment of not less than 30 years of imprisonment when the offense is committed against a judge, prosecutor, lawyer or other public officials during the exercise of the duty or because of it.²

Other provisions punish racist and xenophobic acts,³ the protection of minors from acts that endanger or harm their physical integrity, normal sexual development, and sexual freedoms.⁴ Section IX, chapter II of the Criminal Code is entirely dedicated to the protection of children, marriage, and the family from criminal offenses that endanger the well-being of children as well as other acts that violate the institution of the family or marriage.

The Code of Criminal Procedure is the main legal basis that provides effective procedural means for exercising the rights of victims of criminal offenses. The criminal procedural law also provides the necessary guarantees in cases of non-respect of the victim's rights during criminal proceedings. Law no. 35/2017⁵ brought a series of important changes to the Criminal Code and greatly expanded the active role of the victim in criminal proceedings.

Meanwhile, as far as the Albanian legislation is concerned, the Code of Criminal Procedure makes a provision in some of its provisions, starting with the provision of Article 58 "Rights of the victim of a criminal offense", the purpose of this provision is to determine the position of the victim in the criminal process, as well as its procedural rights from the moment of registration of the notification of the criminal offense until the end of the process, guaranteeing the approximation of the domestic legislation with the international one and in particular with the European one. The object of this provision is to determine the rights of the victim during the phase of preliminary investigations and trial as well as the way of exercising these rights if the victim does not have the legal capacity to act.

The importance of the victim of the criminal offense in the process has been indicated by the legislator with the addition of the provision of Article 9/a of the Code of Criminal Procedure, this norm was established in the part of the general provisions of the Code emphasizing the obligation of public bodies to guarantee that the victims of the criminal offense to be treated with respect for their human dignity and to be protected from reconstruction while exercising the rights provided by the code. The

² Criminal Code of the Republic of Albania, article 79 "Murder in other qualifying circumstances" and article 79/b "Murder of public officials".

³ Criminal Code of the Republic of Albania, article 84/a "Threats with motives of racism and xenophobia through the computer system", article 119/a "Distribution of racist or xenophobic materials through the computer system" and article 265 "Inciting hatred or strife".

⁴ Criminal Code of the Republic of Albania, article 100 "Sexual or homosexual relationship with minors", article 101 "Violent sexual or homosexual relationship with minors aged 14-18", article 108 "Obscene acts", article 109 "Kidnapping or holding a person hostage", article 114 "Exploitation of prostitution", article 117 "Pornography", article 121/a "Stalking" and article 128/b "Trafficking of minors".

⁵ Albanian Juvenile Criminal Justice Code.

provision of article 58, although in its point 1 lists the rights of the victim of the criminal offense, but does not give a definition of this term.

Other provisions in the Code of Criminal Procedure recognize the right of the victim to participate in the trial as a party to prove the charge and to request compensation for damages in cases of criminal proceedings for certain offenses which are provided for in the law.⁶

Albanian procedural legislation provides for the possibility of compensating victims of human trafficking, through procedural means in two processes:

- civil lawsuit in the criminal process;
- lawsuit for seeking damages in the civil process;

The difference lies in the fact that the civil lawsuit in the criminal process is related to the search for material damage, the code of criminal procedure does not recognize the possibility to request “moral damage”. It has provided for the possibility to request compensation for damage only in cases of search by the harmed party accusing before the court. However, victims of accidents or human trafficking have the legal opportunity to seek moral damages through the civil process, referring to the criminal procedure code, the civil code, as well as Law no. 9284, dated September 30, 2004 “For preventing and combating organized crime” and referring to judicial practice referring to case law⁷ related to the meaning of material and moral damage. The rights in the general sense, newly sanctioned in the code of criminal procedure can be classified in these sub-groups:⁸

- the victim’s rights to information and support;
- the rights of the victim to participate in the criminal process;
- rights related to the protection of victims.

Victims of road traffic crime will be treated as victims of crime as a whole and will be guaranteed the same rights.

a. The victim’s rights to information and support

Accident victims receive less information about investigation and prosecution than other categories of victims. Some rights provided in the code of criminal procedure create opportunities for informing and supporting victims. Based on the content of the provision on the rights of victims, we can distinguish:⁹

- to benefit medical care, psychological help, counseling, and other services provided by authorities, organizations, or institutions responsible for helping victims of criminal offenses, especially immediately after an accident;
- communicate in his own language and be assisted by an interpreter, sign language

⁶ Criminal Procedure Code, Article 59. Criminal offenses in which the victim can participate as a party in the criminal process, include actions such as: serious injury due to negligence, minor injury on purpose, domestic violence, defamation, insult, unjust interference in private life, spreading personal secrets, etc.

⁷ Decision of the Supreme Court no. 12 dated September 14, 2007.

⁸ The classification is carried out on the basis of Directive “2012/29/EU” of the European Parliament and of the Council (October 25, 2012).

⁹ Code of Criminal Procedure, article 58 “Rights of the victim of a criminal offense”.

interpreter, or communication facilitator for people with speech and hearing disabilities;

- to request information on the state of the proceedings at any time, as well as to familiarize himself with the documents and evidence, without violating the principle of investigative secrecy;
- to be informed about the arrest of the accused and his release, under the conditions specified in this code;
- to be notified of the non-start of the proceedings, the suspension of the case, and the beginning and the end of the trial.

b. The rights of the victim to participate in the criminal process¹⁰

A very important subgroup consists of the rights of the victim to participate in the criminal process. Specifically, in relation to the criminal process, the victim has the right:

- request criminal prosecution of the guilty person;
- choose a defense attorney and, when appropriate, obtain free legal aid according to the legislation in force;
- request the receipt of evidence as well as submit other requests before the proceeding body;
- appeal to the court against the prosecutor's decision not to start proceedings and the prosecutor's or preliminary hearing judge's decision to dismiss the charge or the case;
- to request damages and be accepted as a civil plaintiff in the criminal process;
- to be exempted under certain conditions by law, from the payment of any expenses for obtaining documents and court fees for filing a lawsuit related to the status of a victim of a criminal offense;
- be called to the preliminary hearing and the first court hearing;
- to be heard by the court even when none of the parties requested to be called as a witness.

c. Rights related to the protection of victims

International standards have provided for other rights related to the protection of victims. These rights protect the victim from victimization and re-victimization from threats and insecurity. Based on them, the individual assessment of the victim is carried out performed, the identification of his needs for protection or special protection, etc. In fact, with the amendments to the Criminal Procedure Code, some of these rights have been sanctioned only in special provisions, such as those provided by Article 58/b.¹¹

¹⁰ "Commentary on the criminal offenses of human trafficking", page 53 <https://www.osce.org/files/f/documents/8/c/373348.pdf>.

¹¹ "Commentary on the criminal offenses of human trafficking", <https://www.osce.org/files/f/documents/8/c/373348.pdf>.

4. The rights provided for the heirs of the victims

A specific right that should be mentioned especially in the case of victims of traffic accidents is the right of the heirs of the victims. Since some of these victims die, their heirs enjoy a number of rights. The heirs of the victim of the criminal offense have rights expressly provided by this code. Unlike the victim himself, the heir can claim or have these rights:

- request criminal prosecution of the guilty person;
- to be informed about the arrest of the accused and his release, under the conditions specified in this code;
- to be notified of the non-start of the proceedings, the suspension of the case, the beginning and the end of the trial;
- file an appeal in court against the prosecutor's decision not to initiate proceedings and the prosecutor's or preliminary hearing judge's decision to dismiss the charge or the case;
- to request damages and be accepted as a civil plaintiff in the criminal process;
- to exercise other rights provided by this code.
- In the criminal procedure code, we do not have a definition for the victim's heir, but the way it was treated makes us think that the position of the victim's heir in the criminal process is not equal to that of the victim. The rights recognized by the heirs are those of information and the right to seek compensation for damages. However, there are also some rights that are directly related to the progress of the criminal process, such as the right of the heir to denounce and request the criminal prosecution of the culprit, to file an appeal against the prosecutor's decision not to start the proceedings and the prosecutor's decision or the preliminary hearing judge to dismiss the charge or case.

As mentioned above, the heir can claim these rights only in the case where the victim has passed away, while the surviving victim is himself a party to the criminal process. It remains a matter of judicial practice to elaborate a complete definition, of who will be the heir of the victim in the criminal process, since the code does not provide such a definition.

5. The role of the police, the reasons for reporting and not reporting crime

The police is the "front line" of justice and of victim's interest. According to the Law, the police organization has the duty to prevent crime, to arrest and leave the court the assessment of criminal offenses authors. The first contact of the police with the victim is of great importance and value in terms of victimology. The police report to the victims who are very sensitive helps the police officer to do his job as well as possible by gathering a lot of information about the situation, while the victim in those circumstances is more willing and able to be included as a witness in the justice system.

The police are the first to intervene in conflicts, road incidents, in emergency situations, the police, in addition to being obliged to prevent incidents, and stop violence, its most important role is to provide assistance to the victim. Police officers must take into account and adapt to the special needs of people, such as children, young people, women, and people at risk who are involved in road incidents.¹² The police must provide support, assistance, and appropriate information to victims of road accidents. It should be kept in mind that the possibility of the victim's survival may depend on the speed of the police officer's intervention.

The operations to be carried performed by the police in the event of a road incident follow logically from their general mission. The mission of the police is administrative police, assistance-protection-information, investigation and judicial police.

After the crime has been committed, the victim's first contact with the justice system is usually through the police, this contact can continue for a significant part of the judicial process. From this moment, it will depend a lot on how the procedure related to the protection of the victims and their compensation will continue, but related to more efficient work for the prevention of crime and victimization in society. The first cooperation between the police and the victim is also essential in relation to how the victim will cope with the situation. In this direction, it is more important that the first aid and protection of people in need is initially provided by state bodies and coordinated by them, here the role of the police is very important, closely related to the information process.

The first body the victim goes to report an incident to is the police. The reporting of the incident to the police by the victims is the key to starting the process of punishing the perpetrator and, above all, protecting the violated rights. A victim reports because he becomes part of the event, a victim reports that he suffered physical, psychological, material, and moral harm. A victim reports to seek criminal prosecution of the perpetrator and to benefit from everything that was rightfully denied or not available to him. The police officer has the responsibility to collect data for the need of protecting public order and security and/or for the prevention and detection of crimes, using any source that can provide data. For this purpose, we aim to use covert cooperation with individuals, covert surveillance of people and environments, as well as location tracking devices.¹³

If we were to list the reasons for the victim's failure to report the incident, I would first list the fact that the victim scares public opinion. It took a long time for the victims of various events to become aware that they should report, as there are relevant instruments for asserting their violated rights and benefiting from compensation.

Another reason for non-acceptance by the victims is the loss of trust. Trust and security are two conditions for fruitful communication and cooperation between the community and the law enforcement agency. When trust and security are undermined by the illegal and arbitrary behavior of law enforcement officials, the quality of cooperation and communication is also weakened.

¹² Police Law, 2010.

¹³ Law no. 108/2014 "On the State Police" as amended.

Victims fear reporting because they are threatened by the perpetrator. This fact does not in any way change the right of the victims to be treated with kindness and respect, nor does it affect their right to benefit from justice mechanisms and to have immediate solutions.

When a crime is not reported to the police, there is a greater risk that the perpetrator will repeat the crime, as a result of which we have re-victimization. Special care should be taken for the victims of such violations so that occasional incidents do not have a devastating effect on the image and work of the entire law enforcement organization.

6. The current situation of road (traffic) accident victims

The study of official statistics regarding reports and victims is based only on the data on victims of criminal offenses maintained by the state police organization. In the statistics made public by the prosecution institution, as well as in the statistics published in the statistical yearbook of the Ministry of Justice regarding the administration of criminal justice, the data on the victims of criminal offenses are not reflected. Consequently, the study cannot identify the situation of victims of criminal offenses in other links of the criminal justice system such as the prosecution and the courts. If we look at the statistics, there are very few on-road traffic victims, including those dead, generally, data are collected on offenders and violations, but not on road accident victims. Surveys do not include questions about being a victim of a misdemeanor, this is also noticed by the study of INSTAT data.

According to experts who deal with road traffic victims, they emphasize that victimization will have an upward trend. The number of deaths, injuries, and lifelong disability from road traffic accidents will increase by more than 60%, becoming the third leading cause of human injury.

In many cities of the Republic of Albania, motorcycles, new vehicles, and comfortable and safe vehicles make up the majority of vehicles that circulate in road traffic, facing other road users such as pedestrians, cyclists, motorcyclists, and vehicles that are depreciated and unsafe. Means of transport of people such as buses, vans, minibusses, etc., passengers often stand and are not secured during transport, not to mention the rural areas where people are transported by vehicles used for agriculture and livestock farming. Thus, these circumstances to a considerable extent contribute to victimization. In addition to the type and condition of vehicles, the safety of the roads is also important in causing victimization in road traffic, where a part of them becomes accessible without being approved, but also walking beyond the norms allowed by the legislator.

7. Conclusion

Society's interest in identifying the perpetrator of the criminal offense has been very primeval, it seems to have been widely addressed in theory through the improvement of legislation, while the interest and treatment of the victim is relatively new. On the other hand, the study, research, and scientific research regarding the issues related to the victim of crime, in particular his position in the criminal justice system, is dictated as the need of the time. In many advanced countries in terms of the protection and promotion of human rights, there is a serious orientation and practical approach to the dignified treatment of people who have suffered from crime.

Albanian criminal law should now be attached to the contemporary efforts of criminal law, incorporate the term "victim" comprehensively, and expand the range of its rights thus giving a whole new dimension to the purpose of criminal law, not only as a right where at its center is the punishment and re-education of the perpetrator of the criminal offense but also its care for the return of the victim to the previous situation as far as possible.

In Albania, although there is an improvement in terms of the rights of the victim of crime, it is found that there is still no equality in relation to the author in terms of the legal treatment of their positions as subjects of the criminal act. The handling and questioning of crime victims by state police or judicial police officers often reveal major and troubling issues.

An important and quite delicate issue during the police proceedings is also the questioning of the victims. International acts recommend acting with special care and not revictimizing the victim. It should not be placed in the role of the accused, but some principles that coincide with the needs of the victims should be respected. In addition, it is important for the police to have close cooperation, but only professionally, and as much as possible to create a relationship of trust with the victims of crime.

After providing first aid, shelter, and provision of certain services from the police, it is necessary to provide legal-professional assistance to the crime victim before the start of the judicial procedure. In practice, there are other cases where the state police or judicial police officers present through the media personal data of individuals, such as generals, photographs, or even worse, they are accused of being guilty of a crime, which makes this issue quite important to be evaluated in two directions; firstly, in violation of the principle of presumption of innocence and secondly a violation of the Law "On the protection of personal data".

Another important element in the framework of victims' rights is their right to compensation. In Albanian legislation, the only legal reference related to the right to compensation is the provision of Article 625 of the Civil Code, but in the meantime, there is no criminal legal basis even for cases where the damage is the result of a criminal offense. The problem is how to act if the perpetrator of the criminal offense is insolvent, in such a situation the state should intervene, in the future should create a fund for this purpose, especially for victims of crimes.

Victims of road traffic incidents should be included in government criminal justice strategies and programs. Victims of road accidents should have the same rights to information and support as other victims of crime. They should be an integral part of crime victim statistics, surveys, and strategies. Victims of road accidents, starting with the families of the victims and the seriously harmed, should be asked about their level of satisfaction with the police response.

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