

RECENT DEVELOPMENTS IN VICTIM-RELATED POLICIES IN BULGARIA

**Post Graduate Course “Victimology, Victim Assistance and Criminal Justice”,
Dubrovnik, 4-15 May 1998**

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Background

Notwithstanding the fact that for many years we claimed that the Bulgarian legislator has provided adequate protection for the victim and that this is a traditional achievement of Bulgarian legislation, I dare say that we have totally forgotten the victim for a long time. Actually, some basic protection has been provided. In brief, the legal status of the crime victim for many years, and even now, looks like this:

According to Bulgarian criminal law, the basic quality of the victim is that he/she is a participant in the social relations directly affected by the crime. A victim can be a natural person, a legal person or the state. Collective bodies cannot be victims because of the lack of legal personality. Therefore, it is quite natural that there be numerous individual victims.

Only the subject whose rights are threatened or harmed can be a victim. And, at that, these rights are expressly provided for in the corpus delicti. Damages present but non-indicated in the provision are not a reason for their holder to be considered a victim. It is not necessary for the victim to sustain real damages. He/she is an object of protection even in cases of attempt, as well as in cases of preparation to the crime.

In numerous corpus delictis, the legislator has specified some qualities and states of the victims as a prerequisite for more severe penalty (for example: some personal qualities such as young or old age, racial affiliation etc., some social qualities such as nationality, religious belonging etc., as well as some special states as illness, unconsciousness, helplessness etc.).

According to the judicial practice, when the victim's behavior has taken a definite part (deal) in the process of crime commitment (for example, provocative conduct) the penalty is smaller. The victim's conduct in cases of inevitable self-defense, imaginary inevitable self-defense etc., has a special penal significance. The legislator has tried to be objective and reasonable and to provide a legal protection of the victim, as well as of the offender.

In the trial proceedings, "victim-offender" relations are under careful examination. The family relations, relations concerning property etc., in the period before crime commitment, in the process of crime commitment, and after that, are subject to exploration by the court. When the offender helps the victim after the crime, he receives a less severe sentence.

According to the Bulgarian criminal procedure law, the victim is entitled to participate in the trial as a witness, a private accuser, a private complainant and plaintiff. In this way he/she defends his/her rights personally or with the help of an attorney.

The person who has sustained material or moral damages by the crime that is being prosecuted by the public prosecutor has the right to take part in the trial as a private accuser. After his death, this right passes on to his heirs at law.

The person who has suffered by the crime that is prosecuted on the ground of a complaint by the victim could raise and uphold an accusation as a private complainant.

The victim or his heirs at law, the institutions, enterprises and organizations that have sustained damages by the crime, could claim damages in the trial and could constitute themselves as plaintiffs. In order to provide better protection of the victim, the law permits a civil claim to be lodged both against the accused and against other persons who can be held liable in civil law for the damages caused by the crime.

At the trial the victim has the following rights:

- ?? to familiarize himself/herself with the case file and to make the necessary excerpts;
- ?? to adduce evidence;
- ?? to make requests, notes and objections;
- ?? to appeal the decisions of the court which infringe upon his rights and lawful interests.

The private complainant may withdraw his complaint, and the plaintiff may demand security for the civil claim.

Because of the low rate of detection of crime and of sentenced persons, a significant part of the victims cannot avail themselves of their rights in accordance with the relevant procedure. The extremely long, torturous trial even causes a secondary victimization.

New trends

Nowadays, an intensive process of victimization of the society is seen in Central and Eastern Europe. This process is a direct consequence of the crime rate in this region. Crime rates have reached unexpectedly significant dimensions. During the last years, the number of victims increased many times. Due to the victims' latency, the exact number of crime victims is considerably more than it is reported in various types of statistical data. The state's counteraction to crime is really not effective, and the crime victims/citizens do not believe in the abilities and good intentions of the law enforcement agencies and refer to them only in most hopeless, desperate situations.

At the same time, during last few years the legislator paid priority attention to the criminal. That was a special reflection of the democratic changes after 1989. The idea of inalienable human rights and freedoms, though not fully understood, was rapidly embraced by everyone in Bulgaria and was used in defense of diverse interests. The idea was not simply overused but even misused. The criminals started claiming more human rights than their victims. The restricted rights and freedom from the period before 1989 turned into hyper-irresponsibility.

Since the 60's, policy makers, criminal justice practitioners and criminologists have become more and more concerned with the victim's position in the criminal justice process and with protecting the victim's interests.

With a big delay, this favorable climate expanded to the former socialist countries, including Bulgaria. Trying to follow this tendency, the Bulgarian legislator, the Executive as well as judicial practice, and science have concentrated their efforts on protection of the rights of the victims (enforceable and potential).

First results

There is not any significant change concerning the role of the victim in the criminal procedure law yet. However, some progress in the crime prevention and victim-related policies has been achieved. Hence, we have some reasons to expect that the initial and the secondary victimization will be reduced. During the last years, several steps have been undertaken:

1. Combating corruption and organized crime was declared to be the first priority of the Government. New crimes have been penalized and more severe sanctions have been introduced. It is difficult to say that this is the best way to protect society, but this is a relevant remedy toward prevention, however.
2. The criminal procedure has been changed. The three-instance court system has been adopted recently. It is again highly controversial whether this quite long procedure is the best way for securing the victim's rights. However, some definitely positive steps have been taken: speeding and optimizing the preliminary proceeding; and admitting the evidence collected by special intelligence means in accordance with the basic principles of the democratic state, the rule of law, and human rights, etc. In such a way, the possibilities to establish the perpetrator increase and the interest of the victim could be protected better indeed.
3. Protection of the witnesses during the criminal proceeding has been introduced recently. According to Art. 97a of the Penal Procedure Code, the bodies of the preliminary proceedings or the reporting judge shall, upon request or with the consent of the witness, take measures for his/her protection, should there be sufficient grounds to presume that due to the testimony there has arisen or may arise real danger to the life, health or the property of the witness, his relatives of ascending or descending line, brothers, sisters or spouse. The protection shall be provided by means of keeping in secret his/her identity (a so-called anonymous witness) and providing guards. The respective examining magistrate, prosecutor and court panel shall be entitled to direct access to the protected witness. The bodies of preliminary proceedings and the court shall interrogate the witness in secret and shall take measures to keep his/her identity in secret. Transcripts of the protocols for interrogation of the witness, without his signature, should be submitted immediately to the accused and, in judicial proceedings, also to the prosecutor, the private accuser, the civil claimant and the civil defendant, who may put questions to the witness in writing. In such a way, the legislator considers that the witness will be motivated to testify without a risk to become the next victim.

In the new National Program for adoption of the *acquis communautaire*, it is provided that the next government task shall be the elaborating and funding of programs for the protection of the witnesses and persons having collaborated with the judiciary .

4. A new Ministry of Interior Act entered into force at the beginning of this year. This Act provides for the establishment of a new Bulgarian reality body “Constabulary” with the Ministry of Interior. Assisting the crime victims as well as the citizens in risky situations, safeguarding the public order, and detection and elimination of reasons and conditions for crime commitment are among the priority tasks of this body. A new Center for crime prevention has also been established under the auspices of the Ministry of Interior. At last, crime prevention is paid due attention.

5. An important element of the state policy is the protection of the citizens from victimization. The victimological research work, which has the task of identifying people at higher risk to become victims of crimes (women, children, disabled persons) and the typical mistakes in their behavior and which gives comprehensive recommendations for avoiding these mistakes, influences positively the limitation of victimization of risky persons. Mass media play an important role in pursuing the policy of protection of the citizens from victimization.

6. Nowadays, we are paying more attention to the victim’s problems in the educational system. The respect of human rights, as well as victim rights, is not an inherent instinct of the personality and has to be shaped under the influence of the outside reality. We consider that this education has to begin in the primary schools or even earlier and should continue throughout the child’s education, thereafter continuing in the life-long education of the adult person.

I am happy to say that the range of people involved in this education is increasing. Now this range includes not only pupils and students, but also police and prison staff, journalists, barristers, magistrates, members of the armed forces, medical practitioners, social workers and civil servants. Special programs and courses have been elaborated on, and a lot of training workshops, colloquia, conferences, etc., take place. They produce results.

7. At present, some NGOs are very active in the explored field. They successfully compensate the delay or the lack of Governmental actions. The activities of the ANIMUS Association - an NGO for protection of women-victims of crimes, domestic violence, sexual harassment, etc. – deserve explicit mention. A “hot” telephone line has been opened, and now every crime victim can express her/his psychological problems and receive specialized help and advice. A Center for rehabilitation of women-victims of violence is planned, to be established soon and jointly with the Sofia Local Government.

8. A particularly important part of the activities of some NGOs is elaborating and evaluating a model of mediation as an alternative to the traditional form of administration of justice. We think that access to the judicial system, the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (Art. 6 of the European Convention of Human Rights) is an essential part of the human rights list but is now not enough. The personality of the 21st century needs something more - faster, more efficient, less expensive procedures. It is my contention that the relevant means are: mediation, reconciliation, arbitration, reparation, negotiation programs, family and community group conferences etc.

Guided by the principle that restoration and restitution, in due course for the physical , psychological, material and social harm suffered by victims, through agreement between the victim and the offender, is of significant importance. We started discussions on mediation as an alternative of the trial.

It is well known that mediation in Europe exists in a good many forms. Those forms can be merged, and there are many variations. We are looking for a Bulgarian model. We are still in the beginning, but we think that mediation, despite some resistance from the judicial society, has good prospects in Bulgaria.

Unsolved problems

The idea of victim compensation through public funds is not alien to the existing legislation. State Liability for Damages Caused to Citizens Act of 1988 provides for special compensation of persons who are victims of illegal actions by the state authorities, including judicial authorities. Due to economic difficulties, the Government of Bulgaria has not signed the Council of Europe Convention on the Compensation of the Victims of Violent Crimes, yet.

The economic difficulties are a good excuse, but it is high time we did something more for the crime victims. When the state is not in a position to guarantee the security of its citizen (Art. 5, European Convention of Human Rights) and they become crime victims, the state should compensate them. This will be an additional stimulus for the state to be more efficient in prosecuting the criminals.

The Government of the Republic of Bulgaria has always declared that protecting the interests of the victims of crime is one of the fundamental functions of criminal justice, and it is doing its best to implement the measures contained in the United Nations and the Council of Europe instruments on assistance to victims and the prevention of the victimization. Now more practical results are necessary. No victim supporting schemes exist yet. The Government is still a debtor to the citizens.

The adoption of a new contemporary National Program for Prevention and Crime Control, as well as a new strategy for limitation of the accelerated process of victimization of society, is indispensable. Coordination among the different law-enforcement authorities and international cooperation in this field also could be improved.

Establishing new legislation, providing resources, technical expertise etc., creating an environment that is friendly and favorable to the victim, and strengthening the capacity of the community to efficiently protect victims - this is the common task of Parliament, the Executive, the judiciary, NGOs, science and community. This also is the only way to protect ourselves.