Categorization of Crime Victims: Comparing Theory and Legislation

Besa Arifi

This article aims to analyze the categorization of victims by several victimological schools and to compare that to the categorization in the Criminal Procedure Code of Macedonia (CPC). The first part of this article analyzes different theoretical categories of victims, taking into consideration approaches of representatives of positivist, conservative, radical and critical victimology. A parallel is drawn between theoretical and legislative categorization of victims. Many countries have reformed their criminal legislation providing certain rights to the victim of crime. The second part of the article discusses the categorization of the victims within the CPC of Macedonia. Categorization of the victims is linked to their separate rights guaranteed by law. The article draws certain conclusions and recommendations regarding the categorization of victims and their specific rights. The importance of effective implementation of the guaranteed rights for the victim is especially emphasized.

Keywords: victims, victims’ rights, categorization of victims, Macedonia.

Introduction

Categorizing the crime victims represents a very delicate and important process, having in mind that the created categories implicate different rights for the victims and interfere with their position in the criminal procedure.

This article aims to analyze the way the theoretical and legislative categorization of victims of crimes has evolved. It will analyze different theoretical...
categories of victims taking into consideration approaches of representatives of positivist, conservative, radical and critical victimology. It will discuss the interesting approaches found in positivist victimology in the writings of Von Hentig, Mendelsohn and Fattah. It will shortly analyze the approach towards the victim found in conservative and radical criminology and victimology. Critical victimology gives a very interesting view of the victim that will be discussed through the approach of Walklate who explains that in the contemporary society, categorizing the victims becomes more difficult having in mind that everybody can become a victim of certain crimes, despite of their characteristics that were seen by earlier authors as criteria for classification of victims (Walklate, 2007).

Macedonia is one of the Balkan countries that introduced a separate chapter dedicated to the victim of crime in its new Criminal Procedure Code of 2010 (in force from 2013). For the first time in Macedonia’s legal history, this Code provided a distinctive definition of the concept “victim” and separated it from the other two concepts: “injured party” and “private prosecutor”. Until 2010, there was no direct definition of the concept “victim” in the criminal procedure; instead, the victim was indirectly categorized under the concept “injured party”.

This article provide a comparison between the definition and the categorization of the victims in theory (explaining the impact of several victimological schools), and in practice (explaining the categorization of victims provided by the law and the subsequent rights of the victims that derive from that legal categorization on the example of the Republic of Macedonia).

**The evolution of the position of the victim in criminal law and procedure**

The role of the victim as a passive subject in the criminal act itself and in the criminal procedure has historically evolved in a very interesting way. Firstly, in the historic adversarial criminal procedure of the old and early middle age, the victim had a crucial role in the criminal procedure, having in mind that the entire accusation and proving of the guilt of the offender was provided by the victim or its actual family members. Later, with the emerging of the inquisitorial criminal procedure, the role of the crime victim was, slowly
but surely, eclipsed by the authority of the “inquirent” and then the “prosecu-
tor” through a process in which the criminal procedure was transformed from
a private to a public matter, controlled thoroughly by the state institutions.
In this regard, the victim becomes entirely marginalized and loses almost its
entire subjectivity in the criminal procedure. Actually, it is not only the victim
that undergoes such an eclipse to its position and rights; it is also the defend-
ant who, until the 19th century and the rise of the anthropological-positivist
school of Lombroso and others, actually lacked any kind of treatment as an
actual subject of the criminal procedure.

For the victim, this kind of re-surfacing into the theory and practice of
criminal law and criminology after a long period of marginalization, hap-
pened in a later time, around the middle of the 20th century, when victimol-
ogy was established as a separate scientific discipline and the Victims’ Rights
Movement occurred. These events helped establish the category of victims’
rights and slowly develop a legislative approach towards them.¹

In certain legislations (such as in common law countries), the victim
continues to have a limited role in the criminal procedure itself. However,
in the last decades, victim’s role and position has re-emerged and has been
upgraded. Nowadays victims’ rights are treated differently in different legal
systems. Certain internationally recognized rights of the crime victim such
as: the right to compensation, the right to access to justice, the right to pro-
tection and the right to special assistance are interpreted and applied differ-
ently in common-law, civil-law and former socialist countries. In Macedonia,
this comparative approach has served as the starting point of the process
of reforming the criminal legislation in the part concerning the rights of the
crime victim.

Different definitions of the term victim

Many authors struggle to find the best definition of the term “crime vic-
tim”. Doak explains that there is not a generally accepted legal definition of
the term (Doak, 2008), whereas Lindgren and Nikolić-Ristanović also indicate

¹ Writings of Doak should be checked for a detailed description of this historical context
(Doak, 2008). Furthermore, other authors also explain the historical evolution of the role of
the victim in their works. Such authors include: Schafer (1968), Young (2001), Kirchengast
(2006), etc.
the lack of such definition (Lindgren, Nikolić-Ristanović, 2011). In theory, there can be found very broad definitions of the term (such as that of Walklate, who indicates that the term victim describes any person who has suffered harm (Walklate, 2007), and also very narrow ones (“physical individuals who have been directly subjected to criminal activity”) (Diesen, Alias, cited by Lindgren, Nikolić-Ristanović, 2011: 19).

One of the most broadly accepted definitions of the term crime victim is the one given in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, that defines a victim as a person who has suffered physical or psychological damage, economic loss or a noticeable deterioration of fundamental rights through actions or negligence contrary to a nation’s criminal legislation (United Nations, 1985). Lindgren and Nikolić-Ristanović explain that under this Declaration, “a person can be classified as a crime victim regardless of whether a perpetrator has been identified, arrested, charged or convicted and regardless of any kinship relation between the victim and the perpetrator” (Lindgren, Nikolić-Ristanović, 2011: 20). This Declaration, apart from being one of the first international instruments of defining the terms “victim of crime” and “victim of abuse of power”, is also important because it gives a relatively broad definition of the term, it includes the collective aspect of the victim when it appears as a part of a certain group, it indicates the importance of close family members who also need to be identified as victims, and very importantly, it separates the status of the victim from the status of the offender, which means that the victim status can be obtained regardless from the fact whether the offender is identified, accused or convicted.

Similar definition of the term victim is given in the EU Directive on Minimum Standards on the Rights, Support and Protection of Victims of Crime (The European Parliament, 2012) where the victim is defined as: 1) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; and 2) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death.

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The EU Directive indicates that the crime is a wrong against society, as well as a violation of the individual rights of victims. This is a very important approach to the crime victim as a subject in the criminal procedure and criminal law in general, having in mind that until very recently, criminal law has been theoretically and practically treated as strictly public law minimizing the role of the victim and treating her/his rights as an issue of private law. Moreover, the EU Directive links the concept of victims’ right with the awareness for very important contemporary problems, such as terrorism and violence against women. It also indicates the priority of children’s best interests and shows awareness for the protection of victims with disability. The EU Directive is obligatory for EU members as well as for states that are in the process of EU accession, which makes this document one of the few internationally binding documents regarding victims’ rights.

Lindgren and Nikolić-Ristanović note that: “From a legal view-point, the group of victims is limited primarily to those exposed to a criminal act as defined by law, while a sociological definition can be seen as broader, including even animals, the environment, the society and states which were exposed to something that is defined or interpreted as a crime. A psychological definition is concerned with the individual’s experiences and interpretations of the criminal act” (Lindgren, Nikolić-Ristanović, 2011: 20). When we analyze the position of the victim in Macedonian criminal law and elsewhere, it is evident that only the legal concept of the victim is relevant, while the other mentioned aspects of defining the victim can be further used in the sociological or psychological context.

Categorizations and typologies of victims

It is interesting to analyze the evolution of the categorization of victims according to some authors who have worked in this field. In this regard, this article tries to indicate some categorizations found in the early theoretical schools of victimology, taking into consideration specifically the positivist victimology of Von Hentig and Mendelsohn, and therefore, make a retrospective to the way the victim of crime was perceived in the beginning of the so called victimological era in comparison with the way the victims are categorized in contemporary laws.
It needs to be clarified that the history of the victimological scientific approach is enriched with different ideas and explanations of the causes and forms of victimization. There have been different reactions of criticism towards positivist victimology and, therefore, new schools of thought have emerged, such as conservative victimology, radical victimology, Marxist victimology, feminist victimology, etc. It is not the aim of this article to discuss in details the views of the mentioned schools of thought. Instead, the article aims to shortly discuss the general points of view of these very different victimological schools.

Categorization under the positivist victimology

As explained by Ben David, “The positivist victimologist drew attention to the victim, and the socio-cultural factors that are most likely to produce victims. Their main issues are why some persons become victims more so than others, and what are the consequences of the recognition of victimization and its impact on the general social condition and the law” (Ben David, 2000: 60). Other authors, such as Wolhuter et al., compare the positivist victimology to the positivist criminology and indicate how both apply the same logic in the process of explaining why a person appears as a criminal or a victim and how these categories “differ” from regular persons. Most of the authors that explain the positivist approach to victimology indicate that the positivists concentrated mostly on the measurement of the amount of victimization, therefore, they worked hard on creating typologies of victimization, analyzed the relation between the criminal and the victim (“doer-sufferer” relationship of Von Hentig, or the “penal couple” of Mendelsohn) trying to indicate ways in which victims may participate in crime. As Wolhuter et al. emphasize “The hunt was to discover what distinguishes victims from the ideal-typical individual who does not suffer crime” (Wolhuter, Olley, Denham, 2009: 14). An interesting conclusion that is shared by some authors explains that while the victim was in a way re-discovered by the positivist victimology, it is interesting that he/she “emerged not as an individual worthy of sympathy or compassion but as a possible partner or contributor to his or her own demise” (Doerner, Lab, 2002: 4). The positivist criminology and victimology gave a great contribution to better understanding of both the criminal and the victim, as well as measuring the nature and extend of crime; however, these approaches have
been also criticized for shortcomings and incomplete assumptions on the causes of victimization.³

a) The typology of victims according to Von Hentig


The factors of this taxonomy correlate with the previous categorizations of victims according to this author to three main categories: a) general (age, vulnerabilities); b) psychological (depressed acquisitive, loneliness); and c) activating (victim turned offender).

Dussich explains that Von Hentig’s “schema was based on psychological, social and biological factors” (Dussich, 2010: 46), whereas Doerner and Lab indicate that, according to Von Hentig, victim characteristics may contribute to the victimization episode (Doerner, Lab, 2002: 7). It is evident that the typology presented by Von Hentig does not correlate with legal categorization of the victims. Legal typologies were developed later, when the Victims’ Rights Movement achieved certain positive results especially in introducing certain rights for the victim within the criminal legislation. Von Hentig’s typology is important because it explains many types of victims that he considers to be important for classification. As with other authors of positivist victimology, the idea is to present ways in which the victimization can be empirically measured.

b) Categorization of victims according to Mendelsohn

Mendelsohn (cited according to Doerner and Lab, 2002: 6-7; Halili, 2007: 55) identifies six basic categories of victims in his struggle to better understand the role of the victim while defending his offenders (he served as a defense attorney): 1) The completely innocent victim; 2) The victim with minor

³ Wolhuter, Olley and Denham explain that the positivist victimology concentrates only in conventional crimes and considers the home as a safe place, an opinion which is confronted by feminist victimology and other theories that indicate the importance of other major source of victimisation such as the domestic violence or corporate crimes (Wolhuter, Olley, Denham, 2009).
guilt; 3) The victim who is as guilty as the offender; 4) The victim who is guiltier than the offender; 5) The most guilty victim; and 6) The imaginary victim.

This is one of the best known typologies provided from the positivist school of victimology and has been seen useful by many authors primarily for identifying the relative culpability of the victim in the criminal act (Doerner, Lab, 2002: 7). Furthermore, apart from being easily comprehensible, the categorization given by Mendelsohn involves an important legal perspective, which derives from the fact that he was an attorney at law. Therefore, this categorization can serve as a good tool for measuring victimization in different situations that correspond to criminal law. For example, one of the mentioned categories is “the most guilty victim” which corresponds to the victim of homicide committed under self-defense. All the categories mentioned in Mendelsohn’s typology correspond to similar legal situations. However, the shortcoming of this categorization is the strict distinction which correlates mostly with conventional types of crime, and therefore can easily be interpreted in contradiction with the interests and the rights of the victim. For example, if the female victim of domestic violence has provoked in any way the perpetrator of the violence, she will not be considered an entirely innocent victim.

c) Categorization of victims according to Fattah

Fattah, who developed the well-known scheme of theoretical models of victimization,\(^4\) is one of the contemporary representatives of positivist victimology. An interesting observation to the scheme model of Fattah is that, according to that scheme, the only way of a person not to become a victim is to avoid all the components mentioned in that scheme. In fact, it is quite unrealistic and unlikely to live in a certain way in order to avoid all the ten components and avoid victimization altogether. As Wolhuter, Olley and Denham explain, “the positivist concern with the role of the victim may be interpreted as victim blaming” (Wolhuter, Olley, Denham, 2009: 16). This observation brings the emphasis to the next subtitle.

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\(^4\) Fattah uses ten different components into his scheme: 1) opportunities; 2) risk factors; 3) motivated offenders; 4) exposure; 5) associations; 6) dangerous times and dangerous places; 7) dangerous behaviors; 8) high-risk activities; 9) defensive/avoidance behaviors; and 10) structural/cultural proneness. These components are thoroughly explained in Fattah’s work (Fattah 2000a: 30-32; Fattah, 2000b: 65-66).
Conservative criminology and victimology

The conservative criminology emerged during the 1980s and early 1990s at the time when US and UK were governed by the New Right (Wolhuter, Olley, Denham, 2009: 17). The essence of conservative theories is that they attributed crime to individual choice or pathology rather than to the structural inequalities of society (Lilly, Cullen, Ball, 2002). One of the most famous representatives of the conservative criminology, Wilson, in his book *Thinking about Crime*, explains his concept of shaping the human nature through socially progressive policies and rehabilitation. In the conclusions of this book he states: “Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful dissembling, calculating of their chances ponder our reaction to wickedness as a clue to what they might profitably do.” (Wilson, 1985: 260).

Wilson points out that the social progress does not prevent crime. He describes criminals as calculating individuals who are looking for a chance to profit and whose decision whether or not to commit crime may be affected by social measures to prevent crime and punish wrongdoers (Wolhuter, Olley, Young, 2009: 18). Therefore, he is prone to severer and more effective crime control policies that include first and utmost the element of retribution.

In this regard, the most important contribution of the conservative criminology to victims rights is the development of the discourse that favors the recognition of victims’ rights to participate in sentencing decisions as a means of exacting retribution (Wolhuter, Olley, Young 2009: 20).

One of the major shortcomings of the conservative criminology was that it focused strictly on predatory crime (burglaries, robberies, rapes, murders), entirely ignoring the white collar crime. Although a very important aspect of everyday life, the predatory crime is far from being the only or the most important part of the crime suffered by victims. Therefore, the conservative criminological approach is often regarded as partial, since it does not include many other important forms of crime. Furthermore, the conservative victimology does not offer a comprehensive categorization of crime victims.
Radical victimology

Radical victimology will be shortly approached in this article through the three forms of its appearance: Marxist victimology, left realist criminology and feminist victimology.

As explained by Wolhuter, Olley and Young, the Marxist approach to crime focused on the crimes of the economically deprived as well as the economically privileged (Wolhuter, Olley, Denham, 2009). Taylor, Walter and Young state that both economically deprived and those privileged offenders share the same qualities as they occur in the context of a society where there is a struggle for property, wealth an economically self-aggrandizement, where there are unequal opportunities and where both, rich and poor pursue legal and illegal ways of amassing wealth (Taylor, Walter, Young, 1975). The Marxist criminologists also indicated that law enforcement is much weaker as regards ruling-class crime and more resources are devoted to the conviction of working-class offenders. Moreover, the corporate crime involves much greater financial cost to society and seriously harms the health of the citizens causing high rates of death and injuries (Box, 1983). Although indirectly, the Marxist victimological approach categorizes victims of working-class crime and those of corporate crime. This approach does not distinguish a separate typology of these victims, instead, explaining the nature of these two aspects of crime, it actually reveals a distinction that was ignored by earlier criminological and victimological approaches and emphasizes the class division and social inequality as an important cause of crime and victimization.

As explained by Young, the central tenet of left realism is to reflect the reality of crime. The left realists refer to the impact of conventional and street crime and indicate that “[w]hile Marxist criminologists, to whom they refer as ‘left idealists’, may be correct to point out how middle-class and professional people commit crimes such as pollution and tax fraud, they point out that it is necessary to focus on the impact of intra-class crime committed by the poorest against people within their own communities” (Wolhuter, Olley, Denham, 2009: 22). They draw the attention to the crimes that the poorest sections of society are most likely to suffer indicating that these people are additionally victimized by corporate crime, experiencing the greatest impact of crime due to their lack of income and resources. On the side of the crime victim, left realists opened the very important discussion about the relative vulner-
ability of certain groups and how some groups are not only more likely to be victims of crime but also less able to cope with the impact of crime (Wolhuter, Olley, Denham, 2009: 23). Within left realism, the victim survey became a potentially key research tool for providing a better understanding of victims. This approach of a synthesis of theories of crime and victimization is somehow lacking in the earlier mentioned criminological and victimological schools. Hence, the left realists can be seen as distinguished critics of positivist, conservative and Marxist criminology. However, despite the efforts of the left realists to take into consideration the impact of predatory crime, corporate crime, racially motivated crime and domestic violence and document these crimes more accurately, they have been criticized for failing to appreciate that not all victims want to reveal their victimization in surveys and that sometimes that way of measuring crime may not be appropriate. Furthermore, Spalek has indicated that their “understanding of race issues is … partial and incomplete” (Spalek, 2006: 41).

Feminist criminology and victimology raised the concern that existing criminological theories were ‘gender-blind’ and that crime was by large regarded as “men’s work, not women’s” (Wolhuter, Olley, Denham, 2009: 23-24). Feminist scholars criticized positivist victimology for engaging in victim-blaming based on gender stereotypes and assumptions of what behavior is ‘appropriate’ for women. Furthermore, radical feminism was concerned to develop a critique of the institution of patriarchy, which was regarded as the most fundamental, widespread and enduring form of oppression which permeates all social institutions and beliefs. They highlighted the problem of violence against women and how that is often hidden by state institutions and not at all or wrongly prosecuted and punished. In this regard, the feminists also point that the institution of patriarchy generated a dichotomy between the public and private spheres, causing the disregard of domestic violence by state institutions as a private matter within the family. Radical feminists have been challenged by critical race feminists who criticized the former for constructing all women’s experiences of victimization on the basis of white women’s experiences, obscuring minority ethnic women’s experiences (Wolhuter, Olley, Denham, 2009: 25). Despite the critiques, the feminist victimology raised very important issues of gender equality in terms of dealing with crime and producing policies of crime control and prevention.
It can be noticed that the different forms of radical criminology and victimology offer an approach that tries to elaborate the essence of crime and victimization taking into consideration the social dimensions of wealth and power, social structure and class, as well as gender. Although they do not offer strict typologies and categorizations of victims as the positivists do, one cannot overpass the very important and essential contribution to a better understanding of the causes of crime and victimization.

**Critical victimology**

According to Mawby and Walklate, critical victimology is “an attempt to examine the wider social context in which some versions of victimology have become more dominant than others and also understand how those versions of victimology are interwoven with questions of policy response and service delivery to victims of crime” (Mawbi, Walklate, 1994: 21).

Wolhuter, Olley and Denham explain that Mawbi and Walklate “criticized positivist victimology for searching for regularities or patterns which precipitate victimization” (Wolhuter, Olley, Denham, 2009: 26). Furthermore, the victim-blaming concept of victim precipitation marginalizes feminist concerns with gender crimes. However, Mawbi and Walklate also indicated the weaknesses of radical victimology and developed “a critical victimology that is concerned to document victims’ lived realities as well as the way in which the social structure shapes these lived realities” (Wolhuter, Olley, Denham, 2009: 27).

Regarding the categorization of victims, it is especially interesting to mention the dilemma that Walklate emphasizes with her writings, especially in her book *Imagining the victim of crime*, where she indicates that in modern times, having in mind the spread of violent crimes and terrorism attacks, everybody can become a victim, regardless of their personal characteristics. This is a very important step forward in comparison to the way the victims were categorized in other schools and sets up a very distinctive standard of critical victimology (Walklate, 2007).

**Further contemporary categorizations of victims**

Lindgren and Nikolić-Ristanović in their book *Crime Victims: International and Serbian Perspective* give a very interesting and summarizing cat-
egorization of crime victims based on different victimological theories and approaches developed to this date. Hence, they differentiate four major types of victims:

1) The ideal victim: the authors hereby explain the approach of Nils Christie who indicates six characteristics of the ideal victim: “a) the victim is weak; b) the victim is involved in a respectable activity; c) the victim is en route to a place which is beyond reproach; d) the perpetrator is dominant to the victim, and can be described in negative terms; e) the perpetrator is unknown to the victim and has no relation to the victim; and f) the victim has enough influence to assert victim status”\(^5\) (Christie, cited according to Lindgren, Nikolić-Ristanović, 2011: 21-22).

2) The complicit victim: the authors explain that the perception provided by the “ideal victim” approach is very limited and unrealistic since in reality, very often the victim and the offender categories are perplexed and cannot be strictly separated in their roles. The authors mention the case of provocative or intoxicated behavior by the victim at the time of crime, explaining that although not a justification for the occurrence of the crime, it can affect both the classification of the crime and the sentence in court.

3) The passive victim: the authors explain that the passiveness of the victim may also affect the way the crime itself is going to be interpreted by the state institutions. Therefore, there are many cases when the victims are actually treated as offenders because of their passiveness during the attack (especially in cases of rape and other sex crimes). An interesting example of this is the fact that in most of the countries in the Balkan region (including Macedonia) the definition of the crime of rape requires that the victim shows continuous resistance during the sexual intercourse, which can be particularly harmful or even fatal for the victim.

4) The resistant victim: authors explain that the situations where the victim is “ideal” in terms of being conscious of the attack and willing to cooperate and end the status of victimization through seeking help and following the counsel of the relevant institutions, are very rare in reality. Therefore, it needs to be established that: “Provocative behavior on behalf of the victim cannot lead to a situation where formal rights are neglected or questio-\(^5\)

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\(^5\) Authors Lindgren and Nikolić-Ristanović thoroughly explain the politics behind ensuring the status of victim indicating that it depends very much on the pressure certain interest groups can have among policy-makers and state institutions.
An individual does not have to be innocent to receive help and protection. The fact that a victim is intoxicated or ‘in an unsuitable place’ does not constitute mitigating circumstances for the perpetrator” (Lindgren, Nikolić-Ristanović, 2011: 23).

This categorization is very useful for many reasons: a) it comprehensively distinguishes between different types of victims; b) it indicates real life situations which correspond to the victim type; c) it summarizes typologies and categorizations found in different victimological scholar approaches; and d) it offers a fundament for establishing a legal classification of victims of crime.

**Normative categorization of victims: The example of the Republic of Macedonia**

Traces of different theoretical categorizations of victims can be seen in the way the crimes and the criminal responsibility are defined in the Criminal Code of Republic of Macedonia. For example, Mendelsohn’s typology of victims is very evident in the way of defining self-defense where the offender, in fact, bears no responsibility if he has killed or severely harmed a victim who has unlawfully assaulted that person. Certainly, it needs to be established that the person who claims self-defense did not originally and intentionally provoke the victim to assault him so that he can afterwards kill him in self-defense. That is a typical example where the roles of the victim and offender are perplexed and need to be thoroughly distinguished.

When it comes to criminal procedure, the rights provided for the victims of crime are intended for “normal” cases where there is a crime, a perpetrator and a victim. The Criminal Procedure Code of 2010 (in text that follows: CPC)\(^6\) in Republic of Macedonia indicates four major rights that derive from the UN Declaration of the rights of the victim, which was mentioned earlier. These include the right to compensation of damage, the right to actively take part in the criminal procedure, the right to protection from continued and secondary victimization and the right to assistance. Furthermore, the victims of crime are categorized in several categories within CPC, thus, as it will be explained in the following subtitles, the mentioned rights are not inclusive for all categories of victims.

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Categorization of victims in the CPC 2010

The CPC 2010 (entered into force in December 2013) defines the crime victim as any person who has suffered harm including physical or mental harm, emotional suffering, material loss or other harm or endangering of their rights and interests as a result of a crime (CPC, art. 21, par. 4). It separates this concept from the “injured party” explaining that the latter concept, apart from the crime victim, includes any other person whose propriety has suffered harm as a result of the crime, and therefore takes part into the criminal procedure together with the prosecutor or only in regard of his claim for damage compensation (CPC, art. 21, par. 5). The CPC dedicates an entire chapter (Chapter 5) to the crime victims where it indicates their rights (Kalajdžiev, Lažetik-Bužarovska, 2011). As it will be explained in the following subtitles, the law makes difference between basic rights of all victims and additional rights for victims of specified offences and vulnerable categories of victims. Thus, there are four categories of victims’ rights in this chapter: a) rights of victims of all crimes; b) rights of victims of severe crimes; c) rights of vulnerable categories of victims; and d) rights of victims of crimes against sexual freedom and sexual moral, crimes against humanity and international law.

a) Rights of victims of all crimes

CPC 2010 provides that every crime victim has the following rights:

- To actively participate in the criminal procedure as part of the prosecution or as the party who seeks compensation for the suffered damage (the “injured party”);
- Right to special care and attention by the institutions and subjects who take part in the criminal procedure;
- Right to psychological and other kinds of professional assistance and support given by institutions, organs and organizations who work with victims’ assistance (CPC, art. 53, par. 1).

The law specifically indicates the obligation of the police, prosecution, court to carefully address the victims and their needs and to provide them knowledge of their rights and position (CPC, art. 53, par. 2). In terms of the four internationally recognized and defined rights of the crime victim, it can
be observed that the right to actively take part in the procedure, the right to compensation and the right to assistance are guaranteed by these provisions. The right to protection from secondary victimization during the criminal procedure is also partially provided having in mind that it only indicates protection from secondary victimization in the time of proceedings, whereas the protection from continuous victimization through witness and victims’ protection program is not included for this general category of victims. However, it must be emphasized that although the law provides certain rights for all victims of crime, it does not provide for any strong mechanism of their application. The law merely obliges the officers and the institutions to take care for the rights of the victim, to treat them with respect and to counsel them about their rights, but it does not indicate how the victim can react to the violation of these obligations. There are no established policies neither competent institution that would specifically deal with the protection of the rights of the crime victim.

b) Rights of victims of severe crimes

Under CPC 2010, victims of crimes sentenced to more than four years imprisonment are entitled to compensation of damages provided by a public fund, as well as to free representation at the criminal procedure (if they have suffered serious psycho-physical harm or have suffered harsh consequences from the crime) (CPC, art. 53, par. 3). The law provides that the Public Fund for compensating the crime victim will be established with a separate law. Unfortunately, 6 years later, such law has not been adopted yet. Moreover, the requirement that the victim should have suffered serious psycho-physical harm or harsh consequences from the crime in order to have the right to a paid attorney is not considered to be fair to the victim. It would be more acceptable to consider that right for all victims of violent crimes as well as for the categories to be explained in the following subtitle.

c) Rights of vulnerable categories of victims

CPC 2010 provides that vulnerable categories of victims are entitled to measures of witness’ and victims’ protection. The CPC defines the categories of vulnerable victims as following:
Persons under the age of 18 (indicated as children),

Persons who could put themselves or their close family in danger while giving testimony related to the crime (persons under risk of attack),

Persons who, because of their age, the nature of the crime, physical or mental disability or other evident health condition, social and cultural history, family circumstances, religious beliefs or ethnicity of the victim, the behavior of the defendant, his family or friends towards the victim, could have negative consequences on the victim's psychological or physical health or negatively could effect the quality of their testimony (especially delicate victims).

These three categories of victims indicated as vulnerable categories have the right to special protection by witness and victims’ protection measures and programs which are, in most cases, mandatory for children and especially mandatory for child victims of sex crimes, violent crimes and human trafficking (CPC, art. 54, par. 1-6). In cases of victims under risk, the will of the victim is decisive regarding the implementation of witness protection programs.

d) Rights of victims of crimes against sexual freedom and sexual moral, crimes against humanity and international law

Apart from the above mentioned rights, victims of sexual crimes and international crimes against humanity have the following subsequent rights:

- Right to a conversation with an attorney or representative, prior to their testimony when they have a claim for damages (the law indicates the “right to a conversation with an attorney” not the right to actually be represented by one),
- Right to be interrogated by a person of the same gender at the police station or at the office of the prosecutor,
- Right to not answer private questions that are not related to the case,
- Right to ask for interrogation thought audio-visual means of communication as provided by this law,
- Right to ask for the exclusion of the public from the hearing of the case (CPC, art. 55, par. 1).

Measures of protection consist of audio-visual recording of the testimonial of the child victim. Only in extraordinary occasions the child victim can be interrogated for a second time.
The above mentioned rights are intended to protect the victims of these crimes from secondary victimization and intimidation due to the nature of sexual crimes.

**Reflection on certain problems regarding categorization of victims and victims’ rights in Macedonia**

There are several problems that occur regarding the nature of categorization of victims in general and in particular in Macedonia.

Firstly, one of the intentions of the legislator while elaborating the CPC 2010, was to put some balance in the criminal procedure and clearly indicate the parties of that procedure (Kalajdžiev, Lažetik-Bužarovska, 2011). Therefore, the roles of the court, the prosecution and the defense were separated and clearly defined. The intention was also to put some balance between the position of the defendant and that of the crime victim. This is a global struggle put forward by the victims’ rights activist and victimologists. However, for the moment, that battle is not yet won since there is not an effective balance between these two subjects of the procedure. Namely, the rights of the defendant are internationally recognized and guaranteed by real obligations for the states and mechanisms of judicial protection (thus the European Convention of Human Rights being a convention, guarantees the due process for the defendant but not the rights of the crime victim, and the European Court of Human Rights provides real obligations for states to respect the rights of the defendant but not directly for the crime victim), whereas the rights of the crime victims are only defined by international soft law standards (mostly by declarations and resolutions instead of conventions). There are, of course, evident exclusions to this approach, such as, for example, the EU Directive on Minimum Standards on the Rights, Support and Protection of Victims of Crime which is obligatory for EU members and as well for states that are in the process of EU accession (The European Parliament, 2012). However, these are EU standards that are thoroughly applied only after a country fully joins the Union. Therefore, international instruments that are binding in the level of Council of Europe and the ECtHR are urgently needed, especially having in mind their broader application in a larger number of countries compared to the EU standards.
Secondly, both in international and national perspective, the link between the categorization of victims and their rights is very indicative. Namely, the victims need to firstly prove their status of a victim and secondly, they need to prove they belong to a special category of victims in order to claim their substantial rights. This should not be understood in any way as a claim to reduce the due process rights of the defendant. Instead, the aim is to establish a legislative practice where the victim has certain rights in the criminal procedure that are not directly linked to its categorization or are not limited because of the characteristics of the victim. When it comes to the status of victim and the rights related to it, there are many situations when the victim, being a female person with a certain profession, or sometimes only a certain character and behavior, is denied of her most important rights as the victim and is blamed for what has happened to her. This surely is linked to many prejudices that still exist in terms of gender and other characteristics of victimization. Measures need to be taken to avoid any unfair treatment of the victim of crime.

Thirdly, a very important problem with the legislation in Macedonia, and in some other regional countries, is that there are good laws which are not implemented in practice. Thus, Macedonia is continuously criticized on this matter in the European Commission Annual Progress reports especially in regard to the protection of children and child victims. The 2013 and 2014 Progress reports (European Commission 2013, 2014) mentioned the following problems in this regard: a) insufficient protection of child victims and compensation of their damages; b) understaffed and underpaid centers for social works; c) non-realistic budgeting of the state fund for compensation of child victims (it operated under the old Law on Juvenile Justice with an annual budget of approximately 8000 Euros); d) lack of coordination between state institutions with regard to justice for children; and e) underequipped police stations for interrogating children in criminal procedure.

**Conclusion**

Based on the above mentioned theories and legal approaches, several conclusions can be made. There are different categorizations and typologies of victims that were developed throughout the history of victimology. This article tried to put an emphasis to the categorizations done by positivist victi-
mology and to explain briefly the reactions of conservative, radical and critical victimology. It also described certain modern ways of categorizing victims based on the writing of Lindgren and Nikolić-Ristanović (2011). These categorizations and typologies are very important not only in a theoretical aspect, but also in terms of interpreting the law.

Regarding the legal categorization of victims of crime, the article explained the categorization in the CPC in Macedonia. An interesting observation is that the law makes difference between basic rights of all victims and additional rights for victims of specified offences and vulnerable category of victims. Regarding the rights of the crime victims, the most important challenges include the very old dilemma whether there can be a real balance between the rights of the victim and those of the defendant. Furthermore, it is also very important to note that in Macedonia, it is evident that victims’ rights are well indicated in the laws, but there is serious lack of will and resources to actually implement them in practice. In this regard, the following recommendations can be presented:

1) It is very important to ensure that especially the vulnerable categories of victims, and most especially the children, receive the guaranteed protection and assistance. Urgent reforms are needed in order to ensure that the child victims are not victims of secondary victimization and other kinds of victimization (investing in the infrastructure of police stations in order to have adequate areas for interrogating child victims, investing in human resources and ensuring that capable and eligible staff interrogates the child victims and assists them in court procedures, investing in audio-visual technology, etc.)

2) Another very important recommendation would be to encourage special protection for victims of hate crimes, having in mind that this term is not mentioned as a separate category of vulnerable victims. It is also very crucial for the sexual orientation to be recognized among the categories of victims of hate crimes.

3) Provisions that define compensation of damages and legal assistance for the victims should be thoroughly implemented in practice. In order to achieve this, serious financial investments are needed in regard of implementing the laws in practice.
Bibliography


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Kategorizacija žrtava kriminaliteta: Poređenje teorije i zakonodavstva

Cilj ovog rada je analiza kategorizacije žrtava kriminaliteta od strane nekoliko viktimoloških pravaca i poređenje sa kategorizacijom žrtava u Zakoniku o krivičnom postupku Makedonije. U prvom delu rada su, polazeći od pristupa pozitivne, konzervativne, radikalne i kritičke viktimologije, analizirane različite teorijske kategorije žrtava. Prikazano je poređenje teorijske i zakonodavne kategorizacije žrtava. Mnoge države su reformisale svoje krivično zakonodavstvo u pravcu garantovanja određenih prava žrtvama kriminaliteta. U drugom delu rada prikazana je kategorizacija žrtava sadržana u Zakoniku o krivičnom postupku Makedonije. Kategorizacija žrtava je povezana sa posebnim pravima koja su žrtvama garantovana zakonom. Rad se završava zaključcima i preporukama u vezi sa kategorizacijom žrtava i njihovim posebnim pravima. Pri tome, posebno je istaknut značaj efikasne implementacije prava koja su žrtvama zagrantovana.

Ključne reči: žrtve, prava žrtava, kategorizacija žrtava, Republika Makedonija.

*Dr Besa Arifi je vanredna profesorka Pravnog fakulteta Jugoistočnog Evropskog Univerziteta u Tetovu, Republika Makedonija. E-mail: b.arifi@seeu.edu.mk.*