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THE CONCEPT OF THE INJURED PARTY AND THE VICTIM OF A CRIMINAL OFFENSE AS CRIMINAL PROCEDURAL SUBJECTS**

ABSTRACT: This paper analyzes the concept of the criminal procedural subject through a theoretical, normative, and comparative framework, with particular reference to the position of the injured party and the victim of a criminal offense in criminal proceedings. It begins with the traditional understanding according to which criminal procedural subjects are holders of certain procedural functions – adjudication, prosecution, and defense – and classifies them as principal and secondary subjects. Within this framework, the injured party is defined as a secondary procedural subject, but one with a complex procedural status, as they may simultaneously perform multiple functions (e.g., testifying, initiating prosecution, or submitting a property claim). Special attention is devoted to distinguishing between the concepts of the injured party and the victim of a criminal offense in domestic legislation and international

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instruments, particularly Directive 2012/29/EU and the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The analysis demonstrates that the concept of a victim encompasses a broader range of rights, including extraprocedural protection, support, and assistance, thereby transcending the traditional procedural framework of the injured party. The paper concludes that harmonizing domestic legislation with international standards requires either the normative recognition of the victim as a distinct procedural subject or the expansion of the existing concept of the injured party, while preserving the adversarial nature of criminal proceedings and ensuring effective victim protection both within and beyond their formal scope.

Keywords: criminal procedural function, secondary procedural subject, injured party, victim of a criminal offense, three-dimensional model of criminal proceedings, international standards in victims'

INTRODUCTION

The position of the injured party is one of the most dynamic issues in modern criminal procedural law. Traditionally understood as a secondary participant in the proceedings, the injured party was for a long time reduced primarily to the role of a witness and holder of a property claim, while their personal and safety interests remained on the margins of criminal proceedings. The development of victimology, as well as the strengthening of international standards for the protection of victims of criminal offenses, has led to a reexamination of this approach and the introduction of the concept of the victim of a criminal offense as a broader category than the classical concept of the injured party.

The aim of this paper is to examine the theoretical and normative foundations of the concepts of the injured party and the victim of a criminal offense, to analyze their relationship, and to assess whether, and in what manner, the current criminal procedural framework in the Republic of Serbia enables adequate protection of the interests of the injured party. There is also a dilemma as to whether the position of the injured party in criminal proceedings can be improved even without introducing an entirely new criminal procedural subject in criminal proceedings – the victim of a criminal offense. If the victim of a criminal offense is considered a criminal procedural subject in criminal proceedings, are they then a secondary or a principal criminal procedural subject? Within adversarial criminal proceedings, is there room for the protection of the interests of the victim of a criminal offense, or is the introduction of a new criminal procedural subject contrary to the very structure of such a procedural

framework? The basic hypothesis of this paper is that the existing statutory solution, although significantly improved compared to earlier periods, does not exhaust all possibilities for strengthening the procedural position of the injured party, especially with regard to particularly vulnerable categories of persons, and that further improvements are possible without introducing the victim as a principal criminal procedural subject. In order to develop this hypothesis, it is necessary to address the theoretical aspect of the concept of principal and secondary criminal procedural subjects, define the traditional concept of the injured party as a criminal procedural subject, and then present new understandings of the concept of the injured party in connection with the concept of the victim of a criminal offense, as well as to consider the need to recognize the rights and obligations of the victim of a criminal offense during criminal proceedings, which is becoming an increasingly popular topic in many countries.

CRIMINAL PROCEDURAL SUBJECTS – THEORETICAL CONSIDERATIONS

With regard to defining the concept of criminal procedural subjects, there are several different approaches, depending on which other concepts of criminal procedural law theorists use in formulating a definition of subjects. In this sense, the criminal procedural concepts used are: criminal procedural function, the rights and obligations of subjects in criminal proceedings, and the concept of a criminal procedural relationship.

The concept of a criminal procedural subject is traditionally defined through the concept of a criminal procedural function that each subject performs during criminal proceedings. A criminal procedural function is a set of activities with the same procedural aim undertaken by certain participants in the proceedings, i.e., the institutional expression of the division of labor in criminal proceedings;¹ accordingly, criminal procedural subjects are those subjects who, by undertaking certain procedural actions determined by their position, perform their criminal procedural functions. Depending on the function that criminal procedural subjects perform in the proceedings, and on whether that function is principal or secondary, they can also be classified as principal and secondary criminal procedural subjects.

The definition of criminal procedural subjects given by Toma Živanović is likewise determined by the concept of criminal procedural functions; the holders of the principal activities or functions of the proceedings are only the

¹ Đurđić, V. (2014). *Krivično procesno pravo – opšti deo*. Niš: Publication Center of the Faculty of Law, 8.

court, the prosecutor, and the defendant; the other subjects may, subject to certain limitations, freely perform or refrain from performing them of their own volition, and thus may dispose of the procedural actions of adjudication, prosecution, and defense.² For T. Živanović, the decisive factor in distinguishing principal from secondary criminal procedural subjects lies in the fact that the holders of principal activities may freely dispose of them, unlike the holders of secondary activities.

Škulić, on the other hand, points out the difference between original and derivative holders of basic functions in criminal proceedings, whereby principal criminal procedural subjects are only those to whom that role originally belongs, and not those who perform certain procedural actions in their name and on their behalf.³

The principal criminal procedural functions in the proceedings are the functions of adjudication, prosecution, and defense. The holder of the adjudicative function is the court, the prosecutorial function lies with the authorized prosecutor, and the function of defense lies with the defendant (with defense counsel). Criminal procedural subjects who are holders of the principal functions are the principal criminal procedural subjects. The holders of secondary functions in criminal proceedings, such as the functions of expert examination and testimony, are witnesses and expert witnesses. There are also differing understandings of this proposition with respect to criminal procedural functions and their holders, which will be presented in the following part of the paper.

The concept of the criminal procedural subject can also be defined through the rights and obligations that the subjects have in the proceedings. A criminal procedural subject is the holder of the rights and obligations that belong to them by law in criminal proceedings; outside the criminal proceedings, subjects do not have these rights and obligations, which makes them only procedural subjects – subjects of criminal proceedings, and not “subjects of the general legal order.”⁴

Bejatović gives a hybrid definition of the criminal procedural subject, combining their rights and obligations in the proceedings and the performance of a function with a clearly defined purpose. According to Bejatović,

“...a criminal procedural subject, as a procedurally capable natural or legal person, is vested with the rights and obligations prescribed by law on the

² Živanović, T. (1941). *Osnovni problemi građanskog i krivičnog procesnog prava* (postupka) 2. Belgrade, 138.

³ Škulić, M. (2009). *Krivično procesno pravo*. Belgrade: Faculty of Law, University of Belgrade, 97.

⁴ Đurđić, V. (2014). *Krivično procesno pravo – opšti deo*. Niš: Publication Center of the Faculty of Law, 90.

basis of which they perform a certain function in criminal proceedings in order to accomplish the task of criminal proceedings.”⁵

T. Vasiljević defined criminal procedural subjects through the concept of the criminal procedural relationship, concluding that criminal procedural subjects are those between whom a criminal procedural relationship is established, while the others are merely participants in the proceedings.⁶ In that case, the distinction between principal and secondary criminal procedural subjects is rejected because only principal criminal procedural subjects exist, while the others are merely participants in the proceedings.

In some theories, as during the time of the Inquisition, the existence of criminal procedural parties (principal criminal procedural subjects, holders of the functions of defense and prosecution) was rejected, but such an understanding has long since been abandoned.⁷

THE INJURED PARTY AS A CRIMINAL PROCEDURAL SUBJECT

In criminal proceedings, the principle of separation of criminal procedural functions applies, together with the rule of one subject – one function, since this

“...ensures the best possible engagement of each criminal procedural subject in the course of the proceedings, while preserving the unity of their personality and action.”⁸

However, there are certain exceptions to this rule. Namely, there are also secondary subjects who perform principal functions, although those functions do not originally belong to them; rather, they are exercised derivatively (defense counsel performs the function of defense, counsel for the injured party performs the prosecutorial function, legal representatives perform functions depending on whom they represent). Likewise, principal subjects have one principal function, but may sometimes also perform certain secondary

⁵ Bejatović, S. (2016). *Krivično procesno pravo: prema Zakoniku o krivičnom postupku iz 2011. godine*. Belgrade, 126.

⁶ Vasiljević, T. (1981). *Sistem krivičnog procesnog prava SFRJ*. Belgrade, 59

⁷ Henkel, H. (1968). *Strafvervahrensrecht, Zweite Auflage*. W. Kohlhammer Verlag, Stuttgart, 1, 112.

⁸ Dimitrijević, D. (1982). *Krivično procesno pravo*, 8th expanded ed. Belgrade: Savremena administracija, 81.

functions. Thus, the defendant performs the prosecutorial function (self-accusation) when pleading guilty, because in doing so they facilitate – assist the authorized prosecutor, as well as the court, in the performance of their functions. State authorities – the court and the public prosecutor’s office – perform other functions in addition to their principal functions of adjudication and accusation because they are obligated to safeguard the interests of the subjects in criminal proceedings. This was particularly pronounced when the principle of material truth existed in our criminal procedural law, and the court, in addition to the function of adjudication, performed the prosecutorial function and the function of defense. In adversarial proceedings, there are fewer examples of this, but they do exist (the court informs all subjects in the proceedings of their rights before a defense statement is given and testimony is taken; the defendant’s confession is not accepted “at face value,” but, taking into account the defendant’s interests, the procedural authority is still required to continue gathering evidence regarding the perpetrator and the criminal offense whenever there is reasonable doubt as to the veracity of the confession, or where the confession is incomplete, contradictory, or unclear and is inconsistent with other evidence, etc.).

The injured party, as the holder of the criminal procedural function, has a specific position in criminal proceedings.

The injured party appears, first and foremost, as a secondary subject and is the holder of a secondary criminal procedural function. However, when the injured party appears in the role of a private prosecutor or a subsidiary prosecutor and takes over criminal prosecution that the public prosecutor has abandoned, the injured party becomes a principal criminal procedural subject and the holder of the prosecutorial function.⁹

Secondary criminal procedural subjects are also referred to as participants in the proceedings, but it is disputed in the literature which criminal procedural subjects are included in that category. Some authors understand the concept of the secondary criminal procedural subject broadly and include all other participants in criminal proceedings, even witnesses and expert witnesses.¹⁰ If the definition given by Toma Živanović is taken into account, that the

⁹ Parties to criminal proceedings are the principal criminal procedural subjects who represent opposing positions and interests in criminal proceedings, that is, who perform the functions of prosecution and defense. They are the defendant and the authorized prosecutor. The authorized prosecutor is primarily the public prosecutor, because in the vast majority of cases it is the public prosecutor who performs the prosecutorial function; however, that function may also be performed by the subsidiary prosecutor and the private prosecutor.

¹⁰ Stevanović, Č., Đurđić, V. (2006). *Krivično procesno pravo – opšti deo*. Niš: Publication Center of the Faculty of Law, 92; Radulović, D. (2009). *Krivično procesno pravo*. Podgorica: Faculty of Law, University of Montenegro, 76.

basic criterion for distinguishing principal criminal procedural subjects from other participants in criminal proceedings is the right of procedural disposition, and the view posited by Škulić regarding the original and derivative holders of basic criminal procedural functions, then defense counsel, as well as counsel for the injured party, the injured party as a prosecutor, and the private prosecutor, may also be classified as secondary criminal procedural subjects. They are authorized to undertake procedural actions instead of their principals, but within the limits set by the original holders of procedural functions (within the power of attorney and according to instructions), which means that they do not have the power of autonomous disposition (for example, they cannot enter a plea on behalf of the defendant-client).

The view advocated by Snežana Brkić and Momčilo Grubač is considerably narrower, identifying as secondary criminal procedural subjects only: 1) the injured party, appearing on the side of the public prosecutor; 2) the natural or legal person against whom a measure of confiscation of unlawful gain is to be imposed, appearing on the side of the defendant; and 3) the guardianship authority, appearing on the side of the court in juvenile proceedings.¹¹ The logic behind this view is that, in essence, secondary criminal procedural functions do not exist, and that the basic functions in criminal proceedings should not even be called basic because they are the only criminal procedural functions. The listed secondary criminal procedural subjects merely contribute to the performance of the basic criminal procedural functions of prosecution and defense, whereas other participants in the proceedings are merely holders of certain rights and obligations, but not of secondary criminal procedural functions, e.g., witnesses, while the holders of property claims are, in fact, holders of civil procedural, rather than criminal procedural functions.

The author is inclined to accept the broader view that every secondary criminal procedural subject is the holder of some secondary criminal procedural function (the witness holds the testimonial function, the expert witness holds the expert examination function, etc.). In this sense, the injured party is certainly a secondary criminal procedural subject, but even if the concept of criminal procedural subjects is understood narrowly, the injured party should be the only secondary criminal procedural subject in criminal proceedings. The corpus of rights and obligations and the complexity of the roles they undertake in the proceedings do not allow the injured party to be classified merely as “the injured party appearing on the side of the public prosecutor,” i.e., on the side of the prosecution, because they have numerous other interests

¹¹ Brkić, S. (2017). Teze o procesnim funkcijama u krivičnom postupku. *Collected Papers of the Faculty of Law in Novi Sad*, 51(4), 1403; Grubač, M. (2011). *Krivično procesno pravo*. Belgrade: Faculty of Law, Union University, 195.

that they pursue in criminal proceedings. The arguments in support of such a claim are numerous:

– In our current Criminal Procedure Code, a statutory definition of the concept of a party to criminal proceedings is provided, which follows from the party-based structure of our criminal procedure. The law briefly states that the parties are the prosecutor and the defendant,¹² while the previous point clarifies that the prosecutor is, in fact, a public prosecutor, a private prosecutor, and the injured party as a prosecutor.¹³ The injured party is not a party to criminal proceedings; they are a secondary criminal procedural subject or a participant in the proceedings, in all of their roles, except when appearing in the role of a private prosecutor or a subsidiary prosecutor. The injured party may also be the holder of certain additional secondary functions, such as the testimonial function when appearing as a witness in criminal proceedings, which is often the case since they naturally possess material facts concerning the criminal offense and the perpetrator. An injured party-witness is, logically, a witness for the prosecution, and in that case, it can be said that the injured party is on the side of the public prosecutor. The injured party filing a motion for criminal prosecution is likewise an injured party who “appears on the side of the public prosecutor,” because such a motion is a necessary condition for the public prosecutor to initiate criminal prosecution for criminal offenses prosecuted *ex officio*. In both of the cases mentioned, the injured party will also have the general rights belonging to them solely in their capacity as the injured party, and the injured party who files a motion for criminal prosecution may simultaneously be a witness and may submit a property claim.

– Furthermore, the injured party submitting a property claim is the holder of a civil-law function, but they are also authorized to exercise their right to the protection of their property interests within criminal proceedings. By submitting a property claim in criminal proceedings, adhesion or joined criminal proceedings are initiated, in which the injured party with a property claim now has the function of a plaintiff – a principal civil procedural subject, but a secondary criminal procedural subject.

– Regardless of whether the injured party assumes any of these additional roles, their procedural subjectivity cannot be denied because, under the letter of the law, they are vested with a guaranteed corpus of rights and obligations in criminal proceedings. The rights of the injured party are prescribed

¹² Art. 2, point 9 of the Criminal Procedure Code, *Official Gazette of the RS*, 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of the Constitutional Court, and 62/2021 – decision of the Constitutional Court.

¹³ The expression “injured party as a prosecutor” is not sufficiently precise because, terminologically, it also encompasses the concept of the private prosecutor, which has already been mentioned above.

in Article 50, paragraph 1 of the Criminal Procedure Code. *Inter alia*, they have the right to: retain counsel from among lawyers, inspect the case file and examine items serving as evidence, be informed of the dismissal of the criminal complaint or of the public prosecutor's abandonment of criminal prosecution, submit an objection against the public prosecutor's decision not to initiate or to abandon criminal prosecution, attend the preparatory hearing and the main trial and participate in the presentation of evidence, be informed of the outcome of the proceedings and be served with the final judgment, etc. The injured party can naturally be interested in the outcome of the criminal proceedings without performing the prosecutorial function; for example, they can refuse to testify or withdraw the previously submitted motion for criminal prosecution, but in that case, their other rights cannot be denied. They do not have to be interested in pecuniary satisfaction either; they can decide not to submit a property claim, thereby showing that they are not guided solely and exclusively by economic interests but also by interests of morality and justice. In its earlier decisions, the European Court of Human Rights emphasized that the injured party's right of access to a court and the right to initiate criminal proceedings is not autonomous but depends on the injured party's right to initiate civil proceedings under national law and to seek damages.¹⁴ In this way, although progressive in many of its decisions, the Court substantially restricted the injured party's right of access to a court¹⁵ because it justified that right only by the existence of a pecuniary interest on the side of the injured party, while failing to protect the injured party's right to join criminal proceedings for other reasons – for the satisfaction of justice, moral principles, retribution, etc.

– The injured party may achieve moral satisfaction where the security measure of publication of the judgment is imposed, as well as where, in the course of the proceedings, the defendant apologizes to the injured party, pleads guilty, shows genuine remorse, reconciles with them in mediation proceedings, etc. Likewise, the injured party may appear in criminal proceedings for the protection of their personal safety, which may be achieved in various ways: by imposing a restraining order, by ordering special witness protection measures when the injured party appears in that role, by ordering measures for protection against domestic violence, etc. The injured party will often be interested in restitution, in restoring the situation to what it was before the commission of the criminal offense (the obligations imposed in the application of deferred prosecution demonstrate this – the suspect may be ordered to remedy the harmful consequence caused by the commission of the criminal offense, to fulfill

¹⁴ *Perez v. France*, (App. No. 47287/99), February 12, 2004.

¹⁵ Ilić, G. (2012). Oštećeni i standardi ljudskih prava u krivičnom postupku. *Annals of the Faculty of Law in Belgrade*, 60(2), 158.

due maintenance obligations, to undergo treatment for alcohol or narcotic drug addiction, to undergo psychosocial treatment to eliminate the causes of violent behavior, to perform an obligation established by a final court decision, or to comply with a restriction established by a final court decision).

– Finally, the fact that the injured party does not appear solely “on the side of the public prosecutor” is best demonstrated by the fact that the legislator recognized the need to enact a *lex specialis* because of the specific nature of certain criminal offenses requiring more detailed regulation. Thus, the Law on the Prevention of Domestic Violence was adopted, which, *inter alia*, provides for “urgent, timely, and effective protection and support to victims of domestic violence.”¹⁶ In this way, it has been recognized that injured parties in respect of certain criminal offenses should be afforded additional protection and assistance, which goes beyond the traditional understanding of the injured party’s participation solely in the capacity of a witness in criminal proceedings. It should also be noted that the Action Plan for Chapter 23 provides for the establishment of victim support services throughout Serbia by 2018,¹⁷ which has indeed been accomplished.

NEW UNDERSTANDINGS OF CRIMINAL PROCEDURAL SUBJECTS (THE INJURED PARTY AND THE VICTIM OF A CRIMINAL OFFENSE)

As shown previously, the injured party is a secondary criminal procedural subject with specific rights and obligations in criminal proceedings, who may appear in several roles and simultaneously perform one or more criminal procedural functions, which makes their position exceptionally complex. However, is there any room for the claim that the injured party can be the holder of a principal criminal procedural function in the proceedings?

An injured party who appears in criminal proceedings as a private prosecutor or a subsidiary prosecutor is the holder of the principal criminal procedural function of prosecution, and there is nothing controversial about that proposition. The problem arises when attempting to put forward the hypothesis

¹⁶ Art. 2 of the Law on the Prevention of Domestic Violence, *Official Gazette of RS*, No. 94/2016 and 10/2023. – other law.

¹⁷ Action Plan for Chapter 23, final version, September 2015, available at: <https://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nacr-%20Konacna%20verzija1%201.pdf>, accessed on October 30, 2025. Revised Action Plan for Chapter 23 – Judiciary and Fundamental Rights, July 2020, available at: <https://www.mpravde.gov.rs/files/Revidirani%20AP23%202207.pdf>, accessed on October 30, 2025.

that an injured party who is not simultaneously a prosecutor in criminal proceedings may be the holder of a principal criminal procedural function.

The answer to this question depends on the type of criminal procedure involved. The prevailing model is the bipolar model of criminal procedure, in which, in criminal proceedings where prosecution is undertaken by the public prosecutor on behalf of the state, there is a relationship between two opposing parties – the state and the defendant. The introduction of the institution of the victim of a criminal offense has led to the emergence of a new three-dimensional, tripartite model of criminal procedure, which, in addition to the state–defendant relationship, also includes the victim of the criminal offense.¹⁸ Thus, whereas the injured party is merely a participant in the two-dimensional model of criminal procedure, where the principal actors are the state and the defendant, the victim of a criminal offense is a principal criminal procedural subject and the bearer of the tripartite state–defendant–victim relationship. In the tripartite model of the criminal procedure, the victim of a criminal offense would be a principal criminal procedural subject who is the holder of a new basic criminal procedural function in criminal proceedings – the protection of the victim’s interests.

The relationship between the concepts of the injured party and the victim becomes even more complicated in the adversarial type of criminal procedure, such as criminal procedure in Serbia following the 2011 reforms. This type of criminal procedure was developed on the basis of the historical accusatorial model of criminal procedure, and it may be said that it is a

“... modern criminal procedure that has accepted the achievements of the accusatorial system of criminal procedure in the sphere of carrying out criminal procedural actions.”¹⁹

The principle of contentiousness (adversity) is a key element of the adversarial type of criminal procedure.

“In that context, the possibility for the parties to criminal proceedings to present their own position on the criminal matter, but also to comment on the position of the opposing party, as the backbone of the principle of adversariality, is the cornerstone of the process of establishing material facts.”²⁰

¹⁸ Tomašević, G., Pajčić, M. (2008). Subjekti u kaznenom postupku: pravni položaj žrtve i oštećenika u novom hrvatskom kaznenom postupku. *Croatian annual of criminal law and practice*, 15(2), 823. Beloff, Douglas E. (1999). Third Model of Criminal Process. The Victim Participation Model. *Utah Law Review*, 290.

¹⁹ Knežević, S. (2012). The adversity principle in criminal procedure. *Law - Theory and Practice*, 29(7–9), 86.

²⁰ *Ibid.*, 86.

This type of procedure arose in specific historical circumstances in England, in which noblemen were confronted with accusations of treason (mostly related to dynastic succession and the religious establishment) in order to overcome the difficulties in defense that the prosecuting authority would impose on them.²¹ They had no difficulty in retaining an expensive lawyer, and this criminal procedure was therefore also referred to as “lawyer-conducted criminal trial.”²² Its essence lies in the possibility afforded to the accused to challenge the case against them as presented by the state, and, according to some authors, this is precisely where the impossibility of participation by the victim of a criminal offense lies.²³

The adversarial type of criminal procedure is the

“...sharp clash of proofs presented by adversaries in a highly structured forensic setting.”²⁴

This logically leaves hardly any room for a significant role for the victim. Adversarial (contentious, oppositional) proceedings in common-law jurisdictions tend to leave out the victim of a criminal offense.²⁵ In Anglo-Saxon countries, there are victim impact statements which, it may be said, provide victims with a certain role. However, they are given after conviction but before sentencing, and such statements may not affect the actual outcome of sentencing, but only provide a therapeutic experience that may aid the victim’s recovery.²⁶

The inclusion of the victim would require a radical change in the very conception of the adversarial type of criminal procedure, moving drastically away from its essence, to such an extent that it could no longer be called adversarial. In that sense, in the adversarial type of criminal procedure, the injured party is a secondary rather than a principal criminal procedural subject, while the victim of a criminal offense may exercise their rights to support and assistance, but outside the framework of criminal proceedings.

²¹ Langbein, J. H. (2003). *The origins of adversary criminal trial*. OUP Oxford, 3.

²² *Ibid.*, 1, 3.

²³ Kirchengast, T. (2013). Victim lawyers, victim advocates and the adversarial criminal trial. *New Criminal Law Review*, 16(4), 569.

²⁴ Landsman, S. (Ed.). (1988). *Readings on Adversarial Justice: The American Approach to Adjudication*. West Academic Publishing.

²⁵ Kirchengast, T. (2013). *Op. cit.*, 568.

²⁶ *Ibid.*, 568.

THE CONCEPT OF THE INJURED PARTY AND THE VICTIM OF A CRIMINAL OFFENSE IN NORMATIVE ACTS

A person injured by a criminal offense, by initiating criminal proceedings aimed at clarifying the criminal event, becomes a secondary criminal procedural subject in criminal proceedings. Our legislator recognizes only the concept of the injured party as a “person whose personal or property right has been violated or endangered by a criminal offense.”²⁷

The new Draft Law on Amendments and Supplements to the Criminal Procedure Code adopts the conceptual approach set out in Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support, and protection of victims of crime, in order to define the concept of the injured party more precisely. Under the Directive, the victim of a criminal offense is

“... a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offense,” but also “family members of a person whose death was directly caused by a criminal offense and who have suffered harm as a result of that person’s death.”²⁸

The concept of the injured party in the Draft is, in effect, equated with the concept of the victim of a criminal offense from Directive 2012/29/EU, except that the linguistic term “injured party” is still used because it is consistent with the Serbian legal tradition.²⁹ According to the Draft, the “injured party” is a person whose personal or property right has been violated or endangered by a criminal offense, as well as the spouse of a person whose death is the consequence of a criminal offense, a person who lived with that person in a non-marital union or some other permanent life partnership, that person’s

²⁷ “Meaning of Expressions” – Art. 2, para. 1, point 11 of the Criminal Procedure Code of the RS.

²⁸ Art. 2, (a) i) and Art. 2, (a) ii), European Union: Council of the European Union, *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, available at: <https://eur-lex.europa.eu/legal-content/SR/TXT/?uri=CELEX%3A32012L0029>, accessed on February 25, 2025.

²⁹ Bejatović, S. (2020). *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*, in: *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*, (ed. Bejatović, S.). Belgrade: OSCE Mission to Serbia, 19.

children, parents, adopted child, adoptive parent, brother, sister, and legal representative.³⁰ The concept of the injured party in the Draft encompasses both direct and indirect victims of a criminal offense. Usually, a direct victim is one who has suffered some form of harm – bodily injury or impairment of health, economic loss, emotional suffering, or mental injury, whereas an indirect victim is a family member of the primary victim, the immediate victim's dependent, or persons who suffered harm “while trying to assist a victim in distress or to prevent victimization.”

The aforementioned definition of the victim of a criminal offense given in Directive 2012/29/EU, which is at the same time the best-known and “most implemented,” was preceded by numerous attempts to define the concept of the victim of a criminal offense in theory and in international instruments. With the development of victimology in the 1940s, the need began to emerge to distinguish and shape the concept of the victim of a criminal offense. For example, in theory, the concept of the victim was initially defined for the purpose of clarifying the factors influencing the development of criminal behavior; the offender and the victim were viewed as a so-called “criminal pair” (Gulotta), and

“...the key to understanding them lies precisely in the specific dynamic consisting of a series of interactions between the participants”

(Fattah),³¹ and later also as an expanded concept in which

“...in addition to traditional victims, victims of other misfortunes such as wars and natural disasters are also included, with emphasis placed on assistance and support for victims.”³²

Later, in international instruments, alongside the development of victimology, this new concept of the victim of a criminal offense was introduced as part of international standards and defined instead of, or alongside, the concept of the injured party. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, as the first instrument of this kind, defines the victim of a criminal offense as

“...persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in

³⁰ Art. 1 of the Draft Law on Amendments and Supplements to the Criminal Procedure Code, available at: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed on February 25, 2025.

³¹ Ignjatović, Đ., Simeunović-Patić, B. (2011). *Viktimologija*. Belgrade: Faculty of Law, University of Belgrade, 14.

³² *Ibid.*, 15.

violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”³³

The term “victim” under the Declaration also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.³⁴

In international instruments governing criminal proceedings conducted in relation to the violent death of a person, direct and indirect victims of criminal offenses are defined as

“...those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence,” and “the dependents of persons who have died as a result of such crime.”³⁵

THE CORPUS OF RIGHTS OF VICTIMS OF CRIMINAL OFFENSES

All international instruments that regulate the concept of victims of criminal offenses are aimed primarily at improving their position and affording them additional protection and assistance. The essence does not lie in the mere introduction of a new concept but in the improved guarantees which victims of criminal offenses may rely on from the authorities conducting the proceedings in their national jurisdictions. Directive 2012/29/EU includes among the rights of victims with specific protection needs: the right to protection, the right to avoid contact between victim and offender, the right to protection of victims during criminal investigations, the right to protection of privacy, the right to individual assessment of victims to identify specific protection needs, the right to protection of victims with specific protection needs during criminal proceedings, and the right to protection of child victims during criminal proceedings.³⁶

The procedural protection of the victim of a criminal offense is, in our Criminal Procedure Code, conventionally framed as part of the protection of

³³ Art. 1, UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*: A/RES/40/34, 1985.

³⁴ *Ibid.*, Art. 2.

³⁵ Art. 2, Council of Europe, *European Convention on the Compensation of Victims of Violent Crimes*, European Treaty Series No. 116, Strasbourg, 1983.

³⁶ Arts. 18-24, European Union: Council of the European Union, *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, available at: <https://eur-lex.europa.eu/legal-content/SR/TXT/?uri=CELEX%3A32012L0029>, accessed on February 25, 2025.

witnesses and injured parties appearing as witnesses in criminal proceedings, and consists of: basic protection, protection of especially vulnerable witnesses, and protection of protected witnesses.³⁷

The Draft provides for an expansion of the concept of the injured party and an improvement of their position, modeled on international legal instruments, in three directions: 1) a clearer definition of the concept of the injured party and the introduction of a broader scope of rights; 2) an expanded right of the injured party to be informed; 3) improved protection against secondary victimization.³⁸ In addition to the already existing rights, the following rights have been added: 1) the right to a translator or interpreter in accordance with the provisions of this Code; 2) the right to free and confidential access to assistance and support services; 3) the right to be informed about the type of and manner of obtaining medical, psychological, and other professional assistance, support, and protection in accordance with the law; 4) the right, at personal request, to be accompanied by a person of trust during procedural actions in which they participate, unless this would be detrimental to the interests of the proceedings; 5) the right to be informed about the stage of the proceedings, the actions taken, and the measures undertaken in relation to the criminal complaint they have filed, or the motion for criminal prosecution, unless this would be detrimental to the interests of the proceedings; 6) the right, upon personal request and without delay, to be informed of the lifting of detention or the defendant's escape from detention, as well as of the measures undertaken for their protection, where necessary; 7) the right to be examined as a witness without unnecessary delay, as few times as possible, and only where necessary for the conduct of the proceedings; 8) the right to free legal aid in accordance with the law.³⁹ During the cross-examination of a particularly vulnerable witness or a witness who is a minor at the main trial, it is prohibited to ask questions that are leading or that are based on the assumption that the witness stated something that they did not in fact state.⁴⁰

The proposals set out in the Draft concerning the introduction of new rights of victims of criminal offenses, which are in line with existing international standards, as well as the prohibition on asking leading questions during the cross-examination of a particularly vulnerable witness, are positive. At the same time, however, some important rights have been omitted, such as the

³⁷ Arts. 102–112 of the Criminal Procedure Code of the RS.

³⁸ Milojević, M. (2025). Položaj oštećenog u pravnom sistemu Republike Srbije – *de lege lata* i *de lege ferenda*. *Legal Horizons*, 8, 194–195.

³⁹ Art. 23 of the Draft Law on Amendments and Supplements to the Criminal Procedure Code, available at: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed on February 25, 2025.

⁴⁰ Art. 50 of the Draft.

preparation of an individual plan for the victim's protection and assistance and the right to respect for the victim's private life.⁴¹ Moreover, the injured party's right to an individual plan for victim protection and assistance, drawn up by the coordination and cooperation group, is provided for victims of the criminal offense of domestic violence under the Law on the Prevention of Domestic Violence.⁴²

THE RELATIONSHIP BETWEEN THE CONCEPTS OF THE INJURED PARTY AND THE VICTIM OF A CRIMINAL OFFENSE

Authors who argue that there is no need to introduce the concept of the victim of a criminal offense into a country's legislation in line with international standards justify this view by claiming that the concept of the victim of a criminal offense is narrower than the concept of the injured party, and that procedural protection would be reduced if the legislator were to protect only the victim, and not the injured party as well, through rules on secondary victimization.⁴³ In Croatian law, according to the letter of the law, the concept of the victim is narrower than that of the injured party, because the injured party is

“...the victim of a criminal offense and the legal person to whose detriment the criminal offense was committed and who participates in criminal proceedings in the capacity of the injured party.”⁴⁴

It follows from this that the injured party may be either a natural or a legal person to whose detriment the offense was committed, whereas the concept of the victim is primarily linked to natural persons. Likewise, in Macedonia, the injured party is defined as

“...in addition to the victim, another person whose personal or property right has been violated or endangered by a criminal offense and who participates

⁴¹ Milojević, M. (2025). Posebno ranjive kategorije žrtava krivičnih dela u srpskom pravu. *Journal of Social Sciences*, 17(1), 65.

⁴² Art. 31, para. 1 of the Law on the Prevention of Domestic Violence, *Official Gazette of RS*, No. 94/2016 and 10/2023. – other law.

⁴³ Škulić, M. (2016). Položaj žrtve krivičnog dela/oštećenog u krivičnompravnom sistemu Srbije uopšte i u odnosu na Direktivu EU 2012–29, in: *Kaznena reakcija u Srbiji*, part 6, (ed. Ignjatović, Đ.), edition Crimen, Faculty of Law, University of Belgrade, 42.

⁴⁴ Art. 202, para. 12 of the Law on Criminal Procedure, consolidated text, *Official Gazette*, 152/08, 76/09, 80/11, 91/12 – Decision and Ruling of the Constitutional Court of the Republic of Croatia, 143/12, 56/13, 145/13, and 152/14.

in criminal proceedings by joining the criminal prosecution or for the purpose of realizing a property claim.”⁴⁵

There are differing views in theory and practice as to which concept is broader or narrower – the concept of the injured party or that of the victim. The question is exceptionally complex, and no simple answer can be given. If the injured party is treated as a secondary criminal procedural subject in criminal proceedings, the concept is narrower because it is determined by that party’s role in criminal proceedings; their rights and obligations are assigned by law so that they may perform a certain function in achieving the aim of criminal proceedings – the clarification and resolution of the criminal matter. The victim of a criminal offense, by contrast, has rights that extend beyond the criminal proceedings themselves, both before and after their conclusion, in order to ensure effective assistance and support with the aim of ensuring the victim’s full reintegration into society. Namely, the concept of the victim is primarily associated with rights of procedural and extra-procedural protection; the victim may have interests that go beyond what is necessary for participation in criminal proceedings for the “purpose of advancing their own procedural interests.”⁴⁶ The first group of rights has nothing to do with the participation of victims in criminal proceedings; moreover, some of them, including the most important one, the right of access to victim support services, are independent of whether the criminal offense has even been reported.⁴⁷ The injured party is a victim of a criminal offense who participates in criminal proceedings, but there are victims who are not part of criminal proceedings and do not participate in them, just as there are injured parties who are not victims of a criminal offense (legal persons, injured parties not included in the system of victim assistance and support).

From a normative perspective, the concepts of the injured party and the victim of a criminal offense contained in international instruments can be compared to those in domestic legislation. The concept of the victim contained in the 1985 Declaration is the broadest when considering the categories of victims it encompasses, so it can be said to be broader than the concept of the injured party in the current Criminal Procedure Code, but also broader than the concept provided for in the Draft and in the 2012 Declaration, because it does not include “persons who have suffered harm in intervening to assist victims

⁴⁵ Art. 21, para. 1, point 4 of the Law on Criminal Procedure, *Official Gazette of the RM*, No. 150, November 18, 2010.

⁴⁶ Burić, Z. (2020). *Žrtve kaznenih djela i kazneno zakonodavstvo Hrvatske*, in: *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*, (ed. Bejatović, S.). Belgrade: OSCE Mission to Serbia, 139.

⁴⁷ *Ibid.*, 137.

in distress or to prevent victimization.” Also, “a person may be considered a victim” under the 1985 Declaration,

“...regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.”⁴⁸

From a theoretical point of view, some authors assess the scope of these concepts in relation to the type of criminal procedure. Historically, the injured party has always been part of criminal proceedings to a certain extent (except in the inquisitorial type of procedure), as a party or participant in the proceedings, but has always remained at the “margins of criminal proceedings,”⁴⁹ exercising their rights primarily through the role of witness. That is the case in the bipolar type of procedure, while, as described in one of the previous chapters, there is also a tripartite model of criminal procedure in which the victim of a criminal offense is a principal criminal procedural subject and the bearer of the tripartite state–defendant–victim relationship. The balance between the concepts of the injured party and the victim tips in favor of the victim if the type of criminal procedure is taken as the criterion of distinction, because the victim of a criminal offense is then a principal criminal procedural subject, whereas the injured party is a considerably narrower concept, since under this criterion it constitutes a secondary criminal procedural subject. In the adversarial type of criminal procedure, as previously shown, there is no place for the role of the victim of a criminal offense.

In theory, there is also, although not widely accepted, an interesting view according to which the defendant is likewise a victim of the criminal offense because, together with the injured party, they form part of the so-called “social pathology.”⁵⁰ In fact, the victim of a criminal offense is a victim only in a secondary sense, whereas the original victim is actually the perpetrator because they represent the point at which social pathology emerges.⁵¹

⁴⁸ Art. 2, UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: A/RES/40/34*, 1985

⁴⁹ Only the injured party in the accusatory type of procedure was the authorized prosecutor; in such an organized model, a private person injured by a criminal offense was the main subject of the criminal proceedings because it was considered that the criminal offense was a private matter of the parties, that it did not affect the public interest, and the criminal proceedings resembled a civil trial.

⁵⁰ This concept was discussed in greater detail by eminent scholars from the territory of the former Yugoslav republics: Šeparović, Z. (1987). *Kriminologija i socijalna patologija*. Zagreb: *Narodne novine*; Bošković, M. (2002). *Kriminologija s penologijom: Socijalna patologija*, Part 2. Novi Sad: Faculty of Law, Publishing Center.

⁵¹ Svetlič, R. (2020). Posebno ranjive kategorije žrtava krivičnih dela i slovenačko krivično zakonodavstvo – teorija, norma i praksa, in: *Žrtva krivičnog dela i krivičnopravni*

The broadest concept of the victim, however, also includes the state and society as indirect victims of the committed criminal offense. Thus, authors in modern criminal law distinguish among three types of victims of a criminal offense: the public, the person injured by the criminal offense, and the victim-in-law, where the victim-in-law is

“...identified in the legislative text itself even though they have never sought protection, as a consequence of the paternalistic point of view of modern legislators.”⁵²

In the literature, authors who consider the concept of the victim to be narrower than that of the injured party likewise deny the need to introduce the concept of the victim, justifying such a position by arguing that in this way “the levels of protection of certain categories of persons are unnecessarily reduced.”⁵³ The negative aspects of introducing the concept of the victim into our legislative system, and the reasons why the concept of the injured party should be retained, are:

- a break with our legal tradition;
- the absence of an explicit normative obligation arising from a particular international legal instrument – in this case Directive 2012/29/EU;
- difficulties concerning the precise normative distinction between the status of a victim and the status of a person injured by a criminal offense, understood in a narrower and in a broader sense;
- the possibility of satisfying all the standards of the Directive within the normative elaboration of the concept of the injured party, without changing the term and introducing a new concept;
- the fact that the term injured party (*oštećeni*) is in the spirit of the Serbian language.⁵⁴

instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite), (ed. Bejatović, S.). Belgrade: OSCE Mission to Serbia, 124.

⁵² Hallevey, G. (2006). Victim’s Complicity in Criminal Law, 2 *IJPS* 72. *International Journal of Punishment and Sentencing*, 2(2), 77, 79.

⁵³ Škulić, M. (2016). Položaj žrtve krivičnog dela/oštećenog u krivičnompravnom sistemu Srbije uopšte i u odnosu na Direktivu EU 2012–29, in: *Kaznena reakcija u Srbiji*, part 6, (ed. Ignjatović, Đ.), edition Crimen, Faculty of Law, University of Belgrade, 42.

⁵⁴ Bejatović, S. (2020). Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite), in: *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*, (ed. Bejatović, S.). Belgrade: OSCE Mission to Serbia, 19.

CONCLUSION

The Criminal Procedure Code defines the concept of a person injured by a criminal offense, but international law also recognizes the concept of the victim of a criminal offense. As part of the European legal area and as a candidate for accession to the European Union, our country should harmonize its legislation with current international standards in the field of the rights of injured parties and victims of criminal offenses. Viewed from that perspective, it is necessary, alongside the concept of the injured party, to define the concept of the victim of a criminal offense as well, and in that way to recognize as criminal procedural subjects both indirect victims and victims who are not witnesses to criminal offenses or have not submitted a property claim, where there is a need for their identification and for an individual plan of protection and assistance during criminal proceedings.

Our legislation needs to recognize the existence of victims of criminal offenses and not tie their right to support and assistance only to situations in which, in criminal proceedings, they appear as witnesses to the criminal event. Victims of violent criminal offenses should be given a status similar to that of an especially vulnerable witness and a protected witness even when they are not testifying in the proceedings (it is often necessary to place the victim in a shelter, protect their mental and physical integrity, provide psychological assistance, as well as assistance consisting of accommodation, food, means of subsistence, and help in finding employment so that they may overcome the trauma as quickly as possible and return to normal life). In that way, assistance and support for victims would be regulated in a general manner and elevated to the statutory level, rather than remaining only at the level of by-laws and special laws relating only to certain criminal offenses.

Given the adversarial type of criminal procedure, recognizing the victim of a criminal offense as a principal criminal procedural subject is not possible. Two paths lie before the legislator. The first is, as reflected in the Draft, to expand the concept of the injured party by incorporating elements from the definition of the victim of a criminal offense, without introducing a separate concept of the victim, while still adding, in order for protection to be complete, certain additional rights of the injured party discussed in this paper. In that way, the traditional concept of the injured party would be retained (enriched by new conceptual elements and new rights), which is the position of one part of legal theory. The second path is to define in the Code (or in a special law) the concept of the victim of a criminal offense as a secondary criminal

procedural subject and to prescribe a new corpus of victims' rights, as well as the manner of their exercise in and in connection with criminal proceedings.

The author believes that there are no obstacles to ensuring effective protection in accordance with current international standards, regardless of whether a new concept of the victim is introduced or the already existing concept of the injured party is expanded. There is room for effective victim protection even within the adversarial type of criminal procedure, because the structure of criminal proceedings in our country, although it contains adversarial elements, nevertheless differs from criminal proceedings in the Anglo-Saxon legal tradition from which that model originates. Victim protection may take place independently of the conduct of criminal proceedings, before and after them, and even when proceedings have not been initiated at all, because these would then constitute extra-procedural protective measures that may be regulated by a special law, thus preserving the conceptual structure of the type of criminal procedure itself. Moreover, there is no obstacle to providing statutory guarantees of protection to victims of criminal offenses within the Criminal Procedure Code itself, bearing in mind that even pre-investigation proceedings, which are initiated and conducted with the aim of creating the statutory prerequisites for the initiation of formal criminal proceedings, and which by their nature are administrative and criminalistic proceedings,⁵⁵ are regulated precisely within the Criminal Procedure Code.

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⁵⁵ Knežević, S. (2023). *Krivično procesno pravo – posebni deo*. Niš: Publication Center of the Faculty of Law, 15.

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