

PROTECTION OF VICTIMS OF CRIMINAL OFFENSES IN  
BOSNIA AND HERZEGOVINA – VICTIMOLOGY VIEWMiodrag N. Simović, PhD<sup>1</sup>*Academy of Sciences and Arts of Bosnia and Herzegovina,  
European Academy of Sciences and Arts, Russian Academy of  
Natural Sciences, Faculty of Law, University of Bihać*Azra Adžajlić-Dedović, PhD<sup>2</sup>*Faculty of Criminalistics, Criminology and  
Security Studies, University of Sarajevo*

**Abstract:** *The central theme of this paper is the victimological perspective on the protection of victims of criminal offenses in Bosnia and Herzegovina. This issue is important due to the increasing number of victims of the most serious crimes, making it particularly relevant given the exceptionally high level of social danger of this category of criminal activities and numerous consequences they leave on the victims. Moreover, the attitude of the relevant entities regarding crime victims in general, is that it is not only a problem of a single country, but a universal problem. As a result, it is necessary for the international community as a whole to take measures aimed at more regularly adequately regulating their criminal-law status, and ensuring their proper legal protection. This would also help to prevent, as much as possible, both their stigmatization and re-victimization.*

*In the first part of the paper, the right to a fair trial and the imbalance between the rights of the accused and the rights of crime victims are analyzed to determine whether the functioning of repressive authorities in Bosnia and Herzegovina reflects the rule of law. The data confirm that justice is more effec-*

<sup>1</sup> Full member of the Academy of Sciences and Arts of Bosnia and Herzegovina; full professor at the Faculty of Law, University of Bihać, professor emeritus, retired judge of the Constitutional Court of Bosnia and Herzegovina, e-mail: [msimovic@anubih.ba](mailto:msimovic@anubih.ba); <https://orcid.org/0000-0001-5116-680X>.

<sup>2</sup> Full Professor of Victimology and Restorative Justice, Department of Criminology, e-mail: [aadzajlic@fkn.unsa.ba](mailto:aadzajlic@fkn.unsa.ba); <https://orcid.org/0000-0002-4873-9782>.

tively served when victims have sufficient information about the criminal justice system and the resources available to them.

*The second part of the paper presents data related to the minimum standards set out in Directive 2012/29/EU of 2012 on the support and protection of crime victims. This Directive ensures that persons who have become victims of crime are recognized and treated with respect, aiming to place victims at the center of the criminal justice system and strengthen their rights. In this way, every victim could rely on having the same rights, regardless of where the criminal offense was committed, their citizenship or residence status. This Directive establishes a set of mandatory standards for the states that ratified it with the aim of improving the position of crime victims within criminal proceedings. In this context, special emphasis is placed on de lege ferenda measures concerning the reform of the victim protection system in Bosnia and Herzegovina.*

**Key words:** victim, Directive, criminal offense, access to justice, fair trial.

## 1. INTRODUCTION

Victims of crime Bosnia and Herzegovina face marginalization and secondary victimization because the legislator did not define victims and the rights of victims of criminal offenses.<sup>3</sup> The Constitution of Bosnia and Herzegovina does not ensure the right of these victims to state protection. However, under Article 3 „Catalogue of Rights“ of the Constitution of Bosnia and Herzegovina (Annex IV to the General Framework Agreement for Peace in Bosnia and Herzegovina), several fundamental rights are guaranteed to all individuals within its territory, which include the right to protection of life, the right to protection from torture or inhuman and degrading treatment or punishment, the right to a fair trial in civil and criminal matters as well as rights related to criminal proceedings, and the right to private and family life, home and correspondence. In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), which is directly applicable in Bosnia and Herzegovina, guarantees in its Article 6 the right to legal security and a sense of justice for crime victims, as well as the right to a fair trial including access to justice.

In relation to crime victims, risk assessments should be a fundamental and appropriate practice, because when the offenders are released, it is expected that there will be an effective risk, which is why management planning is es-

---

<sup>3</sup> See Andrew Nash, “Victims by Definition”, 85 Wash. (U. L. Rev., 2008), 1419- 1461 Available at: [https://openscholarship.wustl.edu/law\\_lawreview/vol85/iss6/5](https://openscholarship.wustl.edu/law_lawreview/vol85/iss6/5), 10.7.2024.

sential to protect both past and/or potential victims.<sup>4</sup> Thus, meeting the interests and needs of the victim, along with fair treatment of both the victims and the accused, is one of the most important goals of the judicial system, which the judiciary in BiH (as evidenced by the cases of Memić, Dragičević, Leotar, Ugljanin and others) has so far failed to achieve.

The experience of the most developed democracies shows that merely recognizing and defining a victim in law is not sufficient. Instead, a comprehensive set of rights must be guaranteed through criminal legislation or a special law in accordance with the United Nations' 1985 Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power. It is the state's obligation to ensure that victims can fully exercise their legally prescribed rights, both through the work of state and public services, and by establishing special departments for the protection of crime victims and dedicated services designed to meet their needs in accordance with the law. Some countries have incorporated the philosophy of victims' rights into laws, mandating specific rights to protection, notification, and reparation for victims. Others have even introduced constitutional amendments to safeguard these rights, as seen in California.<sup>5</sup>

The Rome Statute of the International Criminal Court (ICC) affirmatively and explicitly recognizes the victims' rights to participate in proceedings by presenting their „views and concerns“. It also ensures their right to seek reparations, which led to the establishment of the Trust Fund for Victims (Trust Fund) for this purpose.<sup>6</sup>

Without ignoring the differences between various international documents of this kind, there is broad consensus on the fundamental core of victims' rights within the criminal justice system.<sup>7</sup> This agreement is further reflected in the

<sup>4</sup> Meeting the needs of victims in the criminal justice system. A consolidated report by the criminal justice inspectorates, 2015, 7. Available at: [www.justiceinspectorates.gov.uk/cji/](http://www.justiceinspectorates.gov.uk/cji/), 9.5.2024.

<sup>5</sup> Kristen M. Zgoba & Meghan M. Mitchell, "The effectiveness of Sex Offender Registration and Notification: A meta-analysis of 25 years of findings", *Journal of Experimental Criminology*, volume 19 (2021): 71-96; <https://doi.org/10.1007/s11292-021-09480-z>, 7.5.2024.

<sup>6</sup> *Enhancing Victims' Rights Before the ICC*, Paris: FIDH - International Federation for Human Rights, The John D., Catherine T. MacArthur Foundation, November 2013, 4. Available at: [fidh\\_victim\\_srights621anov2013\\_ld.pdf](http://fidh_victim_srights621anov2013_ld.pdf), 14.5.2024.

<sup>7</sup> See Miodrag Simović, Alija Ramljak, *Viktimologija*, 3. izdanje (Pravni fakultet u Bihaću, 2011), 17-18; Miodrag Simović et al., *Kritička viktimologija o žrtvi, mitu i korupciji* (Laktaši - Banja Luka, Grafomark, 2021), 9-56; Miodrag Simović et al., *Viktimologija o žrtvama prirodnih katastrofa i zaštiti životne sredine u Bosni i Hercegovini* (Grafomark, Laktaši - Banja Luka, 2021), 456-469; Marina, M. Simović, Vladimir M. Simović, *Žrtve krivičnih djela i krivičnopravni instrumenti zaštite* (Laktaši - Banja, Grafomark, 2021), 11-25; Milan Škulić, *Položaj žrtve krivičnog dela/oštećenog krivičnim delom u krivičnopravnom sistemu Srbije, aktuelno stanje, potrebne i moguće promene-normativna analiza* (Beograd: Pravni fakultet Univerziteta u Beogradu, 2015), 2-68; Vanja Bajović, „O položaju oštećenog u krivičnom postupku“, *Pravni život*, 9 (2018): 543-562; Jasminka Mujezinović, Ivanka Marković, Selma Begić, *Krivično-pravna zaštita, pravni i socijalni položaj žrtava seksualnog nasilja u Bosni i Hercegovini: osnovna studija*, (Bijeljina, Sarajevo: Fondacija «Lara», Fondacija lokalne demokratije, 2021), 7-186; Milijana Buha, „Načela

more recent Statement on the Rights of Victims in the Criminal Justice Process, issued in 1995 by the European Forum for Victim Mediation.<sup>8</sup>

## 2. PURPOSE, DESIGN/METHODS/APPROACH

This paper aims to highlight the most significant problems identified in harmonizing Bosnia and Herzegovina's criminal legislation of with the European Union law, particularly in ensuring victims' rights and preventing secondary and tertiary victimization. The objective is to examine and present various forms of secondary victimization under existing legal provisions, as well as through the functioning of institutional mechanisms designed to protect not only victim's rights, but also the broader human rights of all the citizens of Bosnia and Herzegovina.

By addressing issues related to the "right to a fair trial", the paper seeks to propose amendments to the relevant provisions of *de lege lata* and advocacy for the adoption of special laws. To achieve this, a combination of general and specialized scientific methods are employed, with particular emphasis on content analysis, the analytical-synthetic method, abstraction and concretization, and the observation method.

## 3. THE RIGHT TO FAIR PROCEEDINGS AND THE BALANCE BETWEEN THE RIGHTS OF THE ACCUSED AND VICTIMS

The concepts of „legal certainty“ and „proper functioning of the judiciary“ represent two central elements for distinguishing excessive formalism and reasonable application of procedural rules.<sup>9</sup> Under the Convention of Human Rights, the European Court of Human Rights (ECHR) is responsible for assessing whether the proceedings as a whole were fair, including the manner in which the evidence was presented (*Elsholz v. Germany*<sup>10</sup>, paragraph 66). Therefore, it

---

krivičnog gonjenja prema Zakonu o krivičnom postupku Republike Srpske iz 2021. godine“, *Žurnal za bezbjednost i kriminalistiku*, 3, 1 (2021): 29-41.

<sup>8</sup> Marc M. Groenhuijsen, "Victim's rights in the criminal justice system: A call for more comprehensive implementation theory", (1999), 3. In Jan van Dijk, R.G.H. van Kaam, Jo-Anne Wemmers (Eds.), *Caring for crime victims: selected proceedings of the Ninth International Symposium on Victimology* (85-114). Criminal Justice Press.

<sup>9</sup> Edna Erez *et al.*, „Outsiders Inside: Victim Management in an Era of Participatory Reforms“, *International Review of Victimology*, 20(1)(2014), 169; Fattah, Ezzat, „Victimology: Past, Present and Future“, *Criminologie*, 33(1)(2000), 17–46. Available at: <https://doi.org/10.7202/004720ar>, 29.5.2024

<sup>10</sup> Application no. 25735/94, 13 July 2000, ECHR.

must be determined whether the evidence was presented in a way that guarantees a fair trial (*Blücher v. Czech Republic*<sup>11</sup>, paragraph 65).

The perpetrator of a crime should be legally required to pay restitution to the victim. There are two primary models for this: The *partie civile* model, where the victim files a civil lawsuit for claim compensation for damages. Another model is a compensation order, where the court mandates the perpetrator to pay reparations to the victim as an independent criminal penalty. If the perpetrator cannot be identified, refuses to pay, or is financially unable to do so, the compensation should be provided by the state.

The principle of „equality of parties“ is an essential component of the broader concept of a fair trial and is closely linked to the principle of contradiction (*Regner v. Czech Republic* [VV]<sup>12</sup>, paragraph 146). This principle requires „equality of parties“ in the sense of „a fair balance“ between the parties and applies to both civil and criminal cases (*Feldbrugge v. the Netherlands*<sup>13</sup>, paragraph 44). Ensuring equality between the parties means that each party must be given a fair opportunity to present its case - including submitting evidence - under conditions that do not place them at a significant disadvantage compared to the opposing party (*Dombo Beheer B.V. v. the Netherlands*<sup>14</sup>, paragraph 33). Examples of violations of this principle include: one of the parties was placed in an obviously less favorable position, such as when an appeal was not forwarded to the opposing party, preventing them from responding (*Beer v. Austria*<sup>15</sup>, paragraph 19); a procedural deadline expired for only one party, which placed the other party into significantly less favorable position (*Platakou v. Greece*<sup>16</sup>, paragraph 48 and *Wynen and Center Hospitalier Interrégional Edith-Cavell v. Belgium*<sup>17</sup>, paragraph 32); the court allowed the testimony of only one of two key witnesses (*Dombo Beheer B.V. v. the Netherlands*<sup>18</sup>, paragraphs 34 and 35).

In several rulings, the Constitutional Court of Bosnia and Herzegovina has recognized instances of secondary victimization of crime victims in Bosnia and Herzegovina:

Example 1: Decision on Admissibility and Merits, No. AP-3991/11 of 21 October 2014, paragraph 26, published in the „Official Gazette of Bosnia and Herzegovina“ No. 93/14.

<sup>11</sup> Application no. 58580/00, 7 December 2004, ECHR.

<sup>12</sup> Application no. 35289/11, 19 October 2016, ECHR.

<sup>13</sup> Application no 8562/79, 29 May 1986, ECHR.

<sup>14</sup> Application no. Application no. 14448/88, 27 October 1993, ECHR.

<sup>15</sup> Application no. 30428/96, 6 February 2001, ECHR.

<sup>16</sup> Application no. 38460/97, 11 January 2001, ECHR.

<sup>17</sup> Application no. 32576/96, 5 November 2002, ECHR.

<sup>18</sup> Application no. Application no. 14448/88, 27 October 1993, ECHR.

The Constitutional Court found a violation of the right of access to court as an element of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the Convention. The court determined that imposing a mandatory court fee as a prerequisite for processing a lawsuit was not a proportionate measure to achieve the legitimate aim of collecting public revenue. Instead, it infringed upon the very essence of the right of access to court.

Example 2: Decision on Admissibility and Merits, No. AP-1101/17 of 22 March 2018, paragraph 53, published in the „Official Gazette of Bosnia and Herzegovina“ No. 24/18.

The Constitutional Court ruled that the appellant's right to property as guaranteed by Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the Convention had been violated. Additionally, the appellant's right of access to court, as part of the right to a fair trial under Article II(3) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the Convention was also infringed. The violation occurred when the appellant was required to pay legal costs to the Prosecutor's Office of Republika Srpska, which represented Republika Srpska as the defendant in a lawsuit for non-pecuniary damages. The appellant had sought compensation as a victim of a war crime, and under the specific circumstances of the case, the court's decision was deemed disproportionate and excessive burden on the appellant.

#### 4. MINIMUM STANDARDS OF THE VICTIMS' RIGHTS DIRECTIVE

„Victim Support Europe“ (1996) is a program designed to support victims of crime outlining the basic principles and specific rights of victims within the judicial process. These include: ensuring that the rights of crime victims receive equal priority to those of the accused, and guaranteeing the right to protection from secondary victimization.

Directive 2012/29/EU provides some examples of assistance and support for victims that should continue even after the end of criminal proceedings, based on an individual assessment of each case. However, it also allows for other measures that may be equivalent to those mentioned.<sup>19</sup> Another key document is the United Nations Convention against Transnational Organized Crime, adopted in 2000. Its goal is to establish effective international cooperation in the prevention and fight against transnational organized crime. It is supplemented by two protocols: one dealing with human trafficking (Protocol to Prevent,

---

<sup>19</sup> Susan van der Aa, “The right to protection”. In *Strengthening judicial cooperation to protect victims of crime: Handbook*. Superior Council of Magistracy of Romania. (Bucharest, 2014), 161.

Suppress and Punish Trafficking in Persons, Especially Women and Children) and the other with human smuggling (Protocol Against the Smuggling of Migrants by Land, Sea and Air). In addition to these international documents, the following documents adopted by the European Union are of special importance for the protection of crime victims: Council Directive 2004/80/EC of 29 April 2004 concerning compensation for crime victims and Council Framework Decision 2001/220/JHA of 15 March 2001 addressing the standing of the victims in criminal proceedings.

Directive 2012/29/EU of the European Parliament and the European Council of 25 October 2012, establishes minimum standards for the rights, support and protection of crime victims (the Directive). It lays down minimum standards on the rights, support and protection of crime victims and ensures that persons who have become crime victims are recognized and treated with respect. They must also receive adequate protection, support and access to justice. The Directive also requires that European Union member states provide adequate training on the needs of victims for those officials who are likely to come in contact with victims. Additionally, the legislation requires special protection and expanding rights for adults with cognitive impairments, such as intellectual disabilities, as they may be particularly vulnerable and require additional support when giving testimony in order to reduce the stress of the process and help them comprehend the questions asked.

Although this Directive specifically applies to EU member states, it is also crucial for any country aiming to align its criminal legislation with relevant international legal standards. In this context, it is essential to emphasize, both to the professional public and the lawmakers in BiH, not only the importance of this issue, but also the necessity and method of application of international legal standards on the criminal legal status of crime victims in BiH criminal legislation (covering substantive, procedural, juvenile and enforceable law). Regarding the prerequisites for the adequate application of the criminal law norms on the status of the crime victims of, it is necessary, first of all, to determine their number, with the fact that four of them are of key importance. These are: the establishment of a support service for victims of crime; appropriate infrastructure for judicial facilities; the expertise of officials to ensure the proper application of criminal law provisions, and the cooperation and mutual relationship among the entities responsible for applying criminal law norms.

The principle of access to justice and fair treatment requires states to ensure that victims are granted the following rights<sup>20</sup>:

<sup>20</sup> See Joan Barrett, "Expanding Victims' Rights in the Charter Era and Beyond", *The Supreme Court Law Review*, Osgoode's Annual Constitutional Cases Conference, 40(2008), 627-653. Available at: <http://digitalcommons.Osgoode.yorku.ca/sclr/vol40/iss1/20>, 20.6.2024.

- 1) the right to be treated with dignity and respect, acknowledging their personal feelings;
- 2) the right to access the court, which may, in certain circumstances, be subject to legitimate limitations, such as statutory limitation periods (*Stubings and Others v. the United Kingdom*<sup>21</sup>, paragraphs 51 and 52), bail conditions (*Tolstoy Miloslavsky v. the United Kingdom*<sup>22</sup>, paragraphs 62-67), mandatory legal representation (*R.P. and others v. the United Kingdom*<sup>23</sup>, paragraphs 63-67) or the requirement to attempt a friendly settlement before seeking damages from the state (*Momčilović v. Croatia*<sup>24</sup>, paragraphs 55-57). In these cases, the court must consider the impact of the crime on the victim and the injury, loss or damage directly caused by the offense;
- 3) the right to be informed of their rights;
- 4) the right to information in relation to the procedure and their role within it. Constitutional courts can potentially carry out judicial supervision exercises that will defend the constitutional rights of minority groups and ensure that political institutions do not exceed their power.<sup>25</sup> Victimologists should examine how victims are treated: how the police respond to complaints; how the police assist victims in reporting crimes; how prosecutors, defense attorneys and judges engage with state witnesses and how prison and parole officers address special requests from victims<sup>26</sup>;
- (5) the right to compensation from the state. The judiciary, with its impartial perspective, is in the best position to ensure a proper balance between the rights of the accused and those of the victims.<sup>27</sup> The „principle of assistance“ for crime victims includes: (i) the right to assistance (victims have the right to the necessary material, medical, psychological and social assistance through state, voluntary and local resources); (ii) the right to be informed about available health and social services; (iii) the right to access health and social services; (iv) the right to assistance and handling by sensitized and trained personnel; (v) the right to

---

<sup>21</sup> Application no. 22083/93; 22095/93, 22 Oct 1996, ECHR.

<sup>22</sup> Application no. 18139/91, 19 Jul 1995, ECHR.

<sup>23</sup> Application no. 38245/08, 16th October 2012, ECHR.

<sup>24</sup> Application no. 11239/11, 26 March 2015, ECHR.

<sup>25</sup> David Landau, Rosalind Dixon, *Abusive Judicial Review: Courts Against Democracy* (Florida State University, College of Law, 2020), 1332.

<sup>26</sup> John J.P. Dussich, *The challenges of victimology past, present and future*. 131ST International senior seminar visiting experts' papers. Resource material, Series no. 70 (2010), 49. Available at: [https://www.academia.edu/47389278/Victimology\\_Past...](https://www.academia.edu/47389278/Victimology_Past...), 21.6.2024.

<sup>27</sup> Anne A. Morgan, „Victim Rights: Criminal Law: Remembering the „Forgotten Person“ in the Criminal Justice System. 70 *Marq. L. Rev.* (1987), 597. Available at: <http://scholarship.law.marquette.edu/mulr/vol70/iss3/12>, 12.6.2024.



receive support tailored to their specific needs, depending on the nature of the harm they have suffered.<sup>28</sup> In addition, two areas of conflict can arise between victims and the police, when police officers unintentionally make them feel additionally hurt and cause another „wound“: these officers may appear distant, uninvolved or unconcerned and conclude that the applicant's accusations are not credible<sup>29</sup>;

- 6) the right to make a statement about the impact of the crime on the victim and have it considered in court, where appropriate. The statement on the impact of the crime on the victim is not defined in the criminal legislation in Bosnia and Herzegovina, although it should reflect on the sentence imposed on the perpetrator, as well as on the compensation that the victims should receive both from the perpetrator and from the state. In Bosnia and Herzegovina, the legislator has regulated the realization of damage compensation from the perpetrator, while the damage compensation of the victims from the state should be ensured through the adoption of the *lex specialis* law. Furthermore, in cases where the accused is insolvent, coercive measures have not been defined, nor has the state assumed the responsibility for paying compensation, which effectively denies victims their right to receive the compensation they are entitled to;
- 7) the right to appropriate assistance in criminal proceedings. Directive 2011/36/EU provides that Member States shall ensure that victims of human traffickers have access to legal advice without delay. Additionally, depending on their role in the judicial system, victims must be provided with legal representation, including for the purpose of seeking compensation. Legal advice and representation is free if the victim does not have sufficient financial resources (Article 12(2) of the Directive) (Van der Aa, 2014: 163);
- 8) the right to hire a private lawyer. What needs to be determined is whether, given all the circumstances, the failure to provide free legal aid would deny the applicant a fair trial;
- 9) the right to minimal inconvenience. Legal provisions that serve to protect children and juveniles who are victims of crime, deserve special attention in criminal proceedings due to their vulnerable status. In some countries, this right has been extended beyond that of adults by introduction of audio-visual recording for witnesses under the age of 16 and

<sup>28</sup> G.S. Bajpai, *Duties of Front Line Professionals towards. Securing Justice for Victims: A Manual* (Delhi: National Law University, 2018), 9. Available at: <https://profgsbajpai.in/books-monographs>, 12.6.2024.

<sup>29</sup> John J.P. Dussich, *op.cit.*, 48.

allowing the exclusion of the accused and the public during testimony<sup>30</sup>. This right should be expanded by implementing audio-visual recording of the testimony of the victim witness, but only with the consent of the parents, to avoid repeated interrogations of the victim. This must be applied to all victims of sexual violence, especially victims of human trafficking. The procedural protection measures that have not yet been implemented, but are proposed to the procedural authorities that will interrogate the victim in the next stages, for example a special method of interrogation, while avoiding direct contact with the defendant, should be particularly indicated.

Finally, precaution measures in a broader sense can also serve to protect the victim. In this context, the arrest of the accused should also be recognized as a protective measure for the victim.<sup>31</sup> In addition, Article 24 of Directive 2012/29/EU stipulates that when the victim is a child, Member States must ensure: during criminal investigations and proceedings, and in accordance with the role of the victim in the relevant criminal justice system, the competent authorities appoint a special representative for child victims.<sup>32</sup> Directive 2011/36/EU has special provisions regarding an unaccompanied child victims of human trafficking;

- 10) right to privacy;
- 11) the right to security and reasonable protection concerning the accused. Victims' rights become illusory when there is no adequate legal remedy. Without an adequate legal remedy, victims cannot exercise their rights when prosecutors or first-instance courts dismiss their requests<sup>33</sup>;
- 12) the right to speedy justice. Signatory states are obligated to organize their judicial system in a manner that ensures courts can guarantee everyone the right to a final decision in disputes concerning their civil rights and obligations within a reasonable time (*Comingersoll S.A. v. Portugal* [VV]<sup>34</sup>, paragraph 24 and *Lupeni Greek Catholic Parish and others*

<sup>30</sup> Markus Löffelmann, *Victim in Criminal Proceedings: A Systematic Portrayal of Victim Protection Under German Criminal Procedure Law, Part Two: Damage Compensation and Victims' Assistance* (From Resource Material Series No. 70, Simon Cornell, ed, 2006), 39.

<sup>31</sup> See Elizabeta Ivičević Karas, Zoran Burić, Hrvoje Filipović, "Prva iskustva policijskih službenika u provođenju pojedinačne procjene žrtava kaznenih djela", *Policija, igrnost*, Zagreb, godina 28, 4 (2019): 468-489.

<sup>32</sup> Susan van der Aa, *The right to protection. In Strengthening judicial cooperation to protect victims of crime* (Bucarest: Superior Council of Magistracy of Romania, 2014), 168.

<sup>33</sup> See Douglas Beloof, "The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review, *Byu L. Rev.*, 2(2005): 255-265. Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2005/iss2/1>, 20.6.2024.

<sup>34</sup> Application no. 35382/97, 6 April 2000, ECHR.

*v. Romania* [VV]<sup>35</sup>, paragraph 142). If a state introduces a legal remedy that can compensate for the violation of the principle of reasonable time and that legal remedy is fully examined, it does not absolve the applicant of their the status as a „victim“ in the sense of Article 34 of the Convention - this constitutes an „aggravating circumstance“ in the context of violation of Article 6(1).

The state is responsible for all its bodies: not only for judicial bodies, but also for all public institutions (*Martins Moreira v. Portugal*<sup>36</sup>, paragraph 60). Even in judicial systems that apply the principle that the initiative for conducting proceedings is the responsibility of the parties, the conduct of those parties does not relieve the courts of the obligation to ensure a speedy trial - as provided for in Article 6(1) of the Convention (*Pafitis and others v. Greece*<sup>37</sup>, paragraph 93; *Tierce v. San Marino*, paragraph 31, and *Sürmeli v. Germany* [VV]<sup>38</sup>, paragraph 129). The same applies when the cooperation of experts is required during the proceedings: the judge is responsible for the preparation of the case and the speedy conduct of the proceedings (*Capuano v. Italy*<sup>39</sup>, paragraphs 30 and 31; *Versini v. France*<sup>40</sup>, paragraph 29. and *Sürmeli v. Germany* [VV]<sup>41</sup>, paragraph 129);

- 13) the right to conciliation/mediation/arbitration, wherever necessary. For the victim, a plea agreement can be an unpleasant surprise, which can jeopardize the victim's prospects for restitution. It may result in a sentence the victim considers insufficient, making the victim feel as though they have become the main target of the criminal prosecution<sup>42</sup>;
- 14) the right to a quick legal remedy. In a broader sense, it is the responsibility of domestic authorities to act with the necessary diligence to ensure that parties are informed of the proceedings that apply to them, allowing them to access a defense. Notification of the proceedings cannot be left entirely to the discretion of the opposing party (*Schmidt v. Latvia*<sup>43</sup>, paragraphs 86-90, 92, 94 and 95).

<sup>35</sup> Application no. 76943/11, 19 May 2015, ECHR.

<sup>36</sup> Application no. 11371/85, 26 October 1988, ECHR.

<sup>37</sup> Application no. 163/1996/782/983, 26 February 1998, ECHR.

<sup>38</sup> Application no. 75529/01, 8 June 2006, ECHR.

<sup>39</sup> Application no. 9381/81, 25 June 1987, ECHR.

<sup>40</sup> Application no. 40096/98, 10 July 2001, ECHR.

<sup>41</sup> Application no. 75529/01, 8 June 2006, ECHR.

<sup>42</sup> See Bree Cook, Fiona David, Anna Grant, *Victims' Needs, Victims' Rights Policies and Programs for Victims of Crime in Australia*. Australian Institute of Criminology Research and Public Policy, Series no. 19, 1999. Available at: <https://www.aic.gov.au/publications/rpp/rpp19>, 19.6.2024.

<sup>43</sup> Application no. 22493/05, 27 April 2017, ECHR.

## 5. PROPOSAL FOR *DE LEGE FERENDA* MEASURES REGARDING THE REFORM OF THE SYSTEM FOR PROTECTION OF VICTIMS OF CRIMINAL OFFENSES

With regard to Bosnia and Herzegovina, it is necessary to reform the system for the protection of victims of criminal offenses within the current criminal procedure laws by implementing the following measures:

- expanding the obligation to prepare a record and establishing a requirement to issue a certificate or a copy of the record of the victim's report or testimony regarding a criminal offense;
- granting victims the right to refuse not only testimony, but also DNA analysis;
- eliminating secondary victimization of crime victims by ensuring that their protection is not conditional upon their consent to testify or to actively participate in the prosecution;
- amending legal provisions referring to false statements. According to the applicable provisions, giving of a false testimony by a witness or expert exists in the case of a reasonable suspicion that the witness or expert gave false testimony at the main trial. In such cases, the judge or presiding panel member may order making of a special transcript of the witness or expert's testimony and their submission, to the prosecutor. However, the law does not explicitly grant victims the right to refuse to testify, nor does it protect victims from being accused of "giving a false statement" or "defamation" due to inconsistencies in their testimony, which may be maliciously misinterpreted. This gap must be addressed. Before making a decision (regarding the victim's right not to be excluded from the court proceedings), the court will do everything to enable the victim's full presence and consider reasonable alternatives on the victim's exclusion from the criminal proceedings;
- legal provisions that serve to protect children and juveniles who are victims of criminal offenses in criminal proceedings deserve special attention. These provisions should be expanded with the application of audio-visual recording of the victim's testimony as a witness, but only with the parental consent, to prevent repeated interrogations. This must be applied to all victims of sexual violence particularly victims of human trafficking. Furthermore, procedural protection measures—such as special methods of interrogation and avoiding direct contact with the defendant—should be explicitly recommended to authorities handling the victim's testimony at later stages of the proceedings;

- expanding the provision that prohibits questioning a crime victim about their sexual history prior to the offense under prosecution. A specific sanction should be prescribed for those who engage in this form of secondary victimization;
- amending the provisions related to the realization of property claims. The state ensures these claims by guaranteeing the victims only retributive justice, while neglecting compensatory, distributional, social and restorative aspects. Victims should have the right to full and timely compensation for damages from the accused. This right includes restitution of property, payment for damages or losses, reimbursement of costs, provision of services and restoration of rights. In cases involving significant environmental damage, such right includes environmental restoration, reconstruction of infrastructure and public facilities and compensation for relocation costs (wherever appropriate). In case the perpetrator is a public official acting in an official or quasi-official capacity, restitution should be provided by the state (Bajpai *et al*, 2018: 6).

## 6. FINDINGS, ORIGINALITY AND VALUE CONCLUSION

The general conclusion highlights different forms of secondary victimization experienced by victims of criminal offenses, which must be suppressed and prevented to uphold the rule of law.

The relevance of this topic and the problems related to the protection of crime victims are undeniable. Knowing this problem is the first step in analyzing this issue. The second step involves critically examining key aspects that are proposed to be regulated by a special law to successfully reform the system for the protection of victims of criminal offenses in Bosnia and Herzegovina.

The need to adopt the Law on the Protection of Victims of Criminal Offenses in Bosnia and Herzegovina as soon as possible is of particular importance. A legal foundation for this legislation could be found in the Stabilization and Association Agreement between the European Communities and Bosnia and Herzegovina (EU, Euratom, 2015/998). The purpose of this agreement is to: support the efforts of Bosnia and Herzegovina to strengthen democracy and the rule of law; ensure respect for democratic principles, human rights and international law and instruments, including close cooperation with the International Criminal Tribunal for the former Yugoslavia and the principles of market economy; fulfill international obligations; prevent the proliferation of weapons for mass destruction and undertake measures to sign, ratify or accede to all relevant international instruments and ensure their full implementation.

Victims of criminal offenses have multiple needs, which can be grouped into five broad categories: 1) respect and recognition as victims; 2) protection from intimidation, retaliation and further damage by the accused or suspect as well as from distress during criminal investigations and court proceedings; 3) support, including immediate post-crime assistance, long-term physical and psychological help and practical help; 4) access to justice ensuring victims are aware of and understand their rights, and are able to participate in the proceedings, and 5) compensation and restitution, either through financial damages paid by the state or the perpetrator or through mediation or other form of restorative justice.

The implementation of this law does not require additional financial resources from the budget of Bosnia and Herzegovina institutions. Instead, funds for victims' rights and compensation can be sourced from property acquired by committing criminal offenses, as well as from special victim compensation programs that should be managed by the Ministry of Justice of Bosnia and Herzegovina. Another option is to form a special state commission - council for victims of criminal offenses and to establish an operational compensation fund dedicated to victims.

Aligning the legislation of Bosnia and Herzegovina with international legal norms and standards, includes changes to the criminal procedure law, civil laws and the law on the protection of witnesses under threat and vulnerable witnesses.

Furthermore, centers for the protection of women and children-victims of sexual violence are an obligation that Bosnia and Herzegovina undertook with the ratification of the Istanbul Convention. The country must have at least three such centers (in two Entities and Brčko District) where, in accordance with the Istanbul Convention, different types of services will be available to victims of crimes that will meet the needs of the victims from the moment the crime is reported until sentencing the perpetrators. Additional forms of assistance, support and protection of victims should be provided through services for victims, such as centers for the protection of women and children victims of sexual violence.

## REFERENCES

1. Adžajlić-Dedović, Azra, Simović, M. Marina et al., *Feministička viktimologija i psihologija*. Banja Luka: Evropski defendologija centar, 2023.
2. Bajović Vanja, „O položaju oštećenog u krivičnom postupku“, *Pravni život*, 9 (2018): 543-562;
3. Bajpai, G.S., *Duties of Front Line Professionals towards. Securing Justice for Victims: A Manual*. Delhi: National Law University, 2018.

4. Barrett, Joan, "Expanding Victims' Rights in the Charter Era and Beyond". *The Supreme Court Law Review*, Osgoode's Annual Constitutional Cases Conference, 40(2008): 627-653.
5. Beloof, Douglas, "The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review", *Byu L. Rev.*, 2(2005): 255-265.
6. Buha Milijana, „Načela krivičnog gonjenja prema Zakonu o krivičnom postupku Republike Srpske iz 2021. godine“, *Žurnal za bezbjednost i kriminalistiku*, 3, 1 (2021): 29-41.
7. Cook, Bree, David, Fiona, & Grant, Anna (1999). *Victims' Needs, Victims' Rights Policies and Programs for Victims of Crime in Australia*. Australian Institute of Criminology Research and Public Policy, Series no. 19, 1999.
8. Dussich, John J.P. *The challenges of victimology past, present and future*. Paris: 131ST International senior seminar visiting experts' papers. Resource material, Series no. 70, 2010.
9. *Enhancing Victims' Rights Before the ICC*, Paris: FIDH - International Federation for Human Rights, The John D., Catherine T. MacArthur Foundation, November 2013.
10. Erez, Edna *et al*, „Outsiders Inside: Victim Management in an Era of Participatory Reforms“, *International Review of Victimology*, 20(1)(2014), 169.
11. Fattah, Ezzat, *Criminology: Past, Present, and Future: a Critical Overview*. St. Martin's Press, 1997.
12. Fattah, Ezzat, „Victimology: Past, Present and Future“, *Criminologie*, 33(1)(2000), 17–46.
13. Fattah, Ezzat, Sacco, Fincent, *Crime and Victimization of the Elderly* (1989th edition). Springer, 2012.
14. Groenhuijsen, Mark S. (1999). "Victim's rights in the criminal justice system: A call for more comprehensive implementation theory". In Jan van Dijk, R.G.H. van Kaam, Jo-Anne Wemmers (Eds.) *Caring for crime victims: selected proceedings of the Ninth International Symposium on Victimology* (85-114). Criminal Justice Press.
15. Fattah, E. A. (2000). „Victimology: Past, Present and Future“, *Criminologie*, 33(1): 17–46.
16. Ivičević Karas, Elizabeta, Burić, Zoran & Filipović, Hrvoje, "Prva iskustva policijskih službenika u provođenju pojedinačne procjene žrtava kaznenih djela", *Policija, igrnost*, Zagreb, godina 28, 4 (2019): 468-489.
17. Landau, David, Dixon, Rosalind, *Abusive Judicial Review: Courts Against Democracy*. Florida State University, College of Law, 2020.
18. Löffelmann, Markus *Victim in Criminal Proceedings: A Systematic Portrayal of Victim Protection Under German Criminal Procedure Law, Part Two: Damage Compensation and Victims' Assistance* (From Resource Material Series No. 70, Simon Cornell, ed, 2006).
19. Morgan, Anne A. "Victim Rights: Criminal Law: Remembering the „Forgotten Person“ in the Criminal Justice System. *70 Marq. L. Rev.* (1987), 597.

20. Mujezinović Jasminka, Ivanka Marković, Selma Begić, *Krivično-pravna zaštita, pravni i socijalni položaj žrtava seksualnog nasilja u Bosni i Hercegovini: osnovna studija*, (Bijeljina, Sarajevo: Fondacija "Lara", Fondacija lokalne demokratije, 2021).
21. Nash, Andrew, "Victims by Definition", 85 Wash. (U. L. Rev., 2008): 1419- -1461.
22. Simović, M. Marina, Simović, M. Vladimir *Žrtve krivičnih djela i krivičnopravni instrumenti zaštite*, Laktaši – Banja, Grafomark, 2021.
23. Simović, Miodrag, Ramljak, Alija (2011) *Viktimologija*, 3. izdanje. Bihać: Pravni fakultet u Bihaću, 2011.
24. Simović, Miodrag *et al.*, *Kritička viktimologija o žrtvi, mitu i korupciji*. Laktaši - Banja Luka, Grafomark, 2021.
25. Simović, Miodrag *et al.*, *Viktimologija o žrtvama prirodnih katastrofa i zaštiti životne sredine u Bosni i Hercegovini*. Grafomark, Laktaši - Banja Luka, Grafo-mark, 2021.
26. Škulić, Milan, *Položaj žrtve krivičnog dela/oštećenog krivičnim delom u krivično-pravnom sistemu Srbije, aktuelno stanje, potrebne i moguće promene-normativna analiza* (Beograd: Pravni fakultet Univerziteta u Beogradu, 2015).
27. Van der Aa, Susan, "The right to protection". In *Strengthening judicial cooperation to protect victims of crime: Handbook*. Superior Council of Magistracy of Romania, Bucarest, 2014.
28. Wilson, I. Janet, K., *Victims of crimes*. Santa Barbara: ABC CLIO, 2009.
29. Zgoba, M. Kisten & Mitchell, M. Meghan "The effectiveness of Sex Offender Registration and Notification: A meta-analysis of 25 years of findings", *Journal of Experimental Criminology*, volume 19 (2021): 71-96.



## ЗАШТИТА ЖРТАВА КРИВИЧНИХ ДЈЕЛА У БОСНИ И ХЕРЦЕГОВИНИ – ВИКТИМОЛОШКИ ПОГЛЕД

Академик Миодраг Н. Симовић<sup>44</sup>

*Академија наука и умјетности Босне и Херцеговине, Европска академија наука и умјетности, Руска академија природних наука, Правни факултет Универзитета у Бихаћу, Уставни суд Босне и Херцеговине*

Азра Аџајлић-Дедовић<sup>45</sup>

*Факултет за криминалистику, сигурносне студије и криминологију Универзитета у Сарајеву*

**Апстракт:** Централна тема рада је виктимолошки поглед на заштиту жртава кривичних дјела у Босни и Херцеговини. То питање је важно због све већег броја жртава најтежих кривичних дјела, што га чини додатно актуелним с обзиром на изузетно висок степен друштвене опасности ове категорије криминалних активности и бројности посљедица које остављају на жртве. Уз то, став релевантних субјеката, када је ријеч о жртвама кривичних дјела уопште, јесте не само да је то проблем једне државе, већ универзални проблем усљед чега је на нивоу међународне заједнице као цјелине неопходно предузети мјере с циљем што адекватнијег регулисања њиховог кривичноправног статуса, односно њихове адекватније кривичноправне заштите, а тиме и избегавања (у што већем степену) како њихове стигматизације тако и поновне виктимизације.

У првом дијелу рада анализирано је право на правичан поступак и неравнотежа између права оптужених и жртава кривичних дјела, да би се утврдило да ли се кроз рад репресивних органа може говорити и о владавини права у Босни и Херцеговини. Подаци потврђују да је правда већа када жртве имају довољно информација о систему кривичног правосуђа и о ресурсима који су им на располагању.

У другом дијелу рада приказани су минимални стандарди из Директиве 2012/29/ЕУ из 2012 године о подршци и заштити жртава злочина која

<sup>44</sup>Редовни члан Академије наука и умјетности Босне и Херцеговине, редовни члан Европске академије наука и умјетности, инострани члан Руске академије природних наука, редовни професор Правног факултета Универзитета у Бихаћу, професор емеритус, судија Уставног суда Босне и Херцеговине у пензији, e-mail: [msimovic@anubih.ba](mailto:msimovic@anubih.ba); <https://orcid.org/0000-0001-5116-680X>.

<sup>45</sup>Редовни професор Факултета за криминалистику, сигурносне студије и криминологију Универзитета у Сарајеву, e-mail: [aadzajlic@fkn.unsa.ba](mailto:aadzajlic@fkn.unsa.ba); <https://orcid.org/0000-0002-4873-9782>.

*осигурава да се особе које су постале жртве злочина - препознају и третирају с поштовањем, те настоји ове жртве ставити у средиште кривичноправног система и јачати њихова права. На тај начин би се свака жртва могла ослонити на то да ће имати иста права без обзира на то гдје је кривично дјело учињено, на своје држављанство или боравишни статус, прописујући низ стандарда – обавеза за државе које су је ратификовале с циљем побољшања положаја жртава кривичних дјела у кривичном поступку. У том контексту, посебан нагласак стављен је на мјере *de lege ferenda* у вези са реформом система заштите жртава кривичних дјела у Босни и Херцеговини.*

**Кључне ријечи:** *жртва, директива, кривично дјело, приступ правди, правичан поступак.*