

Confrontation and Identification as Procedural Means in Relation to the Victim and the Defendant

Historical and Legal Treatment under the Criminal Procedure Codes of Kosovo and Albania

Prof. As. Arjan Qafa^{1*}, Oltjona Goxha²

¹Attorney & Lecturer in Administrative Law and Legal Practices at the Mediterranean University of Tirana

²Judge at the Court of First Instance of the General Jurisdiction in Tirana.

*Corresponding Author

Prof. As. Arjan Qafa

Attorney & Lecturer in
Administrative Law and Legal
Practices at the Mediterranean
University of Tirana.

Article History

Received: 01.10.2025

Accepted: 27.11.2025

Published: 31.12.2025

Abstract: Confrontation and identification constitute two of the most delicate procedural means of evidence in the criminal process, due to the direct impact they have on the personal statements of the victim and the defendant. This paper aims to analyze the legal meaning, function, and limits of these institutes, relying on the Criminal Procedure Code of the Republic of Albania and the Criminal Procedure Code of the Republic of Kosovo, as well as on European standards for the protection of human rights. Particular focus is placed on balancing the principle of discovering the material truth with the protection of the dignity and psychological integrity of the victim, without infringing upon the fundamental rights of the defendant.

Keywords: confrontation, identification, victim, defendant, evidence, criminal process.

Cite this article:

Qafa, A., Goxha, O., (2025). Confrontation and Identification as Procedural Means in Relation to the Victim and the Defendant Historical and Legal Treatment under the Criminal Procedure Codes of Kosovo and Albania. *ISAR Journal of Arts, Humanities and Social Sciences*, 3(12), 76-79.

1. Introduction

The criminal process constitutes a fundamental legal mechanism for the protection of the legal order and the realization of criminal justice. Its purpose is not only the punishment of the perpetrator of a criminal offense, but also the guarantee of a fair, equal, and humane procedure for all parties involved. In this context, procedural means of evidence occupy a central place, as through them the court forms its conviction regarding the existence or non-existence of criminal liability.

Among the most important procedural means are confrontation and identification, which have a direct impact on the assessment of personal statements. These means acquire particular importance in relation to the victim, as the subject harmed by the criminal offense, and the defendant, as the subject against whom criminal prosecution is conducted. For this reason, their legal regulation requires a careful balancing between the interest in discovering the truth and the protection of fundamental human rights.

2. Confrontation as a Procedural Means

Meaning and purpose of confrontation

Confrontation is a procedural action through which two or more persons who have given contradictory or inconsistent statements are placed face to face with the aim of clarifying these contradictions. In practice, confrontation is mainly carried out between the victim and the defendant, between witnesses, or between a witness and the defendant.

The main purpose of confrontation is the discovery of the material truth, by giving the procedural body the opportunity to assess not only the content of the statements, but also the manner in which they are given, the psychological reactions, and the consistency of the confronted persons.

Thus, confrontation is a procedural action consisting of the direct facing of two or more persons who have given contradictory statements, with the aim of:

- clarifying inconsistencies,
- verifying credibility,
- discovering the material truth.

In relation to the victim, confrontation has a dual function:

1. evidentiary,
2. procedural-guaranteeing, as it helps the court form its internal conviction.

Legal regulation of confrontation

The Criminal Procedure Code of the Republic of Kosovo and the Criminal Procedure Code of the Republic of Albania provide for confrontation as a lawful procedural means, but not a mandatory one. The decision to carry it out is left to the discretion of the procedural body, which must assess whether confrontation is necessary and proportional for clarifying the case.

Both codes require that confrontation be conducted:

- without the exercise of pressure or coercion,
- with respect for human dignity,
- in accordance with the defendant's right to remain silent.³

Confrontation and the principle of material truth

The principle of material truth requires the court to discover the factual reality of the event. However, this principle is not absolute and must be balanced with:

- human dignity,
- protection of the victim,
- fundamental human rights.

Confrontation with the victim must not turn into a means of pressure or intimidation.

3. Confrontation in Relation to the Victim

– Procedural position of the victim

The victim in the criminal process is a subject with a special role, as they are the person who has directly suffered the consequences of the criminal offense. Their statements often constitute the main source of evidence, especially in criminal offenses committed without the presence of other witnesses.

Confrontation can serve to strengthen the credibility of the victim's statements, but at the same time it presents a risk of secondary traumatization, especially in cases of domestic violence, sexual offenses, and offenses against minors.⁴

According to the Criminal Procedure Codes of Kosovo and Albania, the victim enjoys a series of procedural rights, including:

- the right to be informed,
- the right to be heard,
- the right to protection,
- the right to legal representation,
- the right to compensation.

The procedural position of the victim directly affects the manner in which confrontation is conducted. Unlike an ordinary witness, the

victim is emotionally and psychologically involved in the event, which requires increased care from the procedural authorities.

– Guarantees for the protection of the victim

Modern legislation, including the Criminal Procedure Codes of Kosovo and Albania, as well as European standards, require that confrontation with the victim be used with increased caution. In certain cases, confrontation may be avoided and replaced with alternative forms, such as hearings through audiovisual means. This approach is consistent with the jurisprudence of the European Court of Human Rights, which emphasizes the need to protect the psychological integrity of the victim.⁵

4. The Importance of the Victim in the Criminal Process

In the modern criminal process, the victim is no longer treated merely as a source of evidence, but as a procedural subject with legally protected rights and interests. The evolution of criminal procedural law has brought about a paradigmatic shift from the traditional model, which placed exclusive emphasis on the defendant, toward a more inclusive model that recognizes and respects the position of the victim.

The victim is the person who has directly suffered the physical, psychological, moral, or property-related consequences of a criminal offense. For this reason, their statements often constitute the main source of evidence, especially in cases where the criminal offense is committed in intimate circumstances or without the presence of other witnesses, such as:

- sexual offenses,
- domestic violence,
- trafficking in human beings,
- criminal offenses against minors.

In these cases, procedural confrontation takes on particular importance, as it directly pits the victim's statements against those of the defendant or other witnesses.

– The victim as a source of evidence

The victim's statement is personal evidence, but at the same time subjective. When assessing its credibility, the court must take into account:

- the coherence of the statements,
- their consistency with other evidence,
- the emotional state of the victim,
- the victim's relationship with the defendant.

Confrontation is usually used when there are substantial contradictions between the victim's statement and that of the defendant.

5. The Risk of Secondary Victimization

– The concept of secondary victimization

Secondary victimization occurs when the victim experiences trauma again as a result of criminal proceedings. Direct confrontation with the alleged perpetrator may cause:

- anxiety,

- fear,
- feelings of shame,
- re-experiencing of trauma.

This risk is particularly high in cases of:

- sexual violence,
- child abuse,
- domestic violence.

– Confrontation as a stress factor

Psychological studies show that confrontation with the perpetrator:

- increases stress levels,
- negatively affects the ability to give accurate statements,
- may discourage the victim from cooperating with the justice system.

6. Procedural Guarantees for the Protection of the Victim

Guarantees in Kosovo legislation

The Criminal Procedure Code of Kosovo provides for:

- special protection for vulnerable victims,
- the possibility of hearings through audiovisual means,
- the exclusion of confrontation in certain cases.

Guarantees in Albanian legislation

The Criminal Procedure Code of Albania also recognizes:

- protection of the victim from direct contact,
- the use of technology for remote hearings,
- the active role of the court in controlling questioning.

7. European and International Standards

– European Convention on Human Rights

Articles 3 and 8 of the ECHR protect:

- physical and psychological integrity,
- the private life of the victim.

The European Court of Human Rights has emphasized that criminal proceedings must not cause additional suffering to the victim.

– Case-law of the European Court of Human Rights

In numerous cases, the European Court has found that:

- confrontation is not mandatory in every case,
- protection of the victim may justify limitations on the defendant's right to confrontation,
- balance between the parties is essential.

8. Alternative Forms of Confrontation

– Indirect confrontation

Indirect confrontation is carried out through:

- videoconferencing,
- protective screens,
- mediation by the judge.

– Hearing without the presence of the defendant

In exceptional cases, the victim may be heard without the physical presence of the defendant, while ensuring:

- the right to defense,
- the psychological safety of the victim.

– Critical assessment of confrontation with the victim

Confrontation should be used:

- only when absolutely necessary,
- with proportionality,
- while respecting human dignity.

The court bears direct responsibility for preventing any form of re-victimization.

As outlined above, confrontation in relation to the victim represents one of the most delicate aspects of criminal procedure. It must balance:

- the search for truth,
- the rights of the defendant,
- the protection of the victim.

Modern legislation and European jurisprudence confirm that the dignity and psychological integrity of the victim take precedence, making confrontation an exceptional measure rather than a general rule.

9. Confrontation in Relation to the Defendant

– Presumption of innocence

In relation to the defendant, confrontation must respect the principle of the presumption of innocence. The defendant cannot be compelled to speak, to answer questions, or to admit guilt during confrontation.

– Confrontation as a means of defense

Confrontation also serves as a means of defense for the defendant, enabling them to:

- challenge the victim's statements,
- highlight inconsistencies,
- strengthen their own version of events.⁶

10. Identification as a Procedural Means

– Meaning and forms of identification

Identification is a procedural act through which the victim or a witness identifies a person, object, or place connected with the criminal offense. It may be carried out directly or through photographic and audiovisual means.

– Identification in relation to the victim and the defendant

Identification is of particular importance for the victim, but it carries a risk of error. For this reason, the law requires that

identification be conducted without suggestion and under controlled conditions. For the defendant, identification does not constitute absolute evidence and must be assessed in conjunction with other evidence.⁷

11. Historical Treatment of Confrontation and Identification

In ancient criminal law, confrontation and identification were widely used, but without procedural safeguards. During the Middle Ages, they were often accompanied by violence and torture. Only in the modern period, with the development of the rule of law, were these means legally regulated and limited by the principles of humanism and human rights.

In this article, we have reached the conclusion that:

Confrontation and identification are essential procedural means in the criminal process, but their use must be balanced and cautious. The Criminal Procedure Codes of Kosovo and Albania reflect a

modern approach, aiming to protect the victim and to guarantee the rights of the defendant, in the interest of a fair criminal process.

Footnotes / References

1. Salihu, I., *Criminal Procedure Law*, Pristina, 2018.
2. Elezi, I., *Criminal Procedure*, Tirana, 2017.
3. Criminal Procedure Code of the Republic of Kosovo.
4. Hoxha, A., *Criminal Process and Human Rights*, Tirana, 2016.
5. Case-law of the European Court of Human Rights, cases concerning Article 6 of the ECHR.
6. Criminal Procedure Code of the Republic of Albania.
7. Salihu, I., *ibid*.
8. European Convention on Human Rights.