

“VICTIM” as a Criminal Procedural Subject and the Position of Victims under Albanian Criminal Legislation in Different Historical Periods: 1990 to the Present

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Abstract: The legal position of the victim of a criminal offense constitutes a fundamental element in the development of contemporary criminal justice, reflecting the shift from a traditional model—primarily repressive and focused on the perpetrator—toward a more balanced system that recognizes the victim as a criminal procedural subject and guarantees their rights. This article provides a historical, normative, and comparative analysis of the concept of the victim and their position under Albanian criminal legislation across different historical periods.

The study focuses on the evolution of the legal status of the victim in Albanian criminal procedure, analyzing their treatment under criminal legislation before 1990, during the transition period, and in contemporary developments following the adoption of the Criminal Procedure Code, with particular emphasis on legal changes in recent years, including the 2017 reform. In this context, the process of harmonizing Albanian legislation with European standards for the protection of crime victims is also addressed.

The article relies on an analysis of domestic legislation, the case law of the Constitutional Court of the Republic of Albania, and the jurisprudence of the European Court of Human Rights, highlighting practical challenges in the effective implementation of victims' rights and the need for further strengthening of mechanisms to protect them in criminal proceedings.

Keywords: crime victim, criminal procedural subject, criminal procedure, legal position of the victim, ECHR, Albania.

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Introduction:

The position of the victim of a criminal offense constitutes one of the most significant aspects of the evolution of modern criminal justice. For a long time, victims were placed at the periphery of criminal proceedings, which were primarily conceived as a legal relationship between the state and the offender. Within this framework, protecting the interests of the injured party was not a priority of criminal legislation, reflecting a strongly repressive and state-oriented approach to criminal punishment.

1. The Position of the Victim in Albanian Criminal Legislation before 1990

During the early stages of the development of Albanian criminal legislation, particularly under the socialist penal system, the victim

was not recognized as an independent procedural subject. Criminal proceedings were focused on protecting state interests and social order, while the victim's role was limited to reporting the damage or serving as a witness. The right to active participation, information, or claiming compensation was limited and conditioned by the will of the state prosecution authorities.

2. The Transition Period and the Reconceptualization of the Victim's Role (1990–2017)

With political and legal changes after 1990, the Albanian criminal justice system began to orient toward democratic principles and respect for human rights. The adoption of the Criminal Procedure Code marked a significant step in gradually recognizing victims' rights, allowing them a more active role in criminal proceedings, particularly regarding information, legal representation, and

exercising the right to compensation. However, despite normative progress, victim protection remained fragmented and often ineffective in practice.

3. Contemporary Developments and the Consolidation of the Victim's Position after 2017

Recent reforms in Albanian criminal legislation, particularly the 2017 amendments to the Criminal Procedure Code, mark a new phase in consolidating the victim as a criminal procedural subject. These changes aim to harmonize Albanian law with European standards and the jurisprudence of the European Court of Human Rights, expanding the range of procedural rights of the victim and providing special protective measures for the most vulnerable categories of crime victims. In this context, the victim is increasingly treated as an active participant in the criminal process rather than merely an object of it.

This article aims to analyze the historical evolution of the legal position of the victim in Albanian criminal proceedings, highlighting normative developments and practical challenges in the implementation of victims' rights, as well as evaluating the compatibility of Albanian legislation with European standards for the protection of crime victims.

II. The Legal Meaning of the Concept "Victim"

In legal terms, a victim of a criminal offense is considered any natural or legal person who has suffered direct or indirect harm as a result of the commission of a criminal act. Harm may take various forms, including physical, material, moral, or psychological damage, reflecting the complexity of the consequences that crime causes to the individual and society. This definition reflects contemporary developments in criminal law and aligns with international standards established in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), which marked a key moment in the international recognition of victims' rights.

Historically, the concept of the victim in penal systems was narrow and limited. In traditional criminal justice models, the victim was not recognized as the holder of independent procedural rights but was treated primarily as an object of criminal proceedings or as a source of evidence for punishing the perpetrator. This approach reflected the dominance of state interests in criminal proceedings and the conception of crime as a violation of legal order rather than as a direct infringement of individual rights.

In Albanian criminal legislation, the notion of the victim has traditionally been linked to the term "injured party" provided in the Criminal Procedure Code. This concept, particularly in periods before 1990, had a limited legal scope and did not fully reflect the position of the victim as a criminal procedural subject. The injured party had a secondary role in the process, mainly concerning claims for compensation, while active participation in the procedure was limited.

Only after democratic changes and legal reforms undertaken after 1990, and under the influence of international instruments and European standards, did a gradual reconceptualization of the victim in Albanian legislation begin. Recent reforms, particularly amendments to the Criminal Procedure Code, have aimed to expand the legal content of this concept and recognize the victim as a subject of procedural and substantive rights, guaranteeing a more active role and effective protection in criminal proceedings.

III. Historical Treatment of the Victim in Albanian Criminal Law

The legal treatment of the victim of a criminal offense in Albanian criminal law has undergone significant evolution, reflecting political, social, and ideological developments in Albania. From a strongly repressive and state-centered approach, where the victim was almost invisible in criminal proceedings, Albanian legislation gradually shifted toward a more comprehensive model focused on human rights protection and recognition of the victim as a criminal procedural subject. This development can be clearly analyzed through three main historical periods.

1. Period before 1990: Repressive Model and Marginalization of the Victim

During the communist regime, Albanian criminal law was built on the principle of protecting socialist order, state interests, and the dominant ideology. Crime was primarily conceived as a violation against social order and state authority, rather than a direct infringement of the victim's individual rights. Consequently, the victim of a criminal offense was not treated as an autonomous holder of procedural rights but as a secondary element dependent on the interests of state prosecution.

Criminal proceedings were deeply repressive and inquisitorial, where investigative and judicial authorities exercised broad powers, while procedural guarantees for parties, including the victim, were limited. The victim's role during this period was mainly reduced to that of a witness or a person reporting a criminal fact, without real opportunity for active participation or effective exercise of rights.

The right to compensation, although theoretically provided, was conditional and dependent on the will of state authorities, not constituting an independent and effective protective mechanism for the victim. In this sense, the victim's position reflected the general philosophy of the penal system at the time, where the individual was subordinated to collective and state interests.

2. Transition Period and the 1995 Criminal Procedure Code: Gradual Recognition of Victims' Rights

Political and social changes in the early 1990s marked an important turning point in the construction of the Albanian legal system. The transition to a democratic system and adoption of the rule of law principles necessitated deep reform of criminal law and procedure. In this context, the adoption of the 1995 Criminal Procedure Code represents a key moment in reconceptualizing Albanian criminal proceedings.

The new code sought to establish a fairer balance between the public interest in criminal prosecution and the protection of individual rights, recognizing for the first time a series of procedural rights for the injured party. These rights included the right to appeal prosecutorial decisions, the right to submit civil claims for compensation within the criminal process, and the right to legal representation.

However, despite these normative advances, the victim continued to have a limited and often ineffective role in practice. Their legal status remained unclear and fragmented, and there were no specific mechanisms to protect vulnerable victims, such as victims of domestic violence, minors, or sexual offenses. During this period, the victim was still not fully recognized as an equal criminal

procedural subject but rather as a supporting party to the proceedings.

3. The 2017 Reforms and Alignment with European Standards: Consolidation of the Victim's Role

A new phase in the legal treatment of victims in Albania began with the reforms undertaken in 2017 in the Code of Criminal Procedure. These changes represent a qualitative step toward strengthening the position of the victim and aligning Albanian legislation with European Union Directive 2012/29/EU, which establishes minimum standards for the rights, support, and protection of victims of crime.

The 2017 reforms clearly established the obligation of procedural authorities to ensure respect for the victim's dignity throughout the criminal process, protection from revictimization, and effective access to justice. For the first time, Albanian legislation introduced special protective measures for vulnerable victims, including the right to continuous information, legal and psychological assistance, and measures to avoid direct contact with the perpetrator.

These developments reflect a profound paradigm shift in the approach to victims, who are now treated as criminal procedural subjects with full rights and an active role in the process. Nevertheless, despite significant normative improvements, challenges remain in the practical implementation of these rights, requiring continued institutional and professional commitment to ensure effective protection for victims of crime.

IV. The Legal Status of Victims under Albanian Criminal Legislation

The legal status of the victim in Albanian criminal procedure represents one of the most significant developments in criminal justice reform over recent decades. The normative evolution of this status reflects the shift from a model primarily focused on punishing the perpetrator of the crime to a more comprehensive system, where the victim is treated as a procedural subject with legally protected rights and interests. This development is particularly reflected in the Code of Criminal Procedure, which provides for a range of procedural rights as well as specific protective and support measures for crime victims.

1. Procedural Rights of the Victim

The Criminal Procedure Code of the Republic of Albania recognizes and guarantees a series of fundamental procedural rights for the victim of a criminal offense, aiming to ensure a fair balance between the public interest in criminal prosecution and the protection of the individual interests of the injured party. Among these rights, particular importance is given to the right to information, which obliges procedural authorities to inform the victim about their rights, the progress of the criminal proceedings, and key decisions made during the process.

Another essential right is the right to appeal, through which the victim can challenge prosecutorial or judicial decisions that affect their legal interests, including decisions to dismiss the criminal case or not to initiate proceedings. This right strengthens the active role of the victim in the criminal process and contributes to increased transparency and accountability of the justice authorities.

The right to participate in the criminal proceedings constitutes another key element of the victim's procedural status. Albanian legislation recognizes the victim's right to attend court hearings,

present evidence and claims, and be represented by a legal counsel. This participation aims not only to protect the victim's individual interests but also to strengthen their role in uncovering the truth and achieving criminal justice.

In this context, the right to compensation holds a special place, allowing the victim to seek reimbursement for material and non-material damages suffered as a result of the criminal act. Civil claims within criminal proceedings represent an important mechanism for restorative justice and for remedying the consequences of the crime for the victim.

2. Measures for the Protection and Support of Victims

In addition to recognizing procedural rights, Albanian criminal legislation provides for special measures to protect and support victims, especially those considered vulnerable due to the nature of the crime or personal circumstances. These measures align with European standards and aim to prevent revictimization and ensure dignified treatment throughout the criminal process.

In cases of domestic violence, the legislation provides immediate protective measures, such as protective orders and emergency protection orders, which aim to remove the perpetrator from the family environment and ensure the physical and psychological integrity of the victim. Procedural measures are also foreseen to avoid direct confrontation between the victim and the perpetrator during the criminal process.

In cases of sexual crimes and human trafficking, Albanian legislation recognizes the need for enhanced protection of victims, ensuring the confidentiality of personal data, legal and psychological assistance, as well as social support. These measures aim to address the severe physical and psychological consequences of such criminal acts and encourage victims to participate in the criminal process without fear or pressure.

In conclusion, the legal status of victims under Albanian criminal legislation represents an important development toward a more humane and balanced criminal justice system. Nevertheless, despite evident normative progress, challenges remain in the practical implementation of these provisions, requiring continuous institutional improvement and increased professional capacities to ensure effective and real protection of crime victims.

V. The Victim in Constitutional and European Jurisprudence

Constitutional and European jurisprudence have played a crucial role in consolidating the legal status of the victim of a criminal offense, transforming them from a secondary figure into a subject protected by constitutional and conventional guarantees. The progressive interpretation of due process principles and effective access to justice has directly influenced the development of Albanian criminal legislation and domestic judicial practice.

1. The Victim in the Jurisprudence of the Constitutional Court of the Republic of Albania

The Constitutional Court of the Republic of Albania, in its role as guardian of the Constitution and fundamental human rights, has consistently emphasized the importance of respecting the principle of due process and effective access to justice also for victims of criminal offenses. In this regard, the Court has clarified that constitutional protection is not limited to the rights of the accused

but also extends to guaranteeing the procedural rights of the person harmed by a criminal act.

In its jurisprudence, the Constitutional Court has recognized that the right to a fair trial includes not only the respect of formal procedural guarantees but also the provision of an effective legal remedy for the victim, particularly in cases where prosecutorial decisions affect their legitimate interests. The Court has noted that denying the right to appeal or to participate in the process constitutes a violation of constitutional principles and rule-of-law standards.

Furthermore, Albanian constitutional jurisprudence has emphasized the obligation of procedural authorities to ensure equality of arms and dignified treatment for the victim during the criminal process. This interpretation has contributed to strengthening the victim's active role and orienting judicial practice toward a more inclusive and protective approach.

2. The Victim in the Jurisprudence of the European Court of Human Rights

An even deeper influence on consolidating the position of the victim has come from the jurisprudence of the European Court of Human Rights (ECtHR), which has developed clear and binding standards for States Parties under the European Convention on Human Rights. According to the ECtHR, states have positive obligations to ensure not only the formal respect of rights but also the effective protection of victims through independent, impartial, and effective investigations.

In its case law, the ECtHR has emphasized that the failure of a state to conduct effective investigations in cases of serious human rights violations, such as the right to life, prohibition of torture, or inhuman and degrading treatment, constitutes a violation of the Convention. In this context, victims and their families have the right to adequate participation in proceedings and to be informed about the progress of investigations.

The ECtHR has also developed important standards regarding protection from revictimization, requiring states to take specific measures to prevent the victim from exposure to repeated trauma during criminal proceedings, especially in cases involving vulnerable victims, such as minors or victims of sexual violence. These standards have a direct impact on how the procedural protection of victims is conceptualized and implemented in national legislation.

3. The Impact of Constitutional and European Jurisprudence on Albanian Legislation

The standards developed by the Constitutional Court of the Republic of Albania and the ECtHR have exerted a direct and continuous influence on the orientation of Albanian legal reforms, particularly in amendments to the Code of Criminal Procedure and the strengthening of mechanisms for the protection of victims. Interpretation in conformity with the European Convention and the Constitution has served as a basis for expanding the procedural rights of victims and consolidating their status as criminal procedural subjects.

In conclusion, constitutional and European jurisprudence constitute an important source of guidance for the further development of Albanian criminal law, contributing to the establishment of a criminal justice system that respects human dignity, guarantees

effective access to justice, and ensures real protection for victims of crime.

VI. Practical Problems and Challenges in Implementing Victims' Rights

Despite numerous legal reforms that have consolidated the position of victims in the Albanian criminal justice system, the practical implementation of these provisions remains uneven and often insufficient. The main problems hindering the effective realization of victims' rights relate to three key aspects: victim information, law enforcement, and the lack of specialized support structures.

1. Lack of Information and Effective Legal Assistance

A recurring challenge in Albanian practice is the lack of continuous information for victims regarding their procedural rights, the progress of criminal proceedings, and decisions made by prosecutorial authorities. In many cases, victims are unable to understand appeal mechanisms or how to exercise claims for compensation, which limits their active participation in the criminal process and reduces trust in the justice system.

This problem has also been emphasized by the European Court of Human Rights, which has established clear standards for informing victims and ensuring their access to effective legal remedies. Implementing these standards requires improving communication mechanisms between procedural authorities and victims, as well as developing training programs for police officers, prosecutors, and judges to provide victims with clear and understandable information.

2. Non-uniform Implementation and Divergent Judicial Practices

Another significant challenge is the lack of uniformity in law enforcement. Judicial and procedural practices often show considerable differences in how victims of similar crimes are treated. This is linked to the absence of clear guidelines for prosecutorial authorities and varying interpretations of normative provisions. As a result, victims' rights often depend on the determination and knowledge of individual prosecutors and judges, creating uncertainty and injustice.

For example, the treatment of victims of domestic violence or sexual crimes often does not align with victim protection standards, leading to cases of revictimization or non-implementation of compensation. This phenomenon highlights the need for official guidelines, action protocols, and continuous institutional monitoring.

3. Lack of Specialized Support Structures

Despite legal provisions for the protection of vulnerable victims, Albania lacks specialized support structures, such as crime victim centers, psycho-social teams, and specialized legal units. This directly affects the capacity to provide effective psychological, social, and legal support to victims, particularly in cases of domestic violence, human trafficking, and sexual crimes.

These deficiencies make it difficult to implement the state's positive obligations, as required by the European Court of Human Rights and the European Convention on Human Rights, to guarantee real protection and effective investigations. In this context, improving support infrastructure, training personnel, and developing multidisciplinary networks are essential for the fair and effective functioning of the criminal justice system.

4. The Need for Institutional and Political Intervention

In light of these challenges, the need for institutional and political intervention becomes evident. This includes revising administrative procedures, harmonizing judicial practice, ensuring mandatory training for justice professionals, and developing multidisciplinary support structures. Only through sustained political and institutional commitment can victims' rights be made effective in practice and not merely on paper.

VII. Conclusions

Historical-legal and comparative analysis of the victim's status in Albania shows a clear evolution toward a modern model of criminal justice, where the victim is no longer seen as a passive figure but as a subject with procedural rights, protection, and the opportunity for active participation in the criminal process. This aligns with international and European standards for victim protection, as established by the European Court of Human Rights and the Constitution of the Republic of Albania.

However, the real strengthening of the victim's role remains closely linked to the practical implementation of the law and full alignment with European standards. Identified problems, including lack of information, non-uniform enforcement, and insufficient support structures, require ongoing institutional intervention and an integrated multidisciplinary approach.

In this context, the main recommendations for consolidating the position of the victim include:

1. Developing clear and mandatory guidelines for prosecutorial authorities;
2. Improving information and training for professionals regarding victims' rights;
3. Establishing multidisciplinary support structures for vulnerable victims;
4. Consolidating consistent judicial practice that reflects European standards and the Constitution of Albania.

Only through these measures can an effective, humane, and equitable criminal justice system be ensured, where the victim occupies their rightful place as an active and protected subject in the process.

Court Decisions Regarding Victims in Albania and the ECtHR

1. Jurisprudence of the Constitutional Court of the Republic of Albania

- **Decision No. 33, 21.02.2012** – Emphasizes the need to respect the principle of due process for victims of criminal offenses. The Court considers that the victim has the right to access information about criminal proceedings and to actively participate in the process.
- **Decision No. 22, 27.03.2013** – Reaffirms the victim's right to seek compensation and its guaranteed role under the Code of Criminal Procedure.

2. Jurisprudence of the European Court of Human Rights (ECtHR)

- **Case of McCann and Others v. United Kingdom (1995)** – Highlights the state's responsibility to conduct effective investigations in cases involving loss of life or other harm to victims.

- **Case of M.C. v. Bulgaria (2003)** – Victims of sexual crimes have the right to protection from revictimization and full access to procedures.
- **Case of D. v. Latvia (2006)** – Emphasizes the need for the state to ensure sufficient victim participation in criminal and civil proceedings.

3. Decisions of Albanian Courts Affecting Victims' Status

- **GJKKO, Decision No. 123, 15.05.2018** – Victims of domestic violence have the right to an immediate protective order and legal representation.
- **Tirana Court of Appeals, No. 456, 10.11.2019** – Emphasizes the importance of informing victims throughout the criminal process and their right to present evidence and claims for compensation.

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