The Position of the Victim in Criminal Justice: A Restrained Central and Eastern European Perspective on the Victim-Offender Mediation

1. INTRODUCTION

It is well known that the role played by the victim in the interest of the criminal justice system may be very important: it is the victim who decides what offences will be dealt with by this system, because he is the initial source of information on the basis of which the state prosecuting authorities determine the outcome of the criminal case. According to research carried out in some Western European countries, only a minor number of offences are discovered by the law enforcement officials themselves (mainly ones like the supervision of traffic, narcotics, alcohol, prostitution, taxation and customs, which generally do not have individual victims), while over 85% of all reported offences come to the attention of the authorities by notification of the victim or another private citizen. The promptness and completeness of those notifications determine to a great extent whether or not the offence can be solved. In this sense, some authors aptly suggest that the victim is the 'gatekeeper of the criminal justice system'.

It is no wonder that the contemporary trends in European and North American victim policy show significant support for the victim in the earliest stages of the police inquiries: some countries such as the US, Sweden and the Netherlands have introduced statutory or administrative guidelines for the police, providing information on victim's rights and various services (i.e., victim advocates' offices in the US). The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the resolution A/Res/40/34 of the General Assembly in 1985 deals with social assistance to victims in paras. 14-17. It states expressly in para. 16: 'Police, justice, health, social service and other personnel concerned

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should receive training to sensitise them to the needs of victims, and guidelines to ensure proper and prompt aid'. Also, the two recommendations of the Council of Europe (R [85] 11 on the position of the victim within the framework of criminal law and procedure and R [87] 21 on assistance to victims and prevention of victimisation) stipulate, inter alia, that information should be provided to the victim at all stages of the process, particularly on the police level as regards the outcome of police investigation. Assistance to the victim may include, if necessary, emergency help to meet immediate needs, continuing medical, psychological, social and material help, advice to prevent further victimisation, information on victims' rights, assistance during the criminal process and assistance in obtaining reparation by the offender or compensation by the state.5

However, the role of the victim in the criminal justice system is comparatively minor. Due to the historical fact that the state 'took over the criminal process',6 until recently, very few entitlements of the victim have been recognised in the modern administration of criminal justice. The victim could participate in it by reporting the crime, testifying before the court and sometimes by presenting his indemnification claim in criminal proceedings. The prevailing idea was that an offence was always directed against society and thus criminal prosecution and punishment had to have a public nature. On the Continent, the inquisitorial type of criminal procedure involved certain procedural features which ended the need for the private individual to carry the burden of criminal prosecution. Also in the Anglo-American criminal procedure, which by its definition is a contest of the prosecution and the defence before a passive judge, the State 'stole the conflit' from the two parties.7 By replacing the victim as the private prosecutor with the police or public attorneys, it created unsolvable structural problems for a possible intervention of the third party in this type of proceedings (i.e., as regards conduct of examinations at the main trial).

Only the renaissance of interest in the victim that took place in Europe and North America after the second World War8 brought the gradual change of the position of the victim in criminal proceedings. New criminological and victimological theories in the 1970s, have aroused more interest in issues concerning the victim's role in the criminal process; certain aspects of the victims' active participation came to be considered as beneficial to the fulfilment of the aims of the criminal prosecution and to the securing of compensation or restitution. International instruments stress the necessity of making various judicial and administrative mechanisms obtainable and facilitated for the victim9 or require that the victim, who has been

9. Paragraph 5 of the UN Declarations stipulates: 'Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms'. Paragraph 6 states: 'The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing the victim of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceeding where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families...