THE VICTIM'S PROCEDURAL ROLE IN THE YUGOSLAV CRIMINAL PROCESS

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1. Introductory Remarks

As it is well known, crime victims play an important role in the criminal justice system ("gatekeepers of the criminal justice system"). Still, many authors consider that the actual part played by the crime victim has been neglected. Consequently, he is spoken of in terms of a "poor relation of the criminal law" or of a "forgotten figure of the contemporary justice system".

Such disregard of the role can be accounted for by the historical development of the criminal process, which was based on the idea that criminal prosecution has a public nature. The inquisitorial type of criminal procedure involved certain procedural features which ended the need for the existence of a private individual to carry the burden of criminal prosecution. It should also be noted that the victim's role practically ceased to be that of a procedural party in the accusatorial type of criminal procedure. In English criminal procedure, in practically all cases, prosecutions are nominally private, but they are carried out by public officials (police solicitors) acting in a private capacity. Genuinely private prosecutions are rare.

However, recent development of criminological and victimological theories has aroused more interest in issues concerning the victim's role in the criminal process. New views have gradually appeared; viz. certain aspects of the victim's active participation came to be considered as beneficial to the fulfillment of the aims of the criminal prosecution and to the securing of compensation or restitution.

The victim of a criminal offense may assume various roles in the criminal process. Firstly, by filing a crime report (notitia criminis) he may play an important part in the initiation of the criminal proceedings and may involve certain social factors which may influence the decision of the prosecuting and investigating authorities. Secondly, being the only person, besides the offender, who knows the relevant facts, the victim may serve as an...
irreplaceable source of information in the course of the fact-finding process. He may thus, for example, assume the role of the witness or become the object of an expert’s examination. Finally, the victim may assume a formal role, sometimes characterized as “accessory” procedural role, i.e. outside the scope of the parties’ role in the criminal process, but with certain procedural rights which make the realization of his interest in the criminal procedure possible. Only the victim’s procedural role in this sense will be dealt with in this article.

Yugoslav criminal procedure, which is regulated by the Criminal Procedure Act (hereinafter cited as CPA) of 1976, falls into the category of the so-called mixed Continental procedure with all its known features (e.g. separation of the functions of fact-finding and pressing of charges, preliminary investigation on the part of an investigating judge and the main trial in the hands of the judicial panel, both vested with broad investigative powers). It also provides various possibilities for victims to participate in criminal proceedings, to assume the prosecution themselves when the public prosecutor fails to prosecute, and to seek indemnification in the criminal trial itself. So, although it lacks certain modern features such as a system of compensation from public funds, the Yugoslav law could be interesting from a comparativist’s perspective because it is designed to protect victims by providing various legal institutions aimed at the promotion of their interests as regards the securing of indemnification and bringing the guilty to punishment.

Chronologically, the CPA of 1976 is the third statute which comprehensively regulates criminal procedure since the Second World War. It contains a whole array of provisions concerning the victim’s role in the criminal process. However, this has not always been so. The first CPA, that of 1948, largely followed the procedural pattern of the 1923 RSFSR Code of Criminal Procedure and contained relatively few provisions concerning this matter. It provided the victim with the possibility to seek indemnification in the course of the criminal trial but established short time periods for filling a motion for indemnification; it lacked an efficient remedy against non-prosecution because the victim whose crime report was rejected by the public prosecutor could only fill an application for review on the part of the superior public prosecutor whose decision was final. However, in the case of criminal offenses against social property, the court had to consider indemnification claims ex officio, regardless of whether the formal motion of the owner of the claim had been addressed to the court or to some other agency of the criminal process.

The 1953 Code of Criminal Procedure (as amended in 1967 and later on), which reverted to procedural ideas of the 1929 Code of Criminal Procedure of the Kingdom of Yugoslavia, considerably changed the role of the victim