

ENHANCING LEGAL STATUS OF THE INJURED PERSONS BY MEANS OF CRIMINAL PROCEDURE

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***Abstract:** Preventing criminal phenomena is viewed at the moment by the judicial authorities as one of the most important challenges in the field of assuring a fair society. Equally, the activity of combating serious crimes is also of high interest for the judicial authorities in criminal cases they are invested with. The main interest is, thus, focused on respecting the injured persons' rights during the criminal proceedings, especially in those criminal cases in which they are victims of serious crimes. In this matter, the legislative tools are adopted in purpose to maintain an equilibrium between the issue of punishing perpetrators, as part of the criminal justice's goal of finding truth, and enhancing the victims' legal status during the criminal proceedings, as part of avoiding revictimization. The current paper aims at providing useful mechanism of improving the injured persons' legal status during the judicial activities in criminal cases in such a manner to outline a legal framework to support victims during the criminal proceedings. In the matter of practice, it has been observed that improving legal status of the crime victims is an activity of high importance due to the fact that, during a long and unspecific criminal procedure, the risk of revictimization is, in several cases, unavoidable. In this regard, any activity of the judiciary, carried out in this context, means a useful instrument the crime victims really need. The results of the current study have emphasized that the judicial activities in criminal matters could create a new context of supporting victims in those criminal cases in which the judicial authorities agree to use their duties in order to achieve best results in the field of preventing and combating crimes, on the one hand, and reducing degree of revictimization, on the other hand.*

Keywords: *injured persons; criminal procedure; processual rights; criminal proceedings; jurisprudence in criminal matters*

Introduction

The issue of crime victims has for a long time been in the doctrine's attention in its effort to establish a connection between the legal provisions of criminal procedure law, on the one hand, and the case-law solutions pronounced by the courts of law, on the other hand. This interest has particularly been viewed in those criminal cases which involve victims of crimes under two perspectives – injured persons and civil parties. The legal situation of the crime victims is still considered a vulnerable in the entire world (Asquith & Bartkowiak-Théron, 2021). Taking into account the dangerous situation they face on the issues of revictimization during the criminal proceedings. This is because of several reasons. One of them refers to the issue of the criminal procedure which involves crime victims in their procedure of becoming injured persons during the criminal proceedings. Another one refers to the issue of how the courts of law resolve these persons' complaints regarding the compensations. The jurisprudence in criminal matters is a useful processual instrument came to emphasize the injured persons' needs to be part of a judicial context, a more strengthened one.

This is only one step provided by the justice in criminal matters which involves the legal status of the injured persons and how much the courts of law should advance efficient tools in finding appropriate solutions to enhance their judicial status by means of criminal procedure. This is because, in front of the judicial bodies, the crime victims appear as concerned persons (Chornous & Dulskyi, 2024). As a general remark, their status is primarily discussed in accordance with the feature of the damage they suffer as a consequence of the crime committed. Equally, the issue of damage should be considered in no less than three directions.

Firstly, the damage is a form of physical harm, secondly, it is also a psychological harm (Loza, 2024), and last but not least it is a form of

material prejudice the crime victims suffer because of the crime committed (Aromaa, 2012). All of them formalize the entire context of criminal proceedings, when it is about the crime victim which becomes injured person in criminal proceedings. In fact, this is the natural process of accommodating victims of crimes and integrate them into the criminal proceedings. Although the victim becomes injured person during the investigation stage, taking into consideration the specific rules and principles expressly stipulated by the Code of criminal procedure of Romania (Law no. 135 of 2010 on the Code of Criminal procedure of Romania), this processual status is consequently achieved till the final act of criminal proceedings.

Equally, it does not entirely depend of the solution pronounced by the court of law. This means that it is indifferent if the court of law pronounces the solution of acquittal of defendant, the solution of finalizing criminal proceedings, or the solution of condemnation of defendant. The last solution could only be decided in those criminal cases in which it is proved, beyond reasonable doubt, as a standard in the matter (Banet-Weiser & Higgins, 2023), based on pertinent, conclusive and genuine evidence, that the crime exists, it was committed by the defendant with the appropriate form of guilt provided by the criminal law. No other reasons could be retained by the court of law.

Moreover, the issue of compensations claimed by the injured person from defendant is also part of the criminal proceedings which should be clarified by the court of law at the end of criminal proceedings. This aspect will be carried out under the principles and rules provided in criminal matters, including those related to the principle of due process and solving the criminal case in reasonable time (Bălan, 2021). More particularly, the courts of law have to resolve the injured persons' claims, once they become civil parties. Thus, it is obvious that the crime victims should pass some compulsory stages the criminal proceedings provide them with. The first stage refers to the procedure of changing the status of victim in that of injured person. This is possible through lodging a complaint in front of the judicial bodies. By law, the prosecutor is the judicial body entitled to be invested by the crime victims with the

criminal complaint regarding the crime committed. Then, once the prosecutor has been noticed with the information on the perpetrator of having committed a crime, it is thus entitled to begin the criminal procedure, exercise the criminal action, and, consequently, the criminal case will be investigated accordingly (Kremens, 2020).

The means of criminal investigation are part of the judicial bodies' strategies used during the criminal investigation through finding a comprehensive tool of finding truth in criminal cases they investigate. One of these means of investigation refers to the procedure of hearing participants in criminal case, but the processual activity will not be possible to be achieved in missing the injured persons' testimony (McGarry & Walklate, 2015).

1. Current legal status of the injured persons in criminal proceedings

The Code of criminal procedure of Romania regulates certain means of criminal procedure of enhancing the injured persons' legal status. This aspect is currently of high importance, due to the fact that the injured persons has equally processual rights and obligations to be exercised, on the one hand, and respected during the criminal proceedings, on the other hand. In this processual context, created by the injured person with the criminal complaint submitted to the judicial bodies, the subsequent judicial actions and activities could and must be pursued. In fact, it is useful for the theoreticians to know if the initial judicial status of the injured person will effectively be achieved by this person during the entire judicial procedure developed in front of the judicial bodies, as a form of managing the issue of due process (Signorelli, 2023). On the one hand, this aspect refers to the investigative bodies whose activities are carried out in the investigation stage. On the other hand, the issue of fair process also refers to the courts of law able to achieve the judicial activities during the judgment stage (Summers, 2024).

In the beginning of criminal proceedings, when the victim of crime lodges the complaint to the investigative bodies in order to assure that

this person want to initiate and develop the criminal action which will be carried out by the prosecutor, the processual rights and obligations provided by the law of criminal procedure and exercised and respected by the injured persons are definitively in achieving the fundamental goals of criminal process. No action taken by the judicial bodies, either in the investigation stage or in the judgment stage, will be allowed in purpose to infringe the injured persons' legal status. Moreover, their rights assure a processual status well-defined in terms and conditions stipulated by the Code of criminal procedure. This status is equally viewed in the next context created as a consequence of the injured person's action to become a civil party in criminal procedure.

Speaking about the legal status of the civil parties, although they have a series of processual rights and equally obligations during the criminal proceedings, their processual status is more focused on the issues related to the civil context of the criminal law conflict. It is determined by the Code of criminal procedure and expressly provided therein. Concomitantly, the civil party and injured person have to exercise their processual rights in order to delimit competences each other during the criminal proceedings. From a chronology of criminal process, the first status achieved by the victims of crime is that of injured person. then, once this judicial status is well-defined, that person is entitled to declare in front of the investigative bodies if the injured person agrees to pass its judicial status in the next level. This means that the injured person can agree to add another legal status to the injured person, referring to the legal status of civil party.

From a jurisprudential perspective, the interest is equally expressed in the criminal cases in which the attention is paid on both injured person and civil party as well. This is because the case-law solutions delivered by the courts of law in criminal matters are significant judicial instruments of finding an equilibrium between the general interest of society to punish the defendant (Dearing & Huxtable, 2021), on the one hand, and the interest of the persons involved in criminal proceedings, on the other hand, – this issue is about the injured person and civil party. Such context provides a real guarantee that the judicial bodies have to

respect both the injured persons' processual rights and the civil parties' rights and no infringements are allowed to be happened in those criminal cases in which the injured person agreed to become civil party.

In this regard, a pertinent analysis has been carried out during the research activity on the topic of enhancing the injured person's legal status by means of criminal procedure, as it will be highlighted during the next chapter. It provides a useful overview upon the jurisprudence in criminal matters stated by the courts of law in those criminal cases in which the crime victims agreed to achieve the processual status of civil party or they are simply injured persons having appropriate rights and obligations during the criminal proceedings. For this reason, it is very important for the theorists to emphasise their points of view in relation to the criminal cases examined, on the one hand, and to the judicial solutions pronounced by the courts of law, on the other hand.

2. Case-law solutions on injured persons

2.1. Legal entities as injured person

Some pertinent aspects should be asked in those criminal cases in which the injured persons who lodged a complaint is a legal entity. Both jurisprudence and doctrine in criminal matters was usually asking if a legal entity could appear in front of the court of law having the judicial status of injured person. This is because certain forms of doubts claimed by the defence party invoke that there is no possible for the legal entities to achieve the status of injured person during the criminal proceedings (Criminal Decision no. 428/RC/2024 of the High Court of Cassation and Justice of Romania). From this point of view, the jurisprudence has observed the defence lawyer's position which emphasized that, as a general rule, the main question is that to know if the legal entity might be passive subject of the crime of imposition. The main argument was related to the fact that deceit must be perceived through the person's own feeling by the injured person. In these circumstances, it is obvious that the legal entity can however be misled only through its representatives.

Moreover, the defence party has pointed out that, both doctrine and case-law solutions in the matter have admitted that the passive subject of the crime of imposition may be any natural person or legal entity. Despite this remark, the criminal law is in a dynamic evolution and, for this reason, a judicial precedent has already been established by the upper court of justice (Criminal Decision no. 402/2019 of the High Court of Cassation and Justice of Romania) which stated that in cases of establishing a legal relationship of authority, a discussion on deceit cannot be advanced, and consequently the constitutive elements of the crime of imposition are not achieved in accordance with the *de facto* situation, as it was provided by the indictment act (Criminal Decision no. 428/RC/2024 of the High Court of Cassation and Justice of Romania). Moreover, the conclusions advanced both by the public prosecutor and the defence lawyer were analysed by the court of law and taken into consideration in pronouncing decision.

In this regard, the court of law has convicted defendant for the crime of imposition. The upper court of law has rejected the appeal submitted by the defendant and stated that, taking into account the evidence administered, the defendant, under the same unitary criminal resolution, has incorrectly reported a series of medical services as being executed. However, although this activity was not actually happened, the defendant has misled the injured person because of the subsequent discount of fictitious medical services. At the same time, the upper court has stated that, during a period of two years, through repeated criminal actions, under the same criminal resolution, the defendant has retained and illegally used health cards of patients in purpose to discount unexecuted medical services. Consequently, it is obvious that the court of law will take into consideration all circumstances in which the crime was committed, on the one hand, and the jurisprudence in the matter, on the other hand. No subjective solution is allowed in this context.

2.2. Injured person unacquiring status of civil party

As a general remark, it could be pointed out that the injured person could be considered as the victim of crime who lodges a complaint to the

public prosecutor and is interested in achieving the processual status of civil party. However, in practice, there are several situations in which the injured persons do not consent to acquire the processual status of civil party. This is from several reasons belonging to these persons' own wish.

The court of law invested by the indictment act of the public prosecutor with a criminal case will notice the decision of injured person not to become civil party. The reason of choosing so exclusively belongs to the injured party which is thus entitled to appreciate if the damage exists and it should be reclaimed from the defendant. The court of law has stated, under the entire evidence administered, that the defendants have stolen different quantities of benzine from fuel stations. The criminal actions have consisted in illegal use of fuel cards belonging to the injured parties (Criminal Decision no. 335/RC/2024 of the High Court of Cassation and Justice of Romania). The *modus operandi* was taken into account by the defendants in order for them to sell the benzine at a lower price and consequently gain a huge amount of money. Although the damage is a real and serious one, the injured person did not agree to achieve the judicial status of civil party and acted further on in the criminal proceedings as an injured person exclusively. This means that, by lodging a complaint in front of the judicial bodies, the injured person is not obliged to require from them to appoint it as a civil party.

The legal consequences resulting from this status did not detain it from fully exercising the processual rights during the criminal proceedings. This means that, although the injured person refuses to appear in front of the judicial bodies as a civil party through exercising the entire processual rights the criminal procedure Code provides it with, the injured person cannot be infringed to pursue all procedural acts as they are regulated by the processual legal provisions. This is because the injured person is equally responsible for proposing evidence which will be analysed both by the public prosecutor during the investigation stage and by the court of law during the judgment stage of criminal proceedings. By doing so, the judicial bodies will assure themselves that the injured person has submitted pertinent, conclusive and genuine evidence and there are no impediments to reject them from criminal case.

Equally, in cases of serious crimes, such as attempt of murder, the injured person is less possible to agree not to achieve the processual status of civil party. However, in practice, the jurisprudence has provided that the situation could be different and the injured person chooses to prevail on the right not to become civil party (Criminal Decision no. 226/RC/2024 of the High Court of Cassation and Justice of Romania). On the contrary, to see the situation in which the injured person did agree to achieve the processual status of civil party. It is about the criminal case of accessing illegally an information system (Criminal Decision no. 189/RC/2024 of the High Court of Cassation and Justice of Romania).

3. Vulnerable injured persons in criminal proceedings

3.1. Theoretical background

Discussing legal status of the injured persons in criminal proceedings, it could be pointed out that they usually pass a specific context, being characterised by the main issue of being vulnerable persons. Their vulnerability is often appreciated by the doctrine in criminal matters as an antagonistic feature along with the defendant one. This balance is a real mechanism of analysing the consequences of victimization (Wallengren & Mellgren, 2021) and preventing revictimization as well. Equally, the dual character of injured person – defendant necessitates a special approach from theoreticians taking into account the theory of criminal context, on the one hand, and the crime prevention policy (Berg & Schreck, 2022), on the other hand.

Moreover, doctrine has during the years interested in finding answers in the matter of how public authorities are involved in developing programs for the crime victims and the services providers (Gillespie et al., 2021). Although a serious activity was carried out by the public authorities, there are no reasons to believe that the number of vulnerable victims is currently decreasing comparing the phenomenon with the previous periods of time. Actually, the underage victims seem to be more vulnerable and their vulnerability should be analysed through the general mechanisms of training minors and drawing them up into

some actions of victimization (Cuciurca & Frunze, 2023). This is specific to serious crimes committed against underage persons and focuses especially on the in cases of sexual violence (Muratore, 2023) or other forms of violent crimes. Nevertheless, the underage persons are not the only one category of vulnerable victims of this kind of crimes. Women and elderly persons could equally become victims of serious crimes.

The criminal behaviour countered by the underage crime victims could generate other forms of violence (Aromaa, 2012) or specifically could be developed in other criminal environments, also involving vulnerable victims (Magherescu, 2023b).

3.2. Injured person in cases of serious crimes

An essential element of the serious crimes consists in committing the crime of trafficking in persons. The court of law will always retain the circumstances in which these crimes are committed and punish defendants in accordance with the form of guilt they acted with. In the matter of fact, the court of law has to state the defendant's criminal behaviour consisting in recruiting injured person in order to exploit it sexually, especially in those criminal cases in which the injured person is an underage person. Usually, the *modus operandi* consists in misleading victim through using the "Loverboy" method (Magherescu, 2023a), and also impressing her through romantic signs, expensive gifts and money, and also through promising an intimate relationship (Criminal Decision no. 231/RC/2024 of the High Court of Cassation and Justice of Romania). By doing so, the injured person has considered defendant as her protector both in front of her family and the teachers as well.

Analysing the evidence administered, the court of law has stated that the defendant's criminal conduct bring together the constitutive elements of the crime of trafficking in minors. By law, this crime follows the same criminal action as in cases of trafficking in persons, with the different passive subject which in the first case is an underage person. From the point of view of the material element of the objective side, it presents an alternative content and consists in recruiting, transporting, transferring, hosting or receiving underage persons in purpose to exploit

them. Other circumstantial elements are not compulsory to be met. They refer to acts of coercion over the injured person, kidnapping, misleading, abuse of power or any other conditions, as provided by the criminal law provisions. Doctrine in criminal matters has emphasized that the underage persons sometimes suffer serious damages through unlawful conducts of the perpetrators through abuse, poverty, and involve the issues of the rights of the children (Carvalho et al., 2024). Exploitation is also a very serious situation which involves circumstantial situations the vulnerable persons could be victim of (Loyens & Paraciani, 2021; Davies, 2019).

Taking into considerations the relevant aspects provided with a substantial theoretical support, the upper court of law has stated that the defendant has taken the opportunity the injured person's financial and emotional addiction to convince her that he loves her along with providing the intention to get married with her, a criminal conduct also specific to "*Loverboy*" method. During the processual activity of hearing injured person, the victim of crime has recognized that the defendant has physically assaulted when the injured person refused to consume drugs. Moreover, for the injured person the main scope of defendant was to create an addiction estate to victim (Criminal Decision no. 231/RC/2024 of the High Court of Cassation and Justice of Romania). According to the evidence administered, the court of law has stated that the defendant's intention was to exploit the injured person. From a theoretical perspective, it should be pointed out that the activity of hearing crime victims must be organized in a coherent manner in order to understand the injured persons' statement as a narrative which could influence the criminal sentencing procedure (Bandes, 2021).

Taking into account the circumstances the crime of underage trafficking was committed in, although the defendant has declared that a normal relationship was established with the underage injured person, the court of law definitely stated that any motives of cassation recourse as an extraordinary criminal procedure target more the substantial feature of the definitive criminal decision pronounced by the lower court of law and less its legality. Consequently, reestablishing the *de facto* situation of the

crime committed and its conformity with the evidence administered cannot *de plano* be subject of censor from the upper court of law during the extraordinary criminal procedure. This is because, from a jurisprudential perspective, the legislative provisions of criminal procedure law do not allow participants in criminal cases to submit extraordinary judicial instrument of the cassation recourse based on the evidence which conduct to a re-examination of the *de facto* situation.

4. Means of criminal procedure of enhancing the injured persons' legal status

The criminal procedure law is, in this judicial context, a useful tool of enhancing the injured persons' legal status during the criminal proceedings. Actually, by using some specific means of criminal procedure, the injured persons are always faced with significant challenges in their processual actions of gathering evidence in order to prove the truth (Ingram, 2021). The true situation suffered as a consequence of committing crime is also in the entire participants' interest or it could be so. First of all, the defendants should be interested in truth finding process in the criminal cases they are party of. This is because an unlawful status could be achieved by them, as a very dangerous one, of being convicted by mistake, for example. Secondly, the public prosecutor is equally interested in finding the truth in order to prove the crime committed, if the evidence administered confirm that the crime was committed by the defendant. Otherwise, the defendant should imperatively be acquitted.

Moreover, the court of law is the judicial body interested in pronouncing the legal decision either of condemnation or acquittal, pronounced in accordance with the entire *de facto* situation, based on the pertinent, conclusive and genuine evidence administered in the criminal case. The court of law should also state, beyond reasonable doubt, that the unlawful action was committed, it is a crime and was committed by the defendant with the appropriate form of guilt provided by the substantive criminal law. These aspects constitute arguments in admitting

that, generally speaking, all participants in criminal proceedings are looking for the same goal – that of finding the truth in criminal case (Summers, 2023).

In these circumstances, the legislator has provided a series of means of investigation and judgment in order for the court of law to enhance the legal status of injured person, as the victim of crime (Joyce & Laverick, 2022), on the one hand, and the other participants in criminal proceedings, on the other hand. This is possible through respecting the rights of injured persons and no infringement in achieving their goals of processual interests should be allowed. Moreover, their rights are fully respected being indifferent if they acquire the status of civil party or not. Discussing the first situation, it is relevant for the current topic to be pointed out that the injured persons' processual rights do not depend on the process of unacquiring status of civil party. Actually, unacquiring status of civil party is a right of the injured persons, but not an obligation and, for this reason, their legal status cannot suffer modification.

The processual instruments recognised to the injured persons as means of enhancing their legal status refer to the right to propose evidence, right to defence, right to appeal de solutions pronounced by the courts of first instance or even to promote extraordinary procedures in cases of definitive decisions pronounced by the upper courts of law. Moreover, assuring the injured persons that these processual instruments are enhanced by the judicial bodies, some pertinent solutions are guaranteed through processual activities pursued in this context.

Such legal instruments are completed by a series of actions disposed by the law of criminal procedure in the injured persons' capacity. They also refer to the issue of claiming compensations for the damages suffered by them as a consequence of the crime committed. It also can be achieved at the supranational level, as a relevant instrument that their rights are fully guaranteed (Bălan, 2018), although the home courts of law provided differently. In this matter, the European Court of Human Rights is a relevant supranational court of justice provided for those citizens of the Council of Europe member states as a pertinent processual instrument of achieving their rights in those cases in which a

European Convention on Human Rights' provision was infringed by the national authorities (Case of Panayotopoulos and others v. Greece, 2025). The compensations have, in this context, a significant role in gathering an equilibrium between the damage and the consequence of crime meaning for the future.

The same situation could be seen in those cases in which the injured persons are not allowed to participate at the moment of signing guilt agreement in the special procedure, in accordance with the Code of criminal procedure of Romania, although, as victims of crimes, their interest is evident in the matter of speeding up the criminal proceedings (Budaházi & Fantoly, 2024). As a *de lege ferenda* proposal, the legal provisions of criminal procedure law should not deny the injured persons from the procedure of signing the guilt agreement. Consequently, their presence could be allowed during the entire procedure of "negotiation" between the defendant and the case prosecutor, in the respect of the injured persons, as participants in criminal proceedings along with defendants and their defence lawyers. In this manner, they can contribute to a better procedure of resolving the criminal cases through the special procedure of guilt agreement. This perspective is also a useful instrument of criminal procedure law to assure victims of crimes, either as injured persons or civil persons, that their processual rights are fully respected during the entire simplifying criminal procedure and no infringements in their processual positions could be permitted by the judicial bodies, in particular by the case prosecutor who is the entitled judicial body to sign the guilt agreement with the defendant.

Conclusions

Analysing the legal status of the injured persons in criminal proceedings, it is obvious that the general theory of processual rights of the participants require some pertinent solutions to be taken into consideration by the judicial bodies. Both the investigative bodies and the courts of law should be involved in respecting the injured persons' legal status during the criminal proceedings. No restrictive processual

measured could be ordered by them in purpose to infringe the injured persons' processual rights. Otherwise, an illegal solution will be pronounced by the court of law which will be appealed by the injured persons accordingly.

Speaking about the process of enhancing legal status of the injured persons, it should be emphasized that it is also in the judicial bodies' interest and the law of criminal procedure obliges them to pursue the entire legal instruments in order to achieve these goals along with the significant goal of finding the truth in criminal cases and pronounce legal decisions based on legal evidence. This is firstly because the judicial bodies have to respect the procedural rules and activities in such a manner to facilitate all the participants involved, including the injured persons, the access to the case file, to propose evidence and combat those which are not legal administered in criminal cases.

Moreover, the injured persons play a significant role in the architecture of criminal proceedings, being an important instrument of due process, especially in those criminal cases in which they need to promote the principle of solving criminal cases in reasonable time. This principle is equally applied to all participants, but it is more visible in the defendants and injured persons' processual interests.

Finally, the issue of enhancing legal status of the injured persons should be discussed from different points of view, in accordance with their interest in acquiring status of civil party. This is because, in practice, there are several criminal cases in which the injured persons do not agree to acquiring status of civil party and, despite this inconvenience, their processual rights should be fully respected.

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