

**SHAPING JUSTICE:
HOW PENAL LAW AND THE JUDICIARY
ADDRESS CONTEMPORARY
SOCIETAL CHALLENGES**



INSTITUTE OF COMPARATIVE LAW
INSTITUTE OF CRIMINOLOGICAL AND SOCIOLOGICAL RESEARCH
JUDICIAL ACADEMY

X International Scientific Thematic Conference

SHAPING JUSTICE: HOW PENAL LAW AND THE JUDICIARY ADDRESS CONTEMPORARY SOCIETAL CHALLENGES

Urednici/Editors:

Marina Matić Bošković
Jelena Kostić

Thematic Conference Proceedings of International Significance



BELGRADE, november 2025

X International Scientific Thematic Conference
Shaping justice: How penal law and the judiciary address contemporary societal challenges

Publisher:

Institute of Comparative Law
Institute of Criminological and Sociological Research

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Official Language:

English

Prepress:

Branimir Trošić

Printed by:

Birograf Comp d.o.o.

Copies:

100

ISBN 978-86-82582-45-8 (IUP)

ISBN 978-86-80756-86-8 (IKSI)

DOI: https://doi.org/10.56461/ZR_25.ShapingJustice

The conference was held on November 28, 2025 in Belgrade

This Proceedings is a result of research within the project "Adapting the Legal Framework to Social and Technological Changes with a Special Focus on Artificial Intelligence," carried out in 2025 by the Institute of Comparative Law with financial support from the Ministry of Science, Technological Development and Innovation (contract number 451-03-136/2025-03/200049).

POSITIVE OBLIGATIONS OF THE STATE IN CRIMINAL PROCEEDINGS – DUTY TO PROTECT / DUTY TO PUNISH

Zoran Pavlović*
Ištvan Laslo Gal**

The sovereign right of the state to punish is exercised through the criminal justice system in order to protect the legal order, based on the principles of legality and fairness. In the introductory part, the paper discusses fairness as an ethical and legal standard of criminal proceedings, along with the demand for equal treatment of the accused and the victim. Special emphasis was placed on the positive obligations of the state not only to punish the perpetrator of the criminal act, but also to actively protect the victim during the entire procedure, especially in cases of violation of her rights, such as disclosure of personal data, invasion of privacy or secondary victimization through "victim blaming". In the second part of the paper, two examples of violations, rather than protection of the rights of victims in criminal proceedings, are presented, along with issues of responsibility for the violations committed. The central part of the paper analyzes the relevant standards of the European Convention on Human Rights, ECtHR judgments, provisions of the RS Constitution and the Code of Criminal Procedure, as well as their application in court practice, in order to establish a fair balance between punishment and protection of human rights. The last example from the ECtHR's practice and the decision from 2025 shows all the weaknesses of the system and issues of non-respect of the state's obligation to protect the victim. In conclusion, the authors point out the need to create a system of protection and a model in which the positive obligations of the state in criminal proceedings will be possible to be realized. Deficiencies in enabling the realization of the state's positive obligations not only in punishment, but also in protection represent violations from Article 13 of the ECHR, but also violations of already established standards.

KEYWORDS: *positive obligations of the state, The right to punish, Protection of victims' rights, Standards in the actions of state authorities.*

* PhD, full profesor, Faculty of Law for Commerce and Judiciary in Novi Sad, University Business Academy in Novi Sad.

ORCID: <https://orcid.org/0000-0002-9625-1298>

E-mail: zoran.pav@hotmail.com

** PhD, full profesor Faculty of Law University of Pecs.

ORCID: <https://orcid.org/0000-0002-0258-8587>

E-mail: gal.istvan.laszlo@gmail.com

1. INTRODUCTION

The sovereign right of the state to punish - *ius puniendi* is a fundamental right of every state, which is realized through the criminal legal system in order to sanction violations of rights and protect the legal order. Punishment and protection of rights are based on two inseparable principles, legal and just, as Aristotle established that all legal things are by default and just (Aristotel, 2023, p. 93). This ethical principle is particularly important in criminal proceedings and implies equal treatment not only of the perpetrator but also of the victim, in order to restore the social balance that was disturbed by the commission of the crime. In criminal law, the principle of fair treatment has not yet been fully defined. Following the thoughts of Kant (White, 2011), we conclude that society cannot function without respecting rules applicable to all, making justice the universal basis of legislation, and not the result of ad hoc circumstances. Until the moment when we consider fairness for society as an abstraction through justice in a concrete case, (Radbruch, 1980, 52) we have a relatively broad consensus, but when we talk about justice in concrete cases, things are not so uniform or simple. The positive obligation of the state provided for in Article 6, paragraph 3.c of the European Convention on Human Rights and Fundamental Freedoms, defined in the same way as in Article 33, paragraph 3 of the Constitution of the RS, is specified in Article 77 of the Code of Criminal Procedure. The European Convention on Human Rights and the Constitution of the RS state that every defendant has the right to a lawyer if the interests of justice require it, while Article 77 of the Code of Criminal Procedure talks about the defense of the poor with the professional help of a lawyer when reasons of fairness dictate it.

The state's positive obligations of punishment and protection, through the prism of the rights of the accused and the rights of victims in criminal proceedings, have become issues of standards of respect for human rights in society. The Code of Criminal Procedure, as a kind of Magna Carta libertatem of human rights, gives very detailed obligations of the state, not only through the power of punishment, but also as assistance to citizens in criminal proceedings, regardless of their procedural role. Thus, the issue of justice, legality and fairness is brought down from the philosophical to the real level in criminal proceedings, through the practice of national courts, but also of the European Court of Human Rights (ECtHR). While the traditional focus of the procedure was on the guarantees of a fair trial for the accused, the modern understanding of the protection of human rights emphasizes that the victim also has a set of procedural and material rights that the state must respect. The doctrine of positive obligations of the state is particularly relevant, within which two key concepts are developed: **duty to protect** and **duty to punish**.

In the context of criminal proceedings, these obligations require the state to prevent violence, to effectively conduct an investigation, to make the prosecution effective, but also to protect the victim from secondary victimization. Although it can often be read in the works of theorists that the criminal law ultima ratio comes only at the end of a life event, the reasons for both general and special prevention are present as well as the existence of the state's right to punish. That is why the formulation of retribution in Article 42, paragraph 4 of the Criminal Code must be read exclusively through the principle

of fairness and proportionality, balancing between the committed act and the severity of the punishment (and not as stated by the legislator of criminal sanctions).

The authors of this paper are somewhat of a minority with the idea that all these rules and obligations of the state must apply equally to both subjects, the accused and the victim. This non-equality in treatment, through several examples from the practice of the last few years, reminds us that we must not forget the basic principles of the criminal procedure, the role of procedural subjects, but also the phases of the criminal procedure. Therefore, criminal proceedings by their very nature are governed by the principle of **nullum crimen sine iure, nulla poena sine lege**. While the pre-trial and investigative proceedings are not public, until then the main trial can be declared secret, the public can be excluded or it can be public. Therefore, there is no crime without a court, but no punishment without the law, but also, there is no public in the investigative procedure, which is often violated by various entities in the criminal procedure and outside it. That is why the question of how the state will realize its positive obligations towards the accused and towards the victim is of utmost importance. All this implies the existence of legally binding standards, the application of which in practice also requires adequate institutional capacities for the purpose of effective implementation of standards established by law. To the extent that these standards are successfully implemented in practice, the implementation of the state's obligations will be effective.

And it all depends on people, although sometimes one gets the impression that by using artificial intelligence in certain stages of the procedure, errors and omissions to the detriment of the victim or the defendant would be avoided, that those stages of the criminal procedure would be carried out without the human factor. Many questions are raised in this way, but let's start solving them in order.

2. DOCTRINE OF POSITIVE OBLIGATIONS OF THE STATE: DUTY TO PROTECT AND DUTY TO PUNISH

The European Convention on Human Rights is primarily based on the negative obligations of the state, which prevent the state from arbitrarily encroaching on individual rights. However, through the practice of the European Court of Human Rights, the doctrine of positive obligations has also developed, according to which the state must act actively to protect individuals from violations of their rights by third parties.

The obligation to protect includes all measures that the state can reasonably take to prevent harm to the victim's life and integrity. This issue has become a topic of interest quite late, not only in Serbia, Hungary or other countries in the region, but also at the international level. In criminal proceedings, the protection of the accused and his rights is truly an asset of modern criminal law and is an important issue in all democratic states. At the same time, it is important to establish a balance between the rights of the accused and the rights and protection of the victim, because none of the participants in the criminal proceedings should have any advantage over the other subject. In the last few decades, in the practice of the ECtHR, support for victims has been raised to the level of rights and obligations of the

state, to ensure an efficient and simple system of support for victims of all criminal acts. The Court set the standard of "real and imminent danger": the state violates the Convention if it knew or should have known of a real risk to the victim and did not take adequate measures (*Osman v. UK*). This standard is often applied in the context of domestic violence, persecution and gender-based violence (e.g. *Kontrová v. Slovakia*, *Opuz v. Turkey*).

On the other hand, the obligation to punish refers to the need for the state to ensure an efficient, independent and effective criminal procedure that can result in adequate sanctioning of the perpetrator. The ECtHR emphasizes that the criminal procedure must be "practical and effective", not "theoretical and illusory". Ineffective investigation or impunity of violence may represent a violation of Article 2 (right to life), Article 3 (prohibition of torture and inhuman treatment) or Article 8 (right to private life, threatened by violation of the rule that the investigation is not public).

Many irregularities in the performance of procedural actions in criminal proceedings do not mean that the state did not protect itself through the legislative framework and foresee such situations, as well as that they must influence the adoption of a legal decision in the form of a final verdict. For example, in the case of a violation of the right to a trial within a reasonable time, this does not necessarily mean that an illegal or improper decision was made. Therefore, the solution to this violation of the rights of both the defendant and the victim could be in non-procedural models of protection, such as administrative supervision, application of the rules of labor law, disciplinary responsibility, checking the personnel structure and the like. Some special procedural punishment during criminal proceedings could mean that some of the victim's rights are denied, such as the right to an effective investigation in serious crimes. That is why it is very questionable to ask why we do not refer to the fulfillment of obligations from Article 13 of the ECHR - the right to an effective legal remedy - more often. Namely, they must be applied not only at the theoretical level of explanation, but also in the practice of competent state authorities. The effectiveness of a legal remedy is always viewed *in concreto*, as a real possibility of submitting a legal remedy, and carrying out the procedure according to it in a reasonable and short time. Otherwise, we enter into a new violation, namely a violation from Article 6 of the ECHR.

Regardless of the judicial model, whether the investigation is prosecutorial or judicial, whether the person has the status of a victim or victim of a criminal offense, regardless of the stage of the proceedings in which the case is located, the standard of proceeding according to an effective legal remedy must be respected, and the protection of the victim's rights, as well as the right of the state to punish must be effective, fair, regular and legal. The lack of academic works on the violation of the victim's right to an effective legal remedy against violations of their rights is not justified, and the reasons for this may be different. That is why the rulings of the European Court of Human Rights are still the main source of law for these issues, which therefore concern not only the right to punishment, but also the protection of the victim's rights, in the full sense of the word: protection. This means that the victim must have, as a priority, preventive means of protection against the violation of his rights in criminal proceedings, and then, according to the rules of civil law, compensation rights.

3. TWO EXAMPLES AND RELATED QUESTIONS

It all started as news - the name of a famous former football player, accusations of blackmail and fraud in the spotlight. The former football player and coach of Crvena Zvezda became the victim of blackmail of 50,000 euros, but the serious criminal case was deepened by the fact that the criminal complaint, the victim's statement and other evidence from the investigation became public.

A former soccer player and the son of the famous soccer player Dušan Savić and a well-known Serbian journalist and writer, he became a victim of blackmail after a person allegedly demanded 50,000 euros from him. Suspect A. K. (21) from Belgrade was arrested and the police searched his apartment, and he was ordered to be detained for 30 days due to the danger that he could manipulate the evidence while at large.¹

Just a few days after the news spread, information arrived - Vujadin Savić lost his job within the professional staff of Crvena zvezda, where he was an assistant coach until recently. The club announced that the termination of cooperation was due to "private reasons". Although this case was written about in almost all daily and weekly newspapers, discussed on social networks, the key question remained unanswered - how is it possible that the contents of the criminal report and evidence from the investigative procedure end up on the front pages?

That was not all. A few days after that, a photo of the computer screen taken by the prosecutor's office with the victim's statement and other evidence appeared in public.

According to the request of the Special Department for Suppression of Corruption of the Higher Public Prosecutor's Office in Belgrade, checks are being carried out in the competent public prosecutor's office as to whether the evidence from the investigation, as a non-public phase of the procedure, in the form of a photo of the computer screen, came to the public, and thus contaminated the criminal procedure. But, on the other hand, what is much more important, the victim not only lost his job, but the general public, which has the right to be informed, as well as the professional public, was and is more interested in this evidence - the statement in the investigation given by the victim, than in the criminal act itself. If information had not appeared at the beginning that it was a criminal act of extortion or blackmail (and we are talking about different criminal acts with different threatened punishments and actions of execution), no one would have known why the victim filed a criminal complaint and the defendant was detained. Before the court's decision, the public decided that the victim was guilty because he communicated with a transgender person, and what they learned from the published evidence - the victim's statement.

Although in the criminal legislation of the RS, the crime of extortion and blackmail (as a special form of extortion) are distinguished, colloquially known as blackmail in the older literature, and blackmail in the newer literature, the crime itself was almost never discussed, but more about the morality of the victim of the crime. We believe this sociological phenomenon will be investigated in other social humanities, but what is important for this case is that the reaction of the competent state authorities to protect the

¹ <https://www.blic.rs/sudbine/isplivali-detajli-o-uhapsenoj-ak-tri-muskarca-su-upala-usred-noci-ustan-i-pretukli/04phb46> (12.10.2025)

victim was not, to put it mildly, at least with the aim of protection from new traumatization. Given that at the time of writing this paper, the epilogue of the court proceedings is still unknown, we can state here that certain stereotypes and prejudices in relation to the victim prevailed in relation to the suspect and the determination of his potential guilt. The critical narrative and logic of thinking was thus absent, creating the fiction that the victim is actually being tried, and not establishing the facts related to the criminal act of extortion or blackmailing the suspect.

This case and the proceedings in it show many problems in the judicial system, the smallest of which are related to legal, quite good and harmonized solutions with the ECHR and other relevant international documents.

Another example refers to the murder of 9 children and a security guard at the Vladislav Ribnikar school in Belgrade, on May 3, 2023. year, when 5 more children and a history teacher were wounded. After the inspection, a press conference was held for the public. On that occasion, a high-ranking police officer showed the public evidence from the criminal proceedings, showing it to the cameras for 11 seconds, namely a paper with the names of children who were potential victims, with all the details about who they are and what classes they go to.

There is no doubt that it is about the secondary victimization of the victims, but not only by the public, which informed the public about these topics from various criminal acts as in a featurette, but also violated the rule that the investigation is not public.

The fact is that the competent public prosecutor's offices did not react *ex officio*, but only after the criminal report of the parents in the case of the school and the child victims, and that we have not yet received a decision based on it, and in the case of the football player, the public has very little information about what the prosecutor's office is doing in relation to the violation of the rule that the investigation as a phase of the criminal procedure is not public, and that the evidence from the investigation was recorded from the computer of the Public Prosecutor's Office.

The length of the criminal proceedings is observed for each specific case separately, but based on the data presented so far and known to the public, it is clear that in these two cases there was also a violation of the victim's right to access the court, because this right does not mean only that the proceedings before the court start, but also that the proceedings are resolved, which in the case of long trials means a violation of the state's positive obligations to protect the basic human rights and freedoms of victims of criminal acts through the criminal justice system.

About how the victims feel, we can only guess at this moment.

4. VICTIM'S RIGHTS IN CRIMINAL PROCEEDINGS AND PROHIBITION OF SECONDARY VICTIMIZATION

The rights of the victim in the process include not only the right to an effective investigation, the right to privacy protection, the right to respect for dignity, but also the right to a court proceeding without unnecessary retraumatization.

Secondary victimization (**victim-blaming**) represents a situation in which state institutions, instead of protecting the victim, repeat or deepen the trauma by treating him as responsible, unreliable or "immoral". The ECtHR considers that this practice may constitute a violation of Article 3 (no one may be subjected to... humiliating treatment), because such treatment exposes the victim to humiliation and degradation. Here we highlight the following judgments:

J.L. c. Italy (2021)²: prohibition of moral condemnation of the victim

Judgment of *J.L. c. Italy* represents a turning point in the judicial protection of victims from moral condemnation. The ECtHR concluded that there was a violation of Article 8, because it mixes moral and cultural stereotypes with legal criteria, and violates the victim's right to dignity and private life.

The state, instead of protecting the victim's rights, contributed to her stigmatization through court proceedings. This violated the state's positive obligation to protect the victim.

This judgment is key to the topic of the paper because it directly deals with the issue of moral condemnation of the victim in criminal proceedings. Instead of protection in criminal proceedings, we got the opposite: a violation of the right to respect for private and family life.

M.C. c. Bulgaria (2003)³: prohibition of stereotypes about sexual violence

In this case, the European Court emphasized the state's obligation that the investigation must be based on facts and not on moral judgments or stereotypes. The verdict is thus directly related to the concepts of duty to punish and duty to protect.

In the case of *Y. v. Slovenia* (2015)⁴: protection of the victim from humiliating interrogation that may constitute a violation of Article 3. This judgment deepens the standard that the victim must be protected from interrogation that has the purpose of discrediting his character, rather than elucidating the facts.

And finally, but not least, let us say a few words about the procedural rulings from the criminal law of Cyprus, which are also mentioned in the case of *X v. Cyprus*, petition number 40733/22.⁵ The decision of the ECtHR established that in Cyprus, through specific legal solutions, there is an obligation of the state that includes the right to protect

² CASE OF J.L. v. ITALY, (Application no. 5671/16), 2021, available at: <https://hudoc.echr.coe.int/eng?i=001-210300> (15.10.2025)

³ M.C. v. BULGARIA, (Application no. 39272/98), 2003, available at: <https://hudoc.echr.coe.int/fre?i=001-61521> (15.10.2025)

⁴ Y. v. SLOVENIA, (Application no. 41107/10), 2015, available at: <https://hudoc.echr.coe.int/fre?i=001-154728>

⁵ X v. CYPRUS, (Application no. 40733/22), 2025, available at: <https://hudoc.echr.coe.int/fre?i=001-241992> (15.10.2025)

victims during criminal investigations and the right to privacy, as rules that apply to both parties in the proceedings.

The reaction of investigative and prosecuting authorities to allegations of rape of victim H. did not fulfill the positive obligation of the state to apply relevant criminal provisions in practice through effective investigation and prosecution:

On 13 July 2019, the applicant, a British citizen, while on holiday in Ayia Napa, met a man, S.Y., an Israeli citizen, who was staying in the same hotel as her.

X claimed that in the early morning hours of July 17, 2019, she was raped by S.Y. and his friends (twelve people in total) whom he first invited to the hotel room where they were staying. The police took two statements from X on the day of the incident. On July 27, 2019, X made a third, supplementary statement. In those statements, X confirmed that she had consensual sexual intercourse with S.Y. on two occasions before the alleged rape, although on both occasions his friends persisted in entering the room despite being asked to leave.

After six hours of investigation on the evening of July 27, 2019, X signed a retraction statement stating that her account of events was false. On the same day, the lead investigator suggested that the case be classified as "unsubstantiated." X, due to the withdrawal of the allegation, was accused and convicted of the criminal offense of false reporting and other criminal offenses and sentenced to four months in prison, suspended for three years. After an appeal, the Supreme Court overturned her verdict and acquitted her, finding that the withdrawal of allegations was not carried out under conditions with the necessary protective measures.

In March 2022, the State Prosecutor's Office re-examined the decision to suspend the investigation. The review was conducted as if X had not made a statement withdrawing the criminal charges and a decision was made not to reopen the case.

The violations considered by the ECHR related to Articles 3 and 8 of the ECHR. The court noted the existence of a legislative framework for the protection of the rights of victims of sexual violence. In particular, the domestic law criminalized rape by directly referring to the absence of consent, while the state additionally enacted laws concerning the rights, support and protection of victims of crimes.

The police began investigating X's report without undue delay. They quickly located suspects, secured warrants, collected DNA samples and other evidence, and did not delay in questioning witnesses. The speed of the investigation was therefore not disputed.

However, the case was marked by a series of shortcomings on the part of the investigative authorities, the prosecution and the first-instance court. At the heart of the case was the premature termination of X's allegations of rape, which was caused by her retracting her initial statements and the immediate initiation of criminal proceedings against X herself, culminating in her conviction for harming the public interest. However, the Supreme Court overturned that conviction on appeal, after finding some of the lapses in the investigation and deficiencies in the trial court's assessment.

Although the judgment of the Supreme Court was an acknowledgment of the shortcomings in the initial phase of the investigation and the lack of thoroughness, the Court, after combining the issue with its merits and examining it at its own discretion,

considered that X had not lost her victim status. The Supreme Court's findings could not satisfy the requirement of an effective investigation, as these initial deficiencies affected the effectiveness of the entire investigation. Moreover, despite those findings, the State Attorney's office, in reviewing the decision to suspend the investigation, supported the approach taken by both the lead investigator and the trial court in its assessment, with the main exception of not taking into account H's retraction statement. In addition, H made further complaints about the effectiveness of the investigation. Therefore, she could still claim to be the victim of the violation she complains about under Article 34 of the ECHR.

The court reiterated that investigating authorities are obliged to take all reasonably possible steps to secure all available evidence of the incident they are investigating. It was up to the authorities to investigate all the facts and decide based on all the circumstances. There were a number of shortcomings in the investigation, such as the failure to obtain sufficient forensic and witness evidence, which could not be considered isolated failures. However, particular importance was given to the failure to examine whether there was consent. In fact, none of the criminal procedure authorities engaged in any meaningful examination of the evidence that could indicate a lack of consent. No mention was made of X's consumption of alcohol or traces of cocaine in her urine and how this might have affected her ability to consent. Her express disagreement with the suggestion that she have sex with any of the suspects, the fact that at least one of them felt offended by her, and the fact that the suspects showed little respect for her desire for privacy on all three occasions when they persisted in entering the room despite being specifically asked to leave, were not discussed or considered.

The police, and then the investigating authorities, accepted the statements of the suspects that rape did not happen for granted, despite the testimony that S.Y. said he would arrange sex with his friends with X; that certain suspects rudely expressed their intention to have sex with X on July 17, 2019; that blood was found in many places and on the clothes worn by X and on her body; that there were bruises and scratches on X's body; that there was no prior connection between X and most of the other suspects; and X's behavior after the incident. In the court decision, the illogicalities in the statements of the suspects were not mentioned either. The authorities' reluctance to pursue further investigations or prosecute appeared to be based on X's sexual freedom and behavior.

Her credibility seems to be judged through gender bias and a victim-blaming attitude. By focusing on X's prior behavior, authorities appeared to suggest that because she had allegedly previously participated in group sexual activities, she would not have refused to engage in such activities on the day of the alleged rape. The court reiterated that circumstances concerning the victim's behavior or personality cannot relieve the authorities of their obligation to conduct an effective investigation.

The court further noted a selective and inconsistent approach to the evaluation of evidence, which indicates bias. Although the lead investigator's decision to drop the investigation and the state attorney's decision not to reopen it were based largely on the inconsistencies in X's statements, they did not take into account the circumstances under which those statements were made and the psychological effect the alleged rape may

have had on her at the time, or that she may still be intoxicated with alcohol, cocaine, or a sedative given to her by a friend. It was also unclear whether X had time to sleep or rest between the alleged rape and her first and second statements.

H, who was eighteen years old at the time and was a foreigner, alone in Cyprus, was referred to a psychologist only two days after the alleged rape. Although she was interrogated by a policewoman for the first two statements, this was done in the absence of a lawyer, psychologist or social welfare service. After six hours of investigation on the evening of 27 July 2019, X withdrew her report after midnight. In the circumstances, there was persuasiveness in her argument that long and repeated interviews had led to withdrawal.

The above, together with the numerous interviews that X had to go through repeating her statement to the authorities, was also evidence of re-victimization due to the authorities' failure to adopt a victim-sensitive approach and conduct the investigation in a manner that would alleviate the claimant's suffering.

The Court noted that this case revealed certain prejudices regarding women in Cyprus which hindered the effective protection of X's rights as victims of gender-based violence and which, if not reversed, risked creating a background of impunity, discouraging victims' trust in the criminal justice system.

5. INSTEAD OF CONCLUSION:

Protection of the Victim Through the Dimensions of the State's Positive Obligations

- Procedural protection (effective investigation and sanctioning)
The state must ensure a structured, efficient and independent procedure. Judgments of *M.C. c. Bulgaria*, *Opuz v. Turkey* and *Valiulienė* confirm that the ineffectiveness of the procedure represents a violation of the Convention rights and obligations of the state to protect.
- Substantive legal protection (legal recognition of violence)
The European Court of Human Rights insists that legal standards are not based on moral concepts that have long since ceased to be acceptable as such (e.g. the "real" victim resists). The judgment of *M.C. c. Bulgaria* is a central example of exactly this kind of behavior by state authorities who decided in this case before the proceedings before the European Court.
- Protection of dignity (prohibition of condemning the victim)

Judgments of *J.L. c. Italy* and *Y. v. Slovenia* clearly states that the state must prevent secondary victimization and moral condemnation of the victim during the procedure. This includes ESPECIALLY:

- prohibition of using the victim's private life for discrediting,
- the obligation to protect the privacy and integrity of the victim.

To conclude that the practice of the European Court of Human Rights shows that the concepts of duty to protect and duty to punish are of key importance for understanding the rights of victims in criminal proceedings. The state is obliged not only to conduct an effective investigation and punish the perpetrator, but also to ensure that the procedure does not turn into a moral questioning of the victim. National justice systems should develop an approach that guarantees dignity, protection and respect to victims, regardless of their behavior, lifestyle or moral beliefs of others. The state has a clear obligation: the victim must not be "blamed" for the violence he experienced. This represents the core of the modern standard of human rights protection in criminal justice. Therefore, without victim blaming in the criminal procedure, through respect for the basic principles of the procedure, the positive obligation of the state, as we defined it at the beginning, cannot be realized.

Finally, but not least, we should mention that in Serbia the issue of training civil servants working in judicial bodies is reduced to education in the field of ethics and integrity. Unfortunately, according to the existing legal solutions, their training is not the responsibility of the Judicial Academy, but of the body that deals with the education of civil servants. Based on personal experience and work in the judiciary, the authors have the impression that the release of evidence from the investigative procedure will therefore be reduced to the fact that the typist is to blame for the fact that the data became public. But, let's not prejudice, and the decision will definitely be up to the competent court to say the last word.

For all irregular (and some illegal) procedural actions in criminal proceedings, universal protection measures cannot be foreseen, because they have a different impact on the passing of a fair, regular and legal verdict. However it seems that the right of the state to punish has a well-developed mechanism in our criminal procedural law, the victim's right to protection is not only in the appropriate norms of criminal procedural law, but also in non-procedural mechanisms within the judicial hierarchy, good organization of work and internal and external control of regularity in action that does not contradict an independent and independent judiciary. We can say, especially in examples from Serbian life, that due to the improper work of state bodies and services, the victim was additionally punished by a repeated violation of one of her rights by the state. Bearing in mind the fact that it is often impossible to correct the injustice inflicted on the victim by non-competent state bodies that were related to the criminal act, the only possibility that appears to enable the victim the right to protection remains the violation of the right from Article 13 of the ECHR. It is essential for the fulfillment of the state's obligations under this article that an effective legal remedy must be present not only by theoretical reference to the violation from Article 13 of the Convention, but also in practice.

In other words, after learning about a violation of one of the victim's rights from Article 13 of the Convention, it is necessary to pay extra attention to the effectiveness of the procedure for the established violation during the duration of the procedure, so that the protection of the victim's rights, as a positive legal obligation of the state, is not invisible due to delays in the procedure, unnecessary additional checks or conflicts of jurisdiction. The decisions of many bodies that monitor court proceedings in the RS

confirm the author's position that there are violations of victims' rights during the proceedings, while the rights of suspects and defendants are protected to a greater extent. We will not give an answer at all whether through the existing model of a complaint directly to a higher prosecutor or through a corresponding request to other criminal procedure bodies, greater protection of the victim's rights can be achieved. Because, we believe that if the existing legal mechanisms do not provide effective legal protection fulfilling the positive legal obligation of the state towards the victim, then we should look for new solutions.

To reduce the above to a general conclusion that when the state foresees a certain protection of convention rights, and at the same time does not implement such protections itself in concrete procedures because it does not implement them through existing mechanisms or through the behavior of state authorities, this represents a violation of the positive obligations of the state in relation to the right of the victim (and/or the defendant). Considering the presented jurisprudence of the ECtHR, as well as a detailed analysis of one of the cases, there is no doubt that it is time to work on the creation of a system of protection and enforcement of positive legal obligations of the state in criminal proceedings, both those related to the duty to punish and those related to the duty to protect, without separating the obligations of the state in relation to the status of the subject whose right is violated or threatened. The rhetorical question about the use of artificial intelligence in some areas where violations clearly occur, in terms of minimizing abuses, makes complete sense. The robot Sophia (wisdom) in this sense offered the authors several possible solutions, but about that in another paper.

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CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

343(082)

347.962(082)

347.962:004(082)

INTERNATIONAL scientific thematic conference Shaping justice: how penal law and the judiciary address contemporary societal challenges (10 ; 2025 ; Beograd)

Thematic conference proceedings of international significance / X international scientific thematic conference Shaping justice: how penal law and the judiciary address contemporary societal challenges, Belgrade, november 2025 ; urednici, editors Marina Matić Bošković, Jelena Kostić. - Belgrade : Institute of Comparative Law : Institute of Criminological and Sociological Research, 2025 (Belgrade : Birograf comp). - VIII, 236 str. ; 25 cm

"This proceedings is a result of research within the project 'Adapting the legal framework to social and technological changes with a special focus on artificial intelligence'... " --> kolofon. - Tiraž 100. - Str. 7-8: Foreword / Marina Matić Bošković, Jelena Kostić. - Napomene i bibliografske reference uz tekst. - Bibliografija uz svaki rad.

ISBN 978-86-82582-45-8 (ICL)

ISBN 978-86-80756-86-8 (ICSR)

1. Matić Bošković, Marina M., 1977- [urednik] [autor dodatnog teksta]

a) Кривично право -- Зборници b) Судство -- Зборници v) Судство -- Дигиталне технологије -- Зборници

COBISS.SR-ID 184854281