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### **Victim as a sign of corpus delicti**

**Abstract:** It is considered the criminal and legal conception of the victim and his place in the system of signs of corpus delict, and is analyzed his ratio with a conception of the victim in the legislation of the criminal procedure and criminology. In spite of the fact that the criminal and legal concept of the victim is the main and defining it at the same time belongs to the least developed in the theoretical relation. Legislative definition of the victim contains in the legislation of criminal procedure. According to the author, differentiation of criminal and legal and criminal procedure understanding of the victim should be made at least on the following main signs: 1) the circle of the victims in criminal and legal sense much more widely also includes not only natural and legal entities, but also the state, society, the personality, the international community, bodies and the organizations which are not legal entities; 2) can do to the victims in criminal and legal sense not only direct harm or damage, but also other (for example, in the form of the missed benefit or non receipt due); 3) not only physical, material or moral harm can be caused to the victim in criminal and legal sense, but also other rights, freedoms and legitimate interests are violated. At any socially dangerous act there are always two parties: criminal and victim. Ideally it would be necessary to allocate the structure which was injured in an independent element, as well as the subject of a crime. However, as neither the science, nor the theory, nor practice of criminal law are still ready to such radical decision, we believe necessary to place

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the victim as an independent sign in a crime object as carrier and the participant of the public relations.

**Keywords:** victim, damage, harm, sign of corpus delict, results of criminal behavior, participant of the public relation.

A specific place in the doctrine about signs of corpus delicti is held by the victim's figure. At the same time the question of a concept of the victim cannot until recently considered to be finally solved as it causes various judgments.

It is necessary to distinguish criminal procedure, criminal and legal and criminological concepts of a victim which in many respects coincide, but are not identical. At the same time the criminal and legal concept of a victim is the basic defining and at the same time the less developed. Nevertheless, the concept of a victim is defined not in criminal, and in the criminal procedure legislation as follows: "in the presence of the sufficient bases to believe that as a result of the act provided by the criminal law, moral, physical or material harm is directly done to the natural person, it admits quality of the victim" (Art. 87.1 of the Code of Criminal Procedure of the Azerbaijan Republic) [17].

The conception of 'victim' in the criminal law should not be mixed also with a victimology concept in criminology. Properties and behavior of person in respect of potential or real opportunity to become the victim of crime is studied by victimology.

Criminal and legal value of the personality and behavior of the victim is defined by influence of these factors on qualification of a crime and assignment of punishment. So, the group of structures against minors is provided in the criminal law: involvement of minors in commission of crime (Art. 170 of Criminal Code of Azerbaijan Republic, hereinafter the CC of AR); involvement of minors in commission of immoral actions (Art. 171 of the CC of AR); turn of a child pornography (Art. 171-1 of the CC of AR); substitution of foreign child (Art. 172



of the CC of AR); illegal adoption (adoption) (Art. 174 of the CC of AR); disclosure of secrecy of adoption (Art. 175 of the CC of AR). Minor and juvenile age of a victim is considered as the aggravating and especially aggravating circumstances at assignment of punishment to the guilty person (Art. 61.1.5 and Art. 61.1.7 of the CC of AR).

In criminal and legal literature is noted that definition of subject structure of the public relation gives the chance to establish what public relations act as a crime object, the volume of these relations and, therefore, border of operation of the most criminal law.

The reason of allocation of a criminal and legal comprehension of the victim used in criminal trial is a situation that “both there are no harmless crimes, and crimes without the victim, it is simple not always (from the point of view of the current legislation) there is a need of procedural formalization of a victim’s figure as needs of some victims (society, social group, law and order) are satisfied in a public legal order by punishment, at the same time the state prosecutor acts as the spokesman of interests of such victims” [12, p.75]. In the criminal law this issue is resolved long ago, the religious organizations, the owner or other owner of property, supervisory authority, the organization, society or the state, national, ethnic, racial group, the international community, mankind can be the victims. Therefore, the circle of the victims in criminal law is much wider than in criminal trial.

Legal literature offers to recognize the victims not only persons to whom the direct loss by a crime, but also indirect one, that is broad view on a concept of the victim is stated. “Other persons experience the same suffering and show the same symptoms of psychological difficulties, as well as other categories of the victims. Members of families of the victims of murders, partners and spouses of the raped women, parents of the robbed teenagers, relatives of the victims from thefts and other crimes describe similar psychological symptoms, as well as the direct



victims”. And further: “it is bound as to emotional and behavioral reactions to infliction of harm to a subject to which other persons are tied, and with the usual human ideas of safety and justice of the world around broken by a crime it is possible - with the feeling of a fear and vulnerability which is not abandoning us from the moment of collision with the unknown” [12, p.80]. At the same time literature is expressed the opinion on possibility of involvement in an orbit of criminal legal proceedings not primary, but in reasonable extent the secondary victims [7, p.26]. Also jurisprudence adheres to such position, in particular, the Constitutional Court of the Russian Federation considered that not one, and several close relatives of the dead may accept the status of the victim [8].

The main difference of a criminal and legal concept of the victim from criminal procedure consists, in our opinion, in establishment of the harm done to the victim. If the criminal law says about violation of interests of the victim, then the procedural legislation defines him as the person to who harm or damage has been done. The analysis of norms of the operating of Criminal Code demonstrates that results of criminal behavior are expressed by means of various terms: ‘harm’ is mentioned about 80 times, ‘damage’ - more than 40 times, ‘consequences’ - more than 85 times, “violation of the rights and legitimate interests” - about 20 times [13]. According to I.A. Fargiyev “when determining a concept of the victim of the criminal law it is necessary to point out not only harm physical, property, moral, business reputation, but also to ‘other’ harm which can be caused to the victim” [18, p. 98].

Adverse for the injured consequences that caused in result of crime’s commission, are called in the law differently, most often by means of the words ‘harm’, ‘damage’, ‘result’. As V.M. Savitsky noted, in the legislation “the actual and low-justified synonymy that make difficult the usage of the law” is available [9, p. 197], “even the only derogation from the principle ‘one term - one concept’



turns a harmonious terminological row into ordinary terminological confusion” [9, p. 200].

It is necessary to agree with positions of the authors considering that in the conditions of divisiveness of scientific ideas of this or that legal phenomenon it is more reliable to carry out unification of terminology with a support on the text of the Constitution and lexicon of the dominating ideology. Therefore for a formulation of a concept of the victim, a choice has to be made in favor of wider, generalizing phrase towering over private types of harm – “violation of the rights, freedoms and legitimate interests” [11, p.30].

In a general sense the victim as a sign of *corpus delicti* in criminal law should be understood how owner of the rights and the legitimate interests violated by a crime or put under real threat of violation. It is necessary to agree with the statement that growth of humanitarian moods slowly moves the doctrine to recognition of the victim, as well as criminal, an independent element of structure [11, p.12].

As in the theory and practice the understanding of the victim is widespread as natural person (person) to whom the crime does property, physical or moral harm in theoretical researches the offer to extend a concept of the victim not only on physical, but also to not natural persons - on the legal entities and the organizations which don't have the status of the legal entity [18, p.7]. This offer deserves attention in theoretical aspect, but it does not correspond to definition of the victim in the existing procedural legislation. Moreover, in our opinion, injured from a crime in criminal and legal sense along with the personality have to admit the mankind, society and the state. The further specification of the victim is carried out in chapters and articles of the Criminal code. So, in particular, the victim under Article 141 of the CC of AR can be only a pregnant woman who has illegally been made abortion, and the victim under Article 142 of the CC of AR - only a patient needing medical care [13].



In criminalistic literature expressed the fair opinion on close connection of a material and procedural concept of the victim and even need of legislative definition of the victim for the criminal law in view of primacy of the material relations in comparison with procedural and inadmissibility of contradictions between them [22, p.40; 16, p. 9]. According to one of the definitions “a victims has to be admitted the natural or legal entity in the presence of proofs that the crime or socially dangerous behaviour deranged to this person has been done harm and also if preparation for the specified actions or attempt at them have created real threat of causing such harm” [1, p. 7].

We believe that the criminal and legal concept of the victim shouldn't be mixed with procedural. In our opinion, in criminal and legal sense it is necessary to understand legislative fixing of signs of those participants of the public relations which interests are protected by the criminal law from illegal actions of other participants of these relations as the victim. The victim as a figure in criminal trial is the participant of criminal legal proceedings, natural and legal entity to which the crime has done real harm.

Thus, differentiation of criminal and legal and criminal procedure understanding of the victim should be made at least on the following main signs: 1) the circle of the victims in criminal and legal sense much more widely also includes not only natural and legal entities, but also the state, society, the personality, the international community, bodies and the organizations which are not legal entities; 2) can do to the victims in criminal and legal sense not only direct harm or damage, but also other (for example, in the form of the missed benefit or non receipt due); 3) not only physical, material or moral harm, but also other violation of his rights, freedoms and legitimate interests can be caused to the victim in criminal and legal sense.

On the place of the victim in *corpus delicti* in legal literature there is also no unity of opinions. It is known that for fixing of socially dangerous act the



legislative image called by *corpus delicti*, formed of limited number of standard signs of the delict where is available also the abstract information about the victim. The *corpus delicti* forms selected by science in the commonwealth with practice most typical (repeating) and essential (main, in which public danger of committed acts is declared more sharply and most stoutly) by signs of encroachments. The quantity of such signs is obviously and much less than actual data on real criminal acts. This property of crime component (the template ignoring particulars) organically realizes an idea of equality of citizens before the criminal law.

Some authors suggest to consider the criminal and legal doctrine on victim within the doctrine about an object as the victim is a carrier (an owner) of those interests and benefits on which the criminal encroaches and which form the content of this crime's object or to separate a victim in other (fifth) independent element of *corpus delicti* on what he has more rights, than a subject of crime [2, p.73].

Other scientists place a victim at once in several elements of *corpus delicti*, claiming that the victim and signs characterized of his, do not compose a certain element of *corpus delicti*, and scattered on an object, on objective and subjective sides [10, p. 12-13].

Situations, when both a subject of crime and victim act as the same person, are not excluded. Such situations arise, for example, in cases of commission of evasion from conscription by causing to themselves any injuries. Probably, victim can be considered as the subject of a crime in those exceptional cases, when there is an imaginary defense (an excess of necessary defense), passive behavior (the victim's consent), or victimology aspect. For representatives of criminology do not exist a subject of dispute in this case as according to criminology the victims are the subjects of criminal encroachment [5, p. 169].

An opinion is expressed in literature that victim treats to a crime object in ownership of such sign as a subject. So, for example, it is noted that is more often at infringement of the personality, for example, at murder, infliction of harm to



health, rape, etc., the sign 'a crime subject' means the person, "by influence on which body encroachment against an object is made". At the same time an object of a crime any personal interests, the benefits admit, the person as the natural person acts as a subject of a crime. In such cases the term 'crime subject' is replaced with the concept 'victim' [3, p.125]. M. I. Fedorov believes that person personality per se can act as a subject, but not as an object of a crime [20, p.190]. N. I. Korzhansky claims that the person as a living biological being, the person in the natural being at infringement of the personality acts as a crime subject [4, p.133]. Such interpretation of the victim was already offered also by other authors, in particular, A.E. Zhalinsky who considered that a body of the person, parts of the person are, on common sense, an encroachment subject, material basis of life and health, sometimes honor and advantage [15, p.111].

G.P. Novoselov speaks about accommodation of the victim from a crime within criminal legal relations (as passive side where the active side is represented by the criminal), but specially brings the victim for a circle of passive participants of the public relations [7, p.23]. E. Fesenko places the crime object which underwent in structure, but enters into an object 4 more signs - interests and the rights of the victims, social communications; objects (material benefits) and not materialized benefits [21, p.71-73].

In the theory of criminal law the opinion is expressed that that against whom the crime is committed i.e. individuals or some great number of persons whose material or non-material values, being delivered under criminal legal protection, are exposed to criminal influence therefore harm is done to these persons or is created threat of infliction of harm, is a crime object [14, p.135]. At the same time authors give reasons for this line item, quite extensive on volume.

The specified line item was already exposed to criticism in legal literature. So, it was specified that such understanding of an object of a crime contradicts both the legislator's line item, and ordinary common sense. The similar treatment as if





interchanges the position of concepts of an object and a subject of a crime, unreasonably adding here and category of the victim; at the same time an object - always the person or a great number of persons, a subject - certain material or non-material values of these persons. In addition, this line item doesn't meet the principal requirements of a concept of an object of a crime - to determination of what it is caused to or harm as a result of criminal encroachment can be done. In case of such approach it is impossible to differentiate separate crimes among themselves: so, for example, both diversion, and terrorism are committed against a great number of persons, therefore, it is possible to differentiate these crimes only in "subject" (according to this treatment) - to those values to which harm is done. These values also shall admit a crime object. Mixing of an object and subject of a crime levels an entity and value of both the first, and the second [6, p.135]. The public relations arise between people in the course of their activity. Therefore at any socially dangerous act there are always two parties: criminal and victim. Ideally it would be necessary to allocate the structure which was injured in an independent element, as well as the subject of a crime. However, as neither the science, nor the theory, nor practice of criminal law are still ready to such radical decision, we believe necessary to place the victim as an independent sign in a crime object as carrier and the participant of the public relations.

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