

VICTIMS AND CRIMINAL JUSTICE IN SPAIN

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Definition

Victimisation is the direct or indirect effect of the harm resulting from a criminal act. Victimisation assumes that a person, group or social sector is or was damaged or injured as a result of a crime or misdemeanor.

Victimology is directly and mainly concerned with persons affected by a criminal act; in this connection, it also looks into aspects related to prevention and bio-psycho-sociological treatment.

Victimology aims at studying the damage suffered by people and caused by a criminal act, excluding those resulting from physical agents not dependent on an individual's will.

By enhancing communication between citizens and the legal system, as well as by improving criminal proceedings and policing, victimology contributes towards restoring social equity and justice.

Analysis of victimology

In Spanish society there is a strong belief that "delinquents have more rights than victims"; this leads to an excessive focus on the delinquent, to the neglect of the victim. Nevertheless, the victim has a leading role in the political/criminal justice system. In fact, most crimes become known because they are reported by the victim. Victims, therefore, hold the key with which to set the legal system in motion.

Victims' behaviour is not always homogeneous. The possible reactions are: either the victim reports the criminal event or chooses to be silent.

Behavioural factors which lead the victim to report a crime, including his collaboration in clarifying the criminal events and arresting the responsible parties, differ considerably. The main factors that encourage a victim to collaborate with the law include the following:

- desire for revenge;
- economic compensation or recovery of the goods lost;
- to avoid a repetition of the event;
- moral imperative to co-operate with the law enforcement agencies and criminal justice system.

On the other hand, the various factors which discourage the victim of a criminal act from reporting to the authorities include:

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- psychological impact caused by the criminal act on the victim (fear, depression, self-accusation mechanisms, etc.);
- feeling of impotence or vulnerability, mistrust of the criminal justice system, etc.;
- avoidance of further damages (the so-called "second victimisation": economic and work-related damage, feeling of humiliation especially in the case of rape, possible retaliations, etc.).

Having identified the factors which lead to citizens' non-participation and lack of co-operation with the criminal justice system, it is necessary to obtain a higher level of participation by either removing or soothing the negative effect of the above-mentioned factors.

First of all, the system's infrastructure - that is to say, the means available in terms of personnel and equipment - should be taken into consideration. There should be a sufficient number of police officers to counteract existing criminality, and they should be geographically distributed over the territory in an operative manner and equipped with material means in accordance with the circumstances.

Second, it would be necessary to change and improve the operational action not only of the police, but also of each component of the criminal justice system. As regards the police forces, an improved and greater, albeit still insufficient, commitment can be observed.

Finally, specific programmes of prevention, assistance, rehabilitation and treatment of the victim should be formulated. In brief, the following programmes could be developed:

- assistance to the victims, providing them with services which meet both their physical and psychological needs;
- compensation or refund on the part of the offender. These procedures are largely adopted in the USA;
- compensation to the victim, based on social solidarity toward the victim on the one hand and, on the other, on the government's need to refund costs resulting from a crime that was not prevented;
- assistance to the victim/witness: this is related in particular to the victim who has to act as a witness in the criminal proceedings.

Present trends

Historical/judicial perspective

At one time it was left to the victim or his relatives to take the law into their own hands against the offender, his family or patrimony. This was carried out in the manner and for the duration considered appropriate by the offended party.

This stage of absolute private revenge was followed by another stage which was also private but of a proportional character, represented by the so-called "Law of Retaliation": "An eye for an eye, a tooth for a tooth". This was a juridical expression which put an end to any excessive action provoked by an unreasonable feeling of revenge, by establishing a sort of proportionality between the injury suffered and its compensation.

Gradually, as a result of the development and civilisation of human society, the various governmental structures, through their power network, have enlisted the rights of the victim, thus building up a compendium of juridical rules which is reflected in the lawsuit, in order to rationalise and humanise the response to the criminal act and the punishment procedures.

This reduction in the power of the victim reached its historical peak with the enforcement of "ius puniendi" by the modern state, which thus assumed the exclusive right of judging and punishing, as well as the undisputable duty of protecting and defending each and every member of society.

Throughout this continued process of juridical integration, some legal bodies emerged either as a reflection of, or as forerunners to, the individual's right to his personal defence and to punish for the injury suffered. Some of these legal institutions that are worth mentioning include:

- legal assistance; this consists in providing information on the offended party's right to legal assistance in court proceedings, and as to whether or not to refuse reparation for the loss or injury incurred and compensation for the damage caused by the punishable event;
- the hearing; the offended party can, either personally or through a third-party, follow the progress of the proceedings;
- private prosecution: this provides the victim with private legal assistance at his own expense, and is carried out parallel with the public prosecution represented by the Public Prosecutor;
- people's action: This, in the case of private prosecution, does not really represent the victim but an undefined group of citizens who claim justice together with, or separately from, both the private prosecutor's action or that of the Public Prosecutor.

Social perspective

The normal procedure for the indictment and punishment of the offender aims to protect him from public wrath, such as lynching, and from private revenge, such as the settlement of accounts. This form of protection consists of a long list of rights and resources granted to the offender to strengthen his position and counterbalance the power of the state.

Nevertheless, during this process, due to the natural course of events, the position of the victim has gradually become weaker since most victims relinquished their rights by entrusting the state with their defence, thus reaching the point of confrontation between the state and the delinquent. The victim's role has therefore been limited to that of a mere onlooker which is considered as an excuse to justify the punishment given for the damage caused by the criminal act.

Due to this procrastination by the legal system and to social lethargy, new popular movements have arisen which claim for a greater presence of the citizen during the trials. People who are dissatisfied with the present situation react by forming associations which aim to make society more sensitive to the problems which affect them, or to fight against them.

Among these social movements, the following two groups should be mentioned:

- a) legal associations: groups of people who use the law to defend their own interests or that of society, namely:
- Association of the victims of terrorism;
 - Association of raped women;
 - Association of abused women;
 - Association for the fight against drugs;
 - Associations in support of or against abortion.
- b) self-defence movements: in order to make up for what is considered to be the state, in some districts voluntary associations have arisen to deal with social problems (drugs, delinquency, community unsafety, etc.), or to fight against social groups such as drug addicts, prostitutes, gypsies, immigrants, etc., thus provoking outbursts of violence and public unsafety. Examples of such district movements are listed below:
- nightwatchmen;
 - bodies of armed civilians;
 - defence committees;
 - groups for community safety.

Institutional perspective

Public institutions that are aware of the pressing need of the victim to defend and protect his rights, are taking the necessary measures to stem the problem as far as possible.

Thus, initiatives of a financial nature have been taken to subsidise various private associations, to compensate victims of terrorism, as well as those who suffered from judicial errors, and from damages caused either by the authorities or by public institutions in their official capacities.

In addition to the above-mentioned initiatives, actions in support of victims have been taken by municipal and governmental institutions. For example, piloting projects such as the Offices for the Assistance to the Victims of Crime have been developed in various Spanish cities (Valencia and Bilbao). These offices are responsible for providing legal, practical, health and psychological assistance to those people who were victims of a criminal event.

Although still at the stage of research and discussion, there is an intention to introduce legislation which provides for the right of victims of violent crimes to claim for financial compensation from the state.

Finally, within the framework of the legislative system, reforms in procedures have just been initiated which aim at speeding up and simplifying the proceedings for an immediate and effective counteraction to the criminal event. As a result, the victim should no longer have to wait to satisfy his need for justice and be bothered by the present protracted law procedures.

Police perspective

In addition to giving thorough and special attention to the victim of crime - which is the legal duty and the basic principle of the police forces' activities - special police services have been created within the police force with the aim of providing

appropriate solutions to social problems. Among these services, mention should be made of the Centre for the Assistance to Women, which provides support to women who were victims of sexual or physical assault, as well as of the Groups in Support of Juveniles, which take care of juveniles both as victims and authors of crimes.

It is also worth mentioning other kinds of assistance to the victims of crime, although of a general nature, such as that of the architectural character. For instance, in the police offices, reception areas for reporting have been created - or restructured - so as to separate these areas from that where the author of the crime is kept.

Finally, the creation in each police station of the post of an Inspector who is responsible for contacts with the citizenship - that is to say, to gather the requests and suggestions of his district citizens - is also an effective way of doing more justice to both the real and possible needs of the victims of crime.

