**Lidija Grubić-Radaković**
Judge of the County Court in the City of Zagreb
REPUBLIC OF CROATIA

# THE PROTECTION OF THE VICTIM BEFORE AND DURING THE TRIAL IN THE CRIMINAL PROCEDURE IN THE REPUBLIC OF CROATIA

To speak about the protection of the victim of the criminal act before and during the trial (there is no legal regulation on the protection of the victim after the trial) in the form of direct protection, physical and psychic integrity, represents a problem, and that for the reason that clear procedural provisions on the direct protection of the victim of the criminal act during the penal procedure do not exist. For that I have in mind the circumstance that in our procedural law there is no provision like Article 22 of the Statute of the International Court of Justice from 1991 which envisages that "That International Court will secure the protection of victims and witnesses in its regulations on procedure and evidences. Such protective measures will include, but will not be limited by, the trial conduct in camera and the protection of the victim's identity".

To be fair, our procedural penal law contains provisions by which the victim of the criminal act which is during the trial given the capacity of the injured party and witness, is indirectly protected. Such indirect protection of the injured by the criminal act is envisaged in the provisions on custody, which relate, naturally, to the defendant. In first place an obligatory custody in case of criminal acts that bear a maximum sentence of 20 year (from the 1990. the death sentence was abolished – Constitution of the Republic of Croatia, 22nd December 1990) is prescribed. Furthermore, according to the provisions on the optional remanding in custody, the ground for custody is described in Article 182, comma 2, 2 point 2 of the Law on Criminal Procedure – if there is a founded fear that the defendant would destroy the traces of the criminal act, or if special circumstances indicate that he would obstruct the investigation by influencing the witnesses, accomplices and perpetrators of the coverage of the criminal act, and according to point 3, if special circumstances justify the fear that he might repeat the criminal act or that he would complete the attempted criminal act or he would commit a beforehand threatened criminal act, and point 4 – for criminal acts for which a sentence to 10 years of prison or a heavier punishment could be ruled, and that for the way by which it was committed, the consequences and other circumstances when remanded custody is indispensable for the security of persons.

The only legal provision which is directly related to the possible protection of the injured party in the role of witness for the duration of the trial, that has in fact the purpose to enable better qualites of witness' deposition, who refuses to give his testimony in the presence of the defendat. The legal provision of Article 310 of the Law on criminal procedure of the Republic of Croatia envisages the possibility that the Court's Council can exceptionally decide to remove temporariy the defendant from the Court, if the co-defendant or the witness refuses to give his testimony in his presence, or if circumstances indicate that in the defendant's

presence he would not speak the truth. However, the same provision envisages that after the defendant will be admitted to the Court's session, this deposition will be read to him, and after that he has the right to ask questions to such witness or co-defendant and a confrontation can be arranged.

The lack of other provisions that would regulate the direct protection of the victim of the criminal act does not mean that many provisions which relate to the protection of the interest of the injured party, for which the criminal procedure has been eventually undertaken, do not exist in the Law on Criminal Procedure. In this place it is necessary to clear the terms that relate to the victim, because in the moment of processing the victim assumes the capacity of the injured party – witness, and might be qualified as private plaintiff if a procedure started by private initiative is about, while he assumes the role of subsidiary plaintiff in the moment when the prosecution recede from the penal persecution in criminal act that are persecuted according to the Law by official duty. So the Law envisages that the victims of criminal acts in the role of private plaintiffs and injured parties have the right during the investigation to draw the attention to all the facts and propose evidences which are important for the establishment of the criminal act, for the discovery of the perpetrator of the criminal act and the establishment of their damage claims. At the main hearing they have the right to propose evidences, to examine the defendant, the witnesses and the court experts, and to make remarks and give explanations regarding their depositions, and even to make other statements and give other proposals. The injured party, the injured party as claimant and private plaintiff have the right to inspect the acts and to examine the objects that serve as evidence. They can be only temporarily denied to examining particular acts, respectively examining objects, if special reasons of the defence or the security of the nation request, but this refusal may last only until they will not be informed that the investigation was completed, or while the injured is examined as witness. The injured, furthermore, has the right to pursue criminal prosecution in the case that the State Attorney abandons criminal prosecution, irrespective of that if the criminal procedure is undertaken ex officio or by private initiative, not only that he has the right to place a claim for damages but he has to be counseled by the Judge in relation to this right, hence he has the right to material satisfaction and this immediately in the penal procedure. A whole series of special provisions relate to minors as witnesses, who can be convoked by the Court and examined with a special consideration and undertaken with the knowledge, presence and help of the parents, tutors or special professionally trained personnel.

However, experience indicated to the necessity of introducing leal provisions that would enable not only the protection of the interests of the victim, but the protection of his psychic and physical integrity as well. A whole series of criminal acts in their characteristic are connected with the violation of the physical and psychic integrity, when it is about the physical person as object of criminal conduct (if we make an exception for the violation of property), and by all means the dark figure in reporting on criminal acts and perpetrators is connected to a great extent to the lack of protection from possible retaliation of the perpetrator or his accomplices. This has to be pointed out especially in relation with the circumstances in which our State found itself, and that is the state of war recently terminated, which unavoidably (because this is, unfortunately, a side-effect) brought to the growth of criminality whose main characteristic is violence to persons and property. The appearance of various combinations of criminal acts connected with one or more perpetrators was noticed. Perpetrators in collective executions such as committing heavy personal injuries, murders and all these in combination with robbery, extortions, blackmailing, kidnapping and rapes.

There are two problems of procedural regulation as possible solutions of the efficient conduct od penal procedure before us. The first problem is the solution of the dark figure of unreported criminal acts and perpetrators, and the second problem is linked with the procedure itself and the effort that the evaluation of the criminal act witness' deposition, on which evidence is in great part the decision of the court based on, should be of the highest quality as possible. To explain this second problem, it should be noted that in a greater number of criminal acts connected with violence the victim in itself represents the personal and material evidence necessary to assess a fact (the witness' testimony as an indirect evidence and injuries/wounds as direct evidence).

As a possible motivation for reporting the criminal act the necessity imposes to introduce provisions on police protection in the phase of the police investigation and procedure (because investigation in our Law on criminal procedure is the competence of the Court). I omitted the protection of the injured party in the phase of the main hearing on purpose, because at that stage of the criminal procedure evidences have been already collected to the greatest extent, which diminishes in itself the risk that the victim could bear consequences for the act of reporting of the act. The decision of extending such protection should be at the disposal of the police investigator and the Investigating Judge. A more comprehensive solution in the form of the institutionalization of the social work service within the criminal procedure, including the pre-penal procedure (the police phase when it exists before the Court investigation procedure) is envisaged too. In the case the criminal procedure provisions would assume a social security prevention form the moment of the start of the pre-penal procedure, through the phase of the investigating procedure until the main hearing, but any possibility that the rights of the injured/witness in the procedure are widened or limited should be excluded.

The second proposal would be connected with a possible solution in the criminal procedure provisions that would be connected with the evaluation of the deposition of the injured party (victim) as witness and therefore to a more correct Court decision.

The proposals for legal solutions are the following: the institutionalization of interdisciplinary help by experts, ad hoc establishing of a group of experts within the organization of justice, the disposal of determined employed specialists who would, depending on the need for the search of processual subjects (police, the presiding Judge, the Second level Court) give expert help and advice with the same level of evaluation as in the case of expert opinions. The purpose of the existence of such permanent group of experts is to provide the maximum of objectivity, because by institutionalization possible influences of interested parties on the result of the procedure would be rendered impossible.

I speak about the group of experts because of the need of interdisciplinarity, and since that experience so far indicate the need for multi-sided analysis of the person (its behaviour, his approach to reality, possible contribution to the commitment of the criminal act, social conditioning and alike). When it is about criminal acts where confronted depositions with a minimal number of other qualitative direct or indirect evidences are taken into account, the the Court is brought to the situation that it evaluates only these depositions. By doing this, our procedural Law envisages maximal possibilities of objectivisation of the evaluation of the defendant's defense, especially through psychiatric and psychological findings, and therefore on the basis of the evaluation of the structure of the person and its behaviour (tendency to aggressiveness, psychopathological traits, neuroticism, depnedencies and alike) it is possible to assess the existence or not of his criminal conduct which is the object of the criminal

procedure. The evaluation of the behavior of the injured has been object of the free conviction of the Judge, irrespective if this evaluation was made according the procedural system by the jury, or the Court Council consisting of professional judges and jurros as members of the Court.

It is my opinion, therefore, that existing legal solutions do not satisfy completely because they do not offer a solid guarantee to the victim that it will be granted the protection of the society against a possible chicanery, that its deposition wll be maximally objectively evaluated and from all sides, as well as the motif for reporting the act, and finally and the most important thing – that the material truth could be assessed in the procedure with the maximal level of possibilities. In doing this, it has to be pointed out that in the effort to find solutions we should have constantly in mind the rights of the defendant, so that we do not give up any other postulate of the criminal procedure in the actual legal solution (directness, contradictoriness, presumption of innocence, and in dubio pro reo).

It has to be pointed out that existing legal solutions in the Republic of Croatia in a great measure correspond with all prescribed norms od the international conventions on the protection of human rights accepted so far, and the proposed solutions which would be included into the project of the criminal procedure law that will appear shortly in a debate before the Parliament of the Republic of Croatia, are result of the experience from Courts' practice, in relation with the circumstance of the growth of determinate types of criminal acts, gradual changes in the way how criminal acts are carried on, social structure of the perpetrators, and victims of the committed criminal acts too.

It should be noted that despite there are in Croatia indications of the appearance of organized crime, it has not reached yet that level as in some countries of Europe and the world, so that for indicated solutions up to now there was no urgent need shown. As it is realistic to expect the growth of such type of crime, the need surfaces for the legal regulation of the protection of the victim and witness from attempts to prevent his deposition.