

Evolving Human Rights Conditions for Victims in Georgian Legislation

Abstract

Under the Georgian Criminal Procedure Code, a victim is defined as an individual or entity suffering harm due to criminal actions. The rights and responsibilities of such persons have evolved across various legislative periods. Victims encompass both natural and legal persons, the latter represented by individuals authorized to review the decree acknowledging the victim status. Typically, legal entities are victims of property crimes, whereas crimes against the state and drug offenses, governed by public and state order considerations, do not fall under this category. Beyond tangible rights, recent legal reforms have adopted a more profound approach towards victim support, acknowledging the significance of psychological well-being alongside physical health. This shift aims to safeguard victims from secondary victimization, which could exacerbate their plight. The current state of victims' human rights is a pressing issue, meriting attention due to existing challenges and the Constitutional Court's deliberations on victims' rights.

Keywords: Victim Rights, Victimization.

Introduction

The Georgian Criminal Procedure Code defines a victim as "a state, natural, or legal person who has suffered moral, physical, or property damage directly as a result of a crime."¹

The landscape of victims' human rights within Georgian legislation has witnessed significant transformations. These shifts have been propelled by a blend of factors, including the state's evolving stance on the matter and international influences. The systematic examination of

¹ Criminal Procedure Code of Georgia, Article 3, Part 22.

victimology, coupled with an in-depth analysis of victims' rights and their psychological wellbeing, has underscored the importance of addressing victims' rights. Additionally, the reality in Georgia has been marked by pivotal decisions from the Constitutional Court, prompted by the deficiencies in victims' rights.

This topic has gained prominence against the backdrop of global trends, with victims' rights increasingly taking center stage internationally. The human rights and psychological state of individuals affected by crime have been scrutinized repeatedly by the International Court of Justice. Notably, several verdicts against Georgia have led to the imposition of specific obligations on the Georgian state, highlighting the international community's attention to the treatment of victims.

1. Historical Overview of the Victim's Rights Situation

According to the Criminal Procedure Code of Georgia of 1998 of February 20, the victim had a broad right-in particular: the victim could avoid the person participating in the process. He / she could make a motion to conduct investigative actions and could request to participate in the investigative action, the victim would be informed at any time without any restrictions about the materials of the criminal case and the material evidence attached to the case. The victim was entitled to submit evidence on the case himself. In the context of the subsidized accuser affected by the same code, he supported the prosecutor's accusation. It is interesting that the rights of the victim were so broad that he could continue to play the role of the accuser independently of the prosecutor. It is also interesting that if the victim refused to complain, the criminal prosecution of the case was terminated. A person who was considered a victim in the case had the right to appeal the judgments received by the court on appeal and Cassation.²

Under the Criminal Procedure Code of 1998, the power to officially recognize an individual as a victim or their successor was vested in either the prosecutor or the investigator. Additionally, a first-instance judge had the authority to acknowledge someone as a victim during the criminal case review process. It's important to note that the legal framework at the time was acquainted with the concept of a victim's representative.³

The code also established the institution of preliminary investigation, during which victims were entitled to avail themselves of legal protection services. In cases where the victim was a minor, legally incapacitated, or disabled, the involvement of a legal representative was

² Tumanishvili, G., "Victim in Modern Criminal Procedural Law," Law Journal, No. 2, 2009, p. 75.

³ Criminal Procedure Code of Georgia (1998), Article 70.

mandated. This requirement was equally applicable in situations where the victim suffered from health issues, notably in cases identified as involving crimes of trafficking, underscoring the legal system's commitment to providing necessary support to victims under various circumstances.⁴

The provision of such expansive rights to victims could potentially complicate legal proceedings, particularly in cases where the dispute was private and the state's involvement was minimal, barring the interest of the prosecutor or specific exceptional circumstances. This scenario mirrors historical practices where victims themselves sought to redress injustices, a concept discussed in Cesare Beccaria's seminal 1764 treatise, "On Crimes and Punishments." Beccaria argued for the essential function of the criminal justice system to protect society by deterring law violations, emphasizing the crucial role of state intervention in combating crime as early as the 18th century. Despite the longstanding recognition of this principle, the broadening of victims' rights in recent times has sparked debates and protests, signaling a clear demand for reform and evolution in how victims' roles are defined within the criminal justice system.

2. Fundamental Changes in the Criminal Procedure Code

In 2010, Georgia introduced a fundamentally revised Criminal Procedure Code. This new code transitioned the country's legal process from an inquisitorial system to an adversarial system, aligning more closely with practices common in jurisdictions with common law traditions. Under this reform, victims were no longer considered active participants in criminal proceedings but were instead assigned the full scope of witness responsibilities, alongside additional rights such as the right to be informed.⁵

The revised Criminal Procedure Code, effective from 2010, streamlined the process to recognize an individual as a victim. It eliminated the necessity for a court decision or the initiation of court proceedings; merely the occurrence of a crime and the identification of an affected person or their legal successor were sufficient grounds for victim status recognition. A significant departure from the earlier legislation is that the authority to recognize someone as a victim now solely rests with the prosecutor, removing this power from both the court and the investigator. The 2010 Code, with its subsequent amendments, essentially redefined the

⁴ Criminal Procedure Code of Georgia (1998).

⁵ Tumanishvili, G., Jishkariani, B., & Schramm, E., "Influence of European and International Law on Georgian Criminal Procedural Law," Meridian Publishing House, Tbilisi, 2019.

role of the victim in the legal process, limiting them to the capacity of a witness for the prosecution and restricting their access to case materials.⁶

The substantial curtailment of previously broad powers inevitably led to dissatisfaction among affected individuals who sought to retain more extensive rights. Furthermore, on October 25, 2012, a pivotal legal milestone for European nations regarding victims' rights was established with the adoption of Directive 2012/29/EU. This directive aimed to "establish minimum standards on the rights, support, and protection of victims of crime," replacing Framework Decision 2001/220/JHA, and it prompted the Georgian state to consider modifications.

This directive, alongside the resultant calls for change, catalyzed a new wave of reforms in the criminal justice system in 2014. These reforms were designed to bolster the victim's role within criminal proceedings and to ensure maximum protection of victims' interests. These efforts were particularly focused on aligning with the principles of criminal procedure, notably the adversarial principle, thereby reflecting a commitment to integrating international standards on victims' rights into national legislation.⁷

The legislative reforms of 2014 endowed victims with significant rights, notably the right to access case materials during the investigation phase and, crucially, the right to challenge certain decisions made by the prosecutor. I consider the provision allowing victims to familiarize themselves with case materials to be adequately comprehensive within the context of victim rights. However, it's important to acknowledge that expanding victims' rights further could potentially lead to actions that might impede the investigation's objectives.

In Georgia, accessing criminal case materials presented challenges, particularly because Article 57, paragraph "H" of the first part of the Criminal Procedure Code of Georgia restricted victims from obtaining copies of these materials. This limitation highlighted a critical area of concern in ensuring transparency and fairness for victims within the legal process, underscoring the delicate balance between protecting victims' rights and safeguarding the integrity of the investigation.

3. Impact of the Constitutional Court on Victim Rights

The legal framework regarding victim rights underwent a significant amendment following a Constitutional Court decision on December 18, 2020. This decision enabled victims to obtain

⁶ Gakhokidze, J., Mamniashvili, M., & Gabisonia, Y., "The Criminal Process: A General Part," Tbilisi, 2013.

⁷ Explanatory Note to the Draft Law of Georgia on "Amendments to the Criminal Procedure Code of Georgia."

copies of case materials, marking a pivotal shift. The Court found the stipulations of Article 57, paragraph "H" of the first part of the Criminal Procedure Code—specifically, the blanket prohibition against victims receiving copies of case materials—to be in conflict with Article 18(2) of the Constitution. This constitutional provision upholds an individual's right to access information held by public institutions. As a direct consequence of the Court's ruling, victims were accorded the right to both review and obtain copies of case materials, thereby enhancing transparency and access to information within the legal process.⁸

Prior to 2018, the Georgian Constitutional Court, through its decision on December 14 (cases 2/12/1229, 1242, 1247, 1299), expanded the scope for challenging the recognition of an individual as a victim. This expansion allowed appeals regarding the victim status determination not only for particularly grave offenses but also for serious and less serious crimes, broadening the legal avenues available to victims seeking redress and recognition within the criminal justice system.⁹

In recent years, Georgia has seen an uptick in cases related to femicide, domestic crimes, and victims of these types of offenses. This increase underscores the need for enhanced legal support for individuals impacted by such crimes. According to the provisions of the Criminal Code of Georgia, specifically under Article 111 pertaining to domestic crimes and Article 1261 related to domestic violence, victims facing financial difficulties are entitled to free legal assistance. This support is available at any stage of the criminal proceedings, provided that the victim does not already have legal representation. Moreover, the entitlement to free legal aid for individuals affected by domestic violence, as stipulated under Article 111, is granted based on criteria set forth in the Georgian law "On Legal Aid" and is to be administered according to the regulations of the same law. This measure is part of a broader effort to ensure that victims of domestic violence and crimes have access to the necessary legal resources, reflecting a commitment to upholding their rights and facilitating justice.¹⁰

These legislative amendments manifest Georgia's intent to align its victim-related laws with international norms. The evaluation of victims' needs, alongside international directives, reveals a critical insight: varying categories of rights within the criminal process are essential for victims to avoid secondary victimization. Achieving a balance—a golden mean—between

⁸ Constitutional Court of Georgia, Decision on the case N1/3/1312, "Konstantine Gamsakhurdia v. Parliament of Georgia," December 18, 2020, resolution part.

⁹ Constitutional Court of Georgia, Decision on the case of citizens Khvicha Kirmizashvili, Gia Patsuria, and Gvantsa Gagniashvili, and "Nikani Ltd" against the Parliament of Georgia.

¹⁰ Criminal Procedure Code of Georgia, Articles 57-58.

granting undefined rights and the risk of disenfranchisement is pivotal. It ensures that victims possess rights that meet international standards, safeguarding their dignity and supporting their recovery journey effectively. This approach underscores the necessity of a nuanced, rights-based framework within the criminal justice system that meticulously respects and upholds the rights of victims.

Conclusion

Reflecting on the discussed points, it is evident that the victim plays a pivotal role in the judicial process, serving as its fundamental initiator. Without the occurrence of a crime, there would be no basis for accusing individuals or engaging other parties in the legal proceedings. Within the context of Georgia, victims are endowed with considerable rights. From my perspective, granting victims access to criminal case materials might potentially complicate the investigative process, as there's a risk of victims attempting to take justice into their own hands. However, it remains a fact that in Georgia, victims are entitled to this right.

Comparatively, victims' rights and responsibilities vary across different nations, yet many modern European countries, including Georgia, are moving towards enhancing these rights in alignment with the Council of Europe's directives. This trend signifies a progressive effort to ensure that victims' rights are not only respected but also progressively improved, aligning with broader European standards and demonstrating a commitment to upholding the dignity and rights of victims within the criminal justice system.