

# VICTIMS OF SEXUAL OFFENCES AS PARTICULARLY SENSITIVE WITNESSES

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**Abstract:** The authors address the conditions for improving the procedural position of all victims, with a particular focus on victims of sexual offenses, in order to reduce the effects of secondary victimization. Through legislative, descriptive, and comparative methodological approaches, the paper examines relevant issues related to the development of the legislative and institutional framework in the Republic of Serbia, which provides support, assistance, and protection to victims of sexual offenses. Crimes in the domain of sexual relations are among the most severe forms of criminal behavior, as they cause serious and far-reaching consequences that go beyond the usual degree of harm or endangerment to protected rights. In addition to the primary victimization suffered, victims or injured parties also endure various forms of secondary or even tertiary victimization due to the prosecution of these crimes and their perpetrators. Society has a duty to undertake appropriate measures and formal social responses to this criminal phenomenon and the treatment of its victims. By adopting international standards and criminalizing various forms of sexual offenses, Republic of Serbia has initiated the process of improving its legislative and institutional framework to combat these types of criminal behavior. It should be emphasized that, through the adoption of a strategic document and an action plan for its implementation, Republic of Serbia has demonstrated a clear commitment to international standards regarding the assistance, support, and protection of victims and witnesses of all crimes, including those involving sexual violence and moral offenses.

The establishment of the National Network of Victim and Witness Support Services, along with the definition of their competencies, has also introduced the obligation for procedural authorities—including public prosecutors, courts, and police as investigative bodies to conduct individual risk assessments of victims' vulnerability to secondary victimization from the moment a crime is reported. This risk assessment serves as a basis for providing professional assistance, support, and protection from relevant authorities, organizations, and institutions. In this context, it is important to highlight that procedural authorities, before determining the status of a particularly vulnerable witness in a specific case, may obtain the opinion of an assistance and support service or an expert. The goal of this paper is to highlight the fact that conditions are being created in Serbian Criminal Law practice for further improvement in the treatment of victims of sexual offenses. The authors particularly emphasize a good practice example aimed at improving the position of victims of serious crimes, including sexual offenses. Specifically, the paper highlights the guidelines issued by the Supreme Court of the Republic of Serbia to competent authorities regarding property claims of victims. In conclusion, it is noted that by adopting the National Strategy on the Rights of Victims and Witnesses of Crime, along with its Action Plan for implementation (2020–2025), Republic of Serbia has expressed a clear stance on the application of minimum international standards for victim and witness support, as outlined in EU Directive 2012/29. Amendments and modifications to the provisions of the Criminal Procedure Code serve as undeniable confirmation of this commitment.

**Keywords:** *sexual offenses, victims, witnesses, social response, assistance services.*

**Field of study:** Social Sciences – Law

## 1. INTRODUCTION

Only through legally conducted criminal proceedings the state has the ability to prosecute and sanction individuals who have committed crimes against protected interests (Totić, 2024, 70). The ability to freely choose a sexual partner is human right guaranteed by wide range of legal acts. This concerns intimate sphere of an individual, which is protected by the Criminal Law norms of modern states. Practice shows that criminal offenses in the area of sexual relations are present to a certain extent in everyday life. To determine the scope and societal danger of this type of delinquency, the existence of a presumed, so-called high dark number of undetected or unreported cases must be taken into account along with the severity and far-reaching consequences of these crimes. Looking at the current situation in the Republic of Serbia, it is evident that the Criminal Code criminalizes multiple forms of sexual delinquency. This approach undoubtedly deserves praise, as it demonstrates the legislature's unquestionable commitment to following developmental trends and criminalizing all acts that, in practice, violate protected rights and must be safeguarded.

However, from the moment victims or injured parties report these crimes and their perpetrators

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until the conclusion of criminal proceedings, they often face additional traumatic experiences, leading to a sense of secondary victimization. Certainly, the biggest challenge for victims of such crimes is appearing at various stages of the proceedings, repeating their testimony, and potentially facing the perpetrator during trial. This procedural position of victims can, in specific situations, be alleviated by granting them the status of a particularly vulnerable witness, ensuring that relevant state authorities treat them with special care, acknowledging the seriousness of their circumstances. Typically, this applies to cases where the victims are minors, elderly individuals, persons with disabilities or women, especially when the nature of the crime has left severe psycho-emotional consequences that could be exacerbated by the criminal proceedings. Thus, the effective prosecution of crimes against sexual freedom is a complex task that must be addressed through the coordination of various institutions, including the police, prosecution, judiciary, healthcare institutions, social support centers and civil society organizations. Their work should be further strengthened by involving experts with specialized knowledge and experience in working with particularly vulnerable social groups. In line with these efforts, Republic of Serbia in 2020 adopted the National Strategy on the Rights of Victims and Witnesses of Crime (2020–2025) along with an accompanying Action Plan. This document outlines numerous activities in order to improve the position of victims in a comprehensive and systematic manner, regardless of the type of crime. Additionally, various activities have been planned and implemented to enhance the position of particularly vulnerable categories of victims before, during and after criminal or misdemeanor proceedings. Therefore, the objective of this paper is to analyze the scope of these activities and provide potential recommendations for improving the procedural position of victims of sexual offenses.

## 2. CHARACTERISTICS OF SEXUAL OFFENCES

Behaviors in the field of sexual relations that go beyond the boundaries of voluntary sexual acts or natural sexual intercourse are considered criminal behaviors and are referred to as sexual delinquency or sexual offenses. Defining such behaviors is challenging, but it can be stated that they involve sexual contact where one partner unwillingly consents to it or participates without understanding the meaning and consequences of the actions, thereby violating the individual's right to sexual self-determination, freedom and sexual inviolability (Mungee, 2019, p.2). These behaviors represent asocial, antisocial and deviant acts characterized by phenomenological heterogeneity, which violate the sexual integrity, freedom and morality of another person. Such criminal behaviors manifest as criminal offenses and fall within the category of the most socially dangerous acts. The manifestations of sexual offenses often include sexual violence, which involves force, threats and coercion in sexual relations, or the absence of voluntary consent to a sexual act. They can also manifest as sexual abuse or exploitation, involving the misuse of positions of physical or social dependency and hierarchical relationships between the subjects of the criminal case. Additionally, criminalized behaviors in the realm of sexual relations include sexual harassment, which can take the form of various pressures with sexual connotations on another person, thereby violating sexual integrity (Babović & Reljanović, 2020). Forms of sexual offenses also encompass sexual exploitation of others, which may include criminal acts such as human trafficking, facilitating prostitution, procurement and enabling sexual acts, creating, obtaining, or possessing pornographic material, exploiting minors for pornography, encouraging a child to witness sexual acts, or using computer networks or communication tools to commit sexual offenses against minors. Victimization from these acts has a range of effects, including on the physical health of victims, their employment or education prospects, finances and emotional well-being (Walklate, 2007). Victims of sexual offenses often endure physical consequences such as bodily harm, the transmission of infectious diseases, loss of sexual "innocence," unwanted pregnancies and even loss of life. However, these acts also cause internal changes in their psychological well-being, leading to mental suffering that is not immediately visible to the outside world. As a result, victims experience psychological harm, which can realistically lead to mental health issues such as apathy, depression, fear, anxiety, sleep and eating disorders, frigidity and a tendency toward social pathologies (Bošković, 2020).

In addition to the direct violation of the sexual integrity of the passive subject in such crimes, victims may experience other unpleasant and negative feelings and situations, such as humiliation, shame, loss of self-confidence, feelings of inferiority, loss of motivation for professional advancement, job loss, termination of emotional relationships, divorce, fear of the crime being repeated, blackmail and threats from the perpetrator and social condemnation from their community or family (Simeunović Patić, 2021, p. 701). Besides primary victimization, victims of sexual offenses are often subjected to secondary victimization, beginning from the moment the crime is reported or discovered and continuing during pre-investigation and criminal proceedings, and even after their conclusion. Secondary victimization occurs when the

victim is stigmatized by surroundings, accused of being responsible for the crime, or forced to relive the trauma through repeated accounts of the incident to unsympathetic individuals. Such exposure can lead to permanent stigmatization and social marginalization (tertiary victimization) (Ignjatović & Simeunović-Patić, 2023). Research shows that victims are often women, who generally prefer to provide statements to female officers, feeling more comfortable in such situations. This is understandable, as perpetrators of sexual offenses are predominantly male. Female victims are also embarrassed to answer sensitive questions posed by men (Chatorraj, 2006, p. 90). Additionally, sensationalist media reporting on criminal cases poses another significant issue. All these factors inevitably are the reason why there is so many unreported or undiscovered sexual offenses, referred to as the “dark number” of crimes. A noteworthy characteristic of these offenses lies in the offenders, particularly considering criminogenic factors such as causes, conditions, motives and triggers of their deviant and criminal behavior. This is especially significant in cases of recidivism in sexual offenses and the offender’s resocialization (Radojković & Petković, 2017, p. 84). These crimes occur in everyday life or under penitentiary conditions (Pavlović & Radojković, 2016, p. 77), during peacetime or wartime, often motivated by “revenge” stemming from racial, ethnic or national animosity. In many cases, the perpetrator and victim knew each other before the criminal incident (Kipane, 2016, p. 2). Attacks by known perpetrators are more emotionally devastating than those by strangers, as they involve a breach of trust and repeated victimization (Linden, 1999, p. 686). Even listing all the elements of the criminal phenomenon of sexual delinquency would not exhaust the complexity of its essence as a socially harmful phenomenon. A crucial aspect of addressing this specific form of crime lies in the existence of a systemic social reaction and control, both formal and informal. Especially important is the development of a national normative and legislative framework that will enable support for victims or injured parties in cases of sexual offenses.

### **3. THE CRIMINAL PROCEDURE STATUS OF SEXUAL OFFENCES VICTIMS IN THE REPUBLIC OF SERBIA**

When analyzing the criminal procedure status of these victims, it can be stated that it varies depending on their age. The criminal procedure status, assistance, support and protection of minors are largely regulated by provisions on conducting special criminal proceedings when the victim or perpetrator is a minor. In the Republic of Serbia this is regulated by the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles and the Law on Special Measures for Preventing Sexual Offenses against Minors. As for adult victims, their procedural status or legal position is the same as for the other criminal offenses. In such cases, regular proceedings are conducted against the perpetrator, regardless of the possible traumatic state of the victim. Procedural authorities are mindful of victim protection, though their actions are limited by the legal framework. Measures prescribed by law are calibrated in such a way that they do not excessively infringe on the rights of the defense. This, however, contributes significantly to secondary victimization. In specific cases involving sexual offenses, Criminal Procedure Code provisions regarding particularly sensitive witnesses may be applied (Lečić, 2021). According to these procedural rules, the public prosecutor may issue the decision granting the status of a particularly sensitive witness. Also, the president of the panel can do this. In both cases, it can be done either *ex officio*, at the request of the parties or of the witness. If deemed necessary to protect the witness’s interests, the court may also appoint a legal representative. A particularly sensitive witness is determined based on factors such as age, gender, health condition ... A witness granted this status cannot be directly questioned but only through the procedural authorities, and must be treated with special care, avoiding potential harmful consequences for personality, physical and mental state. Importantly, the questioning of such witnesses may involve psychologists, social workers or other professionals and can be conducted at their home or another suitable location, using technical means for audio-visual transmission. This ensures the process takes place without parties in the proceedings. Additionally, this type of witness cannot be confronted with the accused unless they request it. The procedural authority decides on this, considering the witness’s sensitivity and the rights of the defense. In practice, this method of questioning is also applied in cases of organized crime or war crimes (Totić, 2024, 107). Despite these procedural rules and possibilities, various issues in implementing the aforementioned provisions have been observed in judicial practice, which will be discussed in more detail in the next chapter.

To prevent the effects of secondary and repeat victimization, the Republic of Serbia in July 2020, under its obligations from Chapter 23 (Judiciary) of the European Union accession negotiations and with the support of the OSCE Mission, adopted the National Strategy on the Rights of Victims and Witnesses of Crime for the period 2020-2025, along with an accompanying Action Plan for 2020-2022 and 2023-2025. This strategy aims to establish minimum standards for the rights, support and protection

of victims and witnesses of criminal offenses in line with EU Directive 2012/29 (Bejatović, 2020, 14). This strategic document envisages the formation of a National Network of Services for Support to Victims and Witnesses, composed of existing and newly established services and contact points for informing victims and witnesses at higher courts, public prosecutors' offices, police departments, social work centers, healthcare institutions and civil society organizations. Within the framework of the National Network system, victims and witnesses are provided with primary (general) and secondary (specialized) support and assistance services. Primary services include providing necessary information on the rights and status of victims and witnesses, protection from secondary victimization, ensuring professional interviews with the victim or with their assistance in specially designated or adapted premises, allowing interviews with the victims without their physical presence via audio-visual links, providing free legal aid and ensuring the right to use their language with oral or written translation. This category of services and measures also includes providing information about available support services and secondary assistance services, as well as direct referrals to them. It entails the assessment of victims' specific needs to identify them and prepare an individualized risk assessment for secondary and repeated victimization, privacy protection, advice on the financial or practical consequences caused by the crime (how to compensate for damages and costs incurred during the proceedings)... Also, victims are informed about whether the perpetrator has been released and other relevant information.

Forms of secondary support and assistance include providing emotional, psychological and psycho-social support, medical assistance and specific and integrated support to help victims overcome trauma. This is particularly relevant for victims in special categories, such as sexual offenses victims or intimate partner violence, through participation in individual and group rehabilitation treatments. Moreover, this support includes shelter services and temporary accommodations (safe houses) to protect victims from repeat victimization, inclusion in psycho-social and economic empowerment programs and more (Ministry of Justice of RS, 2022). All the above required measures to appropriately amend the existing criminal legislation and the normative framework regulating judicial organization. In this regard, the Draft Law on Amendments to the Criminal Procedure Code, dated September 23, 2024, proposes amendments to the Criminal Procedure Code. These amendments aim to establish, alongside existing rights, the following rights for victims of all criminal offenses, including victims of sexual offenses: the right to an interpreter or translator, right to free and confidential access to support and assistance services, right to submit proposals and evidence to exercise property claims and propose temporary measures for their enforcement, right to be informed about the types and methods of obtaining medical, psychological and other professional assistance, support and protection, right to be examined as a witness without undue delay, a minimal number of times, and only when necessary for the conduct of proceedings... The draft also proposes amendments about particularly sensitive witnesses. The procedural authority, when deciding on the status of the victim, may obtain an opinion from the support services or an expert. The proposed amendment provides a legal framework allowing the procedural authority to use the opinion or individual vulnerability risk assessment of the victim, prepared by other procedural authorities or experts, when deciding about the status of a particularly sensitive witness. This applies to victims of any criminal offense, including victims of sexual offenses. This provision emphasizes the importance of the individual vulnerability risk assessment conducted by the investigative authorities from the moment they become aware of the criminal offense and the perpetrator. This is particularly significant for victims of sexual offenses, domestic violence or any other form of crime involving violence. Although this is a discretionary legal authority of the procedural body, it provides an opportunity to improve the position of the victim as a particularly sensitive witness.

#### 4. DISCUSSIONS

Based on the conducted document analysis, we observe the following. First, it appears that the provisions regarding the determination of particularly vulnerable witness are insufficiently clear in terms of the applicability of the criteria for uniformly assigning this status, which poses a significant challenge in situations where participants in the proceedings lack adequate training and sensitivity. Furthermore, a potential issue is the insufficient trust in institutions, which may operate in an environment of inadequate inter-institutional cooperation and coordination. In a considerable number of cases, prior to the issuance of the relevant decision, an expert assessment of the consequences or the degree of harm or endangerment to the protected interests of the injured party is required. The realization of this assessment can be problematic due to the costs of the proceedings and their reimbursement through the injured party's property claims. In practice, it is often challenging to implement the treatment of a victim of a criminal offense as a particularly vulnerable witness, primarily due to the lack of material and technical resources of the

procedural authorities, especially in the case of lengthy proceedings. The issues may also relate to the fact that the provisions on granting them this status are treated by the procedural authorities as a discretionary procedural category. Decisions regarding this status are often made only during the investigation phase and not from the moment the criminal complaint for the committed sexual offense is filed, which is when the effects of secondary victimization essentially begin. The individual risk assessment and proposal for providing assistance to the injured party can serve as a basis for subsequent actions by the procedural authorities responsible for determining the aforementioned status. We believe that this approach would reduce the potential for arbitrariness, uncertainty and insensitive handling of such matters. Although it is currently overly ambitious to expect that special proceedings will be conducted for sexual offenses where the victims are adults, we consider it entirely realistic that in cases of sexual offenses, victims should be uniformly or, at the very least, more flexibly granted the status of particularly vulnerable witnesses. This status can, in certain situations, be revised. In this context, it would be significant to introduce binding instructions or guidelines as relevant by-laws issued by higher procedural authorities to ensure uniform procedural actions that guarantee equality for injured parties in accessing their rights. In this regard, as an example of good practice regarding serious criminal offenses, which undoubtedly includes victims of sexual offenses, it is important to highlight the Supreme Court of the Republic of Serbia guidelines. These guidelines aim to improve judicial practice regarding compensation to victims of serious crimes. They recommend that competent authorities resolve property claims of injured parties related to these criminal offenses within the criminal proceedings. This approach eliminates the need to redirect injured parties to resolve contentious issues, such as determining the amount of damages, types of non-material damages and establishing monetary compensation amounts (both material and non-material damages) through civil proceedings, as has been the practice so far.

## 5. CONCLUSIONS

By adopting the National Strategy, along with the Action Plan, Republic of Serbia demonstrates a clear commitment to applying the minimum international standards concerning support for victims and witnesses of crimes, as stipulated in Directive 2012/29/EU. In the Republic of Serbia, the process of establishing Victim and Witness Support Services is underway. These services are conceived as partnership services involving collaboration among various entities, such as judicial authorities, police, social work centers, healthcare services and civil society organizations, whose contributions to this issue are highly significant. Their activities and resources play a crucial role when it comes to victims and witnesses of crimes. Steps have been taken to expand the corpus of rights for victims of all criminal offenses, including victims of sexual offenses. Furthermore, by-laws have been adopted that mandate procedural authorities to conduct individual risk assessments of victims' vulnerability to secondary or repeated victimization. The conditions are being created to improve the normative and institutional framework for societal formal responses and control concerning sexual crimes in the Republic of Serbia. This includes attempts to concretize the procedure for determining a particularly vulnerable witness status. Amendments to Criminal Procedure Code stipulate that, before determining this status, the procedural authority may obtain the opinion of the support service or an expert regarding the individual risk assessment of the victim's vulnerability. This creates a unique and necessary continuity of support, assistance and protection for the victim of a sexual crime from the moment a criminal complaint is filed about the offense and its perpetrator. These provisions set the groundwork for treating the determination of the mentioned status as a standard rather than a procedural exception for all victims of sexual offenses, regardless of their age.

Efforts are underway to enhance the technical competencies (specialization and sensitization) of the authorities involved in detecting, prosecuting and adjudicating such cases, as well as in providing support to victims and witnesses. Finally, it should be noted that the primary intention of the authors of this paper was to bring the necessary attention to this issue through an analysis of the scope and degree of improvement in the procedural position of all victims, particularly victims of sexual offenses, to reduce the effects of secondary victimization. At the same time, by providing recommendations for further improving the status of victims of all criminal offenses as particularly vulnerable witnesses, presented in the discussion section of the paper, the authors aimed to offer support to procedural actors, victims and witnesses of criminal offenses.

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