



VICTIMS' RIGHTS IN EU CRIMINAL LAW AND CROATIAN PRACTICE: LEGAL STANDARDS AND IMPLEMENTATION GAPS

Nataša Belamarić, PhD candidate

Constitutional Court of the Republic of Croatia
Trg Svetog Marka 4, 10000 Zagreb, Croatia
natasha.belamaric@gmail.com

Marin Mrčela, PhD, Judge

The Supreme Court of the Republic of Croatia
Trg Nikole Zrinskog 3, 10000 Zagreb, Croatia
marin.mrcela@vsrh.hr

Igor Vuletić, PhD, Full Professor

Josip Juraj Strossmayer University of Osijek, Faculty of Law
Stjepana Radića 13, 31000 Osijek, Croatia
ivuletic@pravos.hr

ABSTRACT

This paper examines the development of victims' rights in European Union criminal law and their implementation in the Croatian legal system. It focuses on the normative framework established at the EU level, in particular Directive 2012/29/EU and related instruments, and analyses how these standards are reflected in Croatian legislation and judicial practice. Special attention is given to the case law of the Constitutional Court of the Republic of Croatia, which provides valuable insight into the practical application of victim protection standards. The analysis shows that, while the Croatian legal framework is largely aligned with EU law, certain challenges remain in practice. These are particularly evident in cases where courts apply procedural rules in a formalistic manner or fail to take into account the psychological consequences of trauma and the specific needs of vulnerable victims. At the same time, certain case law demonstrates a more developed, victim-oriented approach, especially in cases involving children and victims of serious forms of violence. The paper highlights the importance of balancing the rights of victims with the rights of the defence, as well as the need for a consistent application of legal standards. It concludes that the main difficulty lies not in the absence of

legal norms, but in their effective and sensitive application in practice. In this regard, further professional training, greater awareness of trauma-related issues and the strengthening of institutional support mechanisms are essential for ensuring effective protection of victims' rights in line with European standards.

Keywords: *Constitutional Court of the Republic of Croatia, Criminal proceedings, Directive 2012/29/EU, European Union law, European Court of Human Rights, Human rights, Secondary victimisation, Vulnerable victims, Victims' rights*

1. INTRODUCTORY REMARKS IN THE DEVELOPMENT OF VICTIMS' RIGHTS IN THE EUROPEAN LEGAL AREA

From its earliest beginnings, the concept of a criminal offence has involved both the offender on the one side and the victim on the other. Despite this, for centuries criminal law theory developed without giving much attention to the victims and their rights within criminal proceedings.¹ However, over the past few decades, European Union policy has increasingly placed victims' rights at the centre of the area of justice and equality, seeking to make them more visible, accessible and legally empowered. This development reflects broader trends in criminal law and victimology, which increasingly focus on the protection and realisation of victims' rights. Victims are no longer viewed merely as passive participants in criminal proceedings, but as procedural actors with their own interests and rights. This change is closely linked to the evolving case law of the European Court of Human Rights, which, through its interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention on Human Rights; the Convention),² has developed the doctrine of positive obligations of states. In relation to fundamental rights such as the right to life (Article 2), the prohibition of torture (Article 3), the prohibition of slavery and forced labour (Article 4) and the right to respect for private life (Article 8), these positive obligations require states to make measures aimed at ensuring the effective protection of those rights. They also require states to provide victims with access to an effective investigation, genuine and effective access to justice, and mechanisms that protect them from secondary victimisation.

¹ It should be noted that after World War II, particularly in response to the need to study the position of victims of crimes committed during war, religious, racial and political persecution, victimology emerged as a new discipline closely related to criminology. The World Victimology Society was founded in 1979, and in 1985 the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly Resolution 40/34, 29 November 1985). The Croatian Victimology Society was founded in 1991, Available at: [<https://www.enciklopedija.hr/clanak/zrtvoslovlje>], Accessed 20 March 2026.

² Convention for the Protection of Human Rights and Fundamental Freedoms (Konvencija za zaštitu ljudskih prava i temeljnih sloboda), Official Gazette, No. 18/1997, 6/1999 (consolidated text), 8/1999 (corr.), 14/2002, 1/2006, 13/2017, 6/2024.

Although the criminal-law dimension of the European Convention on Human Rights has traditionally focused on protecting defendants and the rights of the defence, its case law has gradually recognised the interests of victims, as they are themselves holders of Convention's rights. These standards seek to establish a fair balance between the rights of the defence and the rights of victims, aligning procedural guarantees of the accused with the rights and interests of victims within criminal proceedings. European Union policy consistently follows these developments through its legislative and institutional initiatives. This reflects how developments in the case law of the European Court of Human Rights have been carried over into the EU legal framework. A key milestone in this regard is Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter: Directive 2012/29/EU; the Directive)³ on victims' rights, which establishes minimum standards on the rights, support and protection of victims of crime within the European Union, guaranteeing access to information, support services and protection from secondary victimisation. Nevertheless, its implementation remains challenging for all Member States, including the Republic of Croatia. Croatian legislation is formally aligned with EU law, and there is a growing recognition in practice of the standards developed in the case law of the European Court of Human Rights, whose influence supports a more consistent application of EU law. However, certain challenges can still be observed in judicial practice, which may limit the effective protection of vulnerable victims. One of the issues that continue to arise is the insufficient understanding of the psychological consequences of effects of trauma, which can affect both the assessment of victims' testimonies and the use of procedural protection mechanisms. In this context, there is a clear need for additional specialised training for judicial officials to improve practice.

2. NORMATIVE FRAMEWORK FOR THE PROTECTION OF VICTIMS AT THE EUROPEAN UNION LEVEL

The Charter of Fundamental Rights of the European Union (hereinafter: the EU Charter)⁴ represents a key legal instrument for the protection and promotion of human rights and fundamental freedoms at the level of the European Union. As such, it is directly relevant to the protection of victims of criminal offences involving violations of fundamental rights. The EU system of victim protection is grounded

³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, OJ L 315, 14 November 2012, pp. 57–73.

⁴ Charter of Fundamental Rights of the European Union, OJ C 202, 7 June 2016, p. 389.

in the core values of the EU Charter, in particular human dignity, the right to life, personal integrity, the prohibition of inhuman or degrading treatment, respect for private and family life, equality and non-discrimination. The right to an effective remedy (Article 47) plays a key role in ensuring that these rights can be effectively enforced in practice. However, victims' rights are primarily developed through directives, whose legal basis lies in Article 82(2) of the Treaty on the Functioning of the European Union (hereinafter: TFEU),⁵ commonly referred to as the Lisbon Treaty. This provision grants the European Union the competence to adopt directives establishing minimum rights of victims of crime. The possibility of further action in the field of victims' rights under the TFEU was announced in the Stockholm Programme, particularly in point 2.3.4., which is specifically devoted to victims of crime.⁶ The improvement of victims' rights, support, protection and participation in criminal proceedings, alongside the detection and punishment of offenders, was identified as a strategic priority by the European Commission in the Action Plan implementing the Stockholm Programme of the European Council (hereinafter: the Action Plan).⁷ The Action Plan recognised victims' rights as an important part of developing the EU area of freedom, security and justice, as well as of strengthening fundamental rights. It also emphasised the need for stronger protection of victims of crime and terrorism through new legislative measures and coordinated action at EU level. Concrete proposals by the Commission were presented in the Communication of 18 May 2011 entitled "*Strengthening victims' rights in the EU*", which set out objectives aimed at reinforcing existing national measures and ensuring that victims of crime, including victims of gender-based violence, trafficking in human beings, sexual exploitation, child abuse and terrorism, enjoy a minimum set of rights on a non-discriminatory basis across the Union.⁸ The Action Plan also called for concrete legislative measures, including a comprehensive framework for victim protection and the introduction of a European Protection Order to ensure effective cross-border protection.

⁵ Treaty on the Functioning of the European Union (consolidated version), OJ C 202, 7 June 2016, p. 47.

⁶ Burić, Z., *Novi položaj žrtve u kaznenom postupku – u povodu obveze transportiranja odredaba Direktive 2019/29/EU u hrvatski kaznenopravni sustav* (hereinafter: 'Burić, *Novi položaj žrtve u kaznenom postupku – u povodu obveze transportiranja odredaba Direktive 2019/29/EU u hrvatski kaznenopravni sustav*'), *Hrvatski ljetopis za kazneno pravo i praksu*, Vol. 22, No. 2, Zagreb, p. 389.

⁷ Androulakis, I., *European Perspectives on Rights for Victims of Crime* (hereinafter: "Androulakis, *European Perspectives on Rights for Victims of Crime*"), *Eucrim*, vol. 9, no. 4, 2014, p. 111; See also The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, OJ C 115, 4 May 2010, § 2.3.4.; and Commission Work Programme 2011, COM(2010) 623 final, § 3.

⁸ Androulakis, *European Perspectives on Rights for Victims of Crime*, *loc. cit.*, note 7.

An earlier step in the development of EU victims' rights is Directive 2004/80/EC on compensation to crime victims⁹, which established a framework for state compensation in cases of violent crime. Its main purpose is to ensure that victims can access compensation even where the offender is unknown or unable to pay, including in cross-border situations linked to the free movement of persons within the EU. By requiring Member States to introduce national compensation schemes and mechanisms of cooperation, Directive 2004/80/EC laid the groundwork for a more structured approach to victim protection, later further developed through instruments such as Directive 2012/29/EU, which will be examined in more details in the following section.¹⁰

2.1. Protection of Victims' Rights through a Horizontal Legal Framework – Directive 2012/29/EU Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime

Directive 2012/29/EU represents the culmination of the implementation of the Action Plan and a significant step forward in the development of EU criminal law. It constitutes a more comprehensive legal instrument, providing clearer rights for victims and more precise obligations for Member States.¹¹ Directive 2012/29/EU builds upon the previous regulatory framework of the European Union, in particular Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. That Framework Decision marked the beginning of EU action in the field of victims' rights¹² and constituted a turning point in the approach to victims within criminal proceedings.¹³ It codified, at the supranational level, rules relating to the legal position of victims that were binding on the domestic legal orders of Member States.¹⁴ While the earlier framework established basic procedural safeguards, Directive 2012/29/EU introduced a more systematic and individualised approach to victim protection and access

⁹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6 August 2004, p. 15.

¹⁰ For more on the theoretical foundations of state compensation for victims of crime, in particular the concept of social solidarity as a justification for State involvement in compensation, see Buck, K., *Can Theoretical Analysis Contribute to a Future European Framework?*, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 2, No. 13, 2005, p.148 -178.

¹¹ Burić, *op. cit.*, note 6 p. 391.

¹² *Ibid.*, p. 387.

¹³ Pavišić, B., *Novi hrvatski Zakon o kaznenom postupku*, Hrvatski ljetopis za kazneno pravo i praksu, Vol. 15, No. 2, Zagreb, 2008, p. 533.

¹⁴ Pemberton, A.; Groenhuijsen, Marc S., *The EU Framework Decision for Victims of Crime: Does Hard Law Make a Difference?*, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 17, 2009, p. 1.

to justice. It also served as a catalyst for amendments to Croatian criminal procedure legislation concerning victims.¹⁵ A key element of Directive 2012/29/EU is the requirement to carry out an individual assessment of each victim's protection needs, particularly in cases concerning vulnerable victims. This approach allows protective measures to be adapted to the specific circumstances of each victim, while at the same time maintaining a balance between victims' rights and the rights of the defence. Although Directive 2012/29/EU has established a common EU framework on victims' rights, its implementation varies across Member States, mainly due to differences in national legal traditions and existing victim support systems.¹⁶ Unfortunately, evaluations conducted by the European Commission have shown that full harmonisation in the realisation of victims' rights has not yet been achieved.¹⁷ One of the main challenges identified in the European Commission's report on the implementation of Directive 2012/29/EU concerns the application of concepts such as individual assessment, specific protection needs and secondary victimisation, which requires not only an appropriate legal framework but also an adequate level of institutional awareness and professional expertise. Consequently, the formal alignment of national legislation with EU standards alone does not guarantee effective protection in individual cases. In practice, the quality of victim protection still largely depends on the sensitivity of the judicial authorities, the availability of institutional support, and the willingness of the courts and other competent bodies to adapt procedural measures to the needs of vulnerable victims. Moreover, new forms of crime, especially in the digital environment, have created new categories of victims that are not fully covered by Directive 2012/29/EU, which can create challenges in national systems that lack adequate protection.

2.2. Protection of Particularly Vulnerable Groups: Victims of Sexual Violence, Victims of Trafficking in Human Beings, and Victims of Domestic Violence and Violence against Women

Directive 2012/29/EU, as already noted, is the main EU legislative instrument on the protection of victims of crime, setting minimum standards for access to infor-

¹⁵ Burić, *op. cit.*, note 6, p. 391.

¹⁶ For more details see European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime* COM(2020) 188 final (11 May 2020); and European Union Agency for Fundamental Rights (FRA), *Victims of crime in the EU: the extent and nature of support for victims* (Publications Office of the European Union 2019).

¹⁷ Droždan-Kranjčec, A.; Mamula, M., *Sustav podrške žrtvama i svjedocima kaznenih djela u Hrvatskoj - usklađenost s međunarodnim zahtjevima i standardima*, Hrvatski ljetopis za kaznene znanosti i prakse, Vol. 30, No. 2, Zagreb, 2023, p. 550.

mation, support and protection. Although its provisions are general in nature, it recognises the specific needs of particularly vulnerable groups, such as victims of domestic and sexual violence and victims of trafficking in human beings. It is this recognition that has led to the adoption of additional directives that build on its general framework, allowing for more targeted and individualised forms of protection and support aimed at reducing the risk of secondary victimisation.

2.2.1. Victims of Sexual Violence

The European Union has developed the protection of victims of sexual violence through both general and specialised instruments, aimed at addressing different forms of abuse and ensuring adequate support, protection and access to justice. Alongside the general framework established by Directive 2012/29/EU, Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children (hereinafter: Directive 2011/93/EU)¹⁸ represents a key instrument for the protection of child victims. It sets minimum standards for defining criminal offences, sanctions and victim protection, with the aim of ensuring a more consistent approach across Member States. Directive 2011/93/EU requires the criminalisation of various forms of child sexual exploitation, including online abuse, while ensuring effective protection and support for child victims from the earliest stages of proceedings. Particular emphasis is placed on preventing secondary victimisation and providing medical, psychological and legal assistance, especially for children in vulnerable situations.¹⁹ Directive 2011/93/EU also emphasises the protection of privacy and identity of the child and is aligned with key international instruments, including the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)²⁰ and the UN Convention on the Rights of the Child.²¹

¹⁸ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17 December 2011, p. 1.

¹⁹ For more details, see Victim Support Europe, *The Child Abuse Directive*, Available at: [https://victim-support.eu/legislation/the-child-sexual-abuse-directive/?utm_source=chatgpt.com], Accessed 20 March 2026.

²⁰ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (Konvencija Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja (Lanzarotska konvencija)), Official Gazette, International Agreements, No. 11/2011.

²¹ Convention on the Rights of the Child (Konvencija o pravima djeteta), Official Gazette, International Agreements, No. 12/1993.

2.2.2. Victims of Trafficking in Human Beings

In addition to the general framework established by Directive 2012/29/EU, the key EU instrument in the field of trafficking in human beings is Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, which replaced Council Framework Decision 2002/629/JHA (hereinafter: Directive 2011/36/EU).²² It was adopted on the basis of Article 83(1) of the TFEU, pursuant to which the European Union is empowered to establish minimum rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them.²³ At the EU level, trafficking in human beings is regarded as one of the most serious forms of crime and, as such, requires a coordinated and comprehensive response. Directive 2011/36/EU establishes a comprehensive framework for preventing and combating trafficking in human beings, combining criminal prosecution with victim protection. It adopts a broad understanding of exploitation, including sexual and labour exploitation, forced begging, criminal exploitation and organ removal, while providing additional protection for children as particularly vulnerable victims. Their vulnerability is specifically recognised, which is why, in such cases, there is no requirement to prove the use of coercive means. Victim protection represents a central element of Directive 2011/36/EU. Directive 2011/36/EU requires Member States to ensure early identification and continuous support for victims, including medical, psychological and legal assistance, while placing particular emphasis on preventing secondary victimisation, especially in the case of children. It also includes preventive measures aimed at reducing the demand that contributes to trafficking in human beings. Finally, it establishes a link between criminal enforcement and victim support by encouraging the use of confiscated assets for compensation purposes. In this way, trafficking is understood not only as a form of organised crime, but also as a broader social issue that requires a multidimensional response. This framework was further developed by Directive (EU) 2024/1712,²⁴ which expands the notion of exploitation to include newer forms such as forced marriage, surrogacy and illegal adoption, and strengthens access to compensation and victim support mechanisms. These changes reflect an effort to

²² Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15 April 2011, p. 1.

²³ Đurđević, Z., *Lisabonski ugovor: prekretnica u razvoju kaznenog prava u Europi*, Hrvatski ljetopis za kazneno pravo i praksu, Vol. 15, No. 2, Zagreb, 2008, p. 1104.

²⁴ Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L 2024/1712, 24 June 2024.

adapt the legal framework to evolving forms of trafficking while reinforcing the protection of victims.

2.2.3. Victims of Domestic Violence and Violence against Women

Directive (EU) 2024/1385 of the European Parliament and of the Council on combating violence against women and domestic violence (hereinafter: Directive (EU) 2024/1385)²⁵ is the first comprehensive legislative act of the European Union specifically addressing this issue. Directive (EU) 2024/1385 represents an important step in strengthening the protection of women from all forms of violence within the European Union. It is, notably, the first EU legislative instrument specifically focused on the prevention of violence against women. The Directive introduces minimum standards in substantive criminal law, particularly regarding the definition of criminal offences and sanctions related to sexual exploitation, gender-based violence, and certain forms of cyber violence. It introduces a gender-sensitive, comprehensive framework that criminalises specific forms of cyber violence, including non-consensual sharing of intimate images, cyberstalking, and cyber incitement to hatred or violence, while strengthening obligations for accessible reporting channels, specialised training for investigators and prosecutors, and individualised protection measures. By linking criminalisation with preventive and supportive obligations, Directive (EU) 2024/1385 addresses structural patterns of violence against women and domestic violence more explicitly than previous instruments, emphasising the need for timely and effective investigations that avoid secondary victimisation.²⁶ For Croatia, which has already aligned its legislation with the Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter: Istanbul Convention),²⁷ Directive (EU) 2024/1385 offers an opportunity to further harmonise substantive criminal law and procedural safeguards. However, with the transposition deadline set for 14 June 2027, challenges are likely to arise in ensuring consistent application across judicial and law enforcement bodies, particularly in rural areas where access to specialised support services remains limited. Effective implementation will require not only legislative amendments but also sustained investment in training programmes focused on trauma-informed practices and

²⁵ Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ L 2024/1385, 24 May 2024.

²⁶ Braschi, S., *The New EU Directive on Combating Violence against Women and Domestic Violence*, Zeitschrift für die gesamte Strafrechtswissenschaft (ZStW), Vol. 137, No. 2, 2025., pp. 425 – 442.

²⁷ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (Konvencija Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i obiteljskog nasilja (Istanbulska konvencija), Official Gazette, International Agreements, No. 3/2018.

gender-sensitive judicial reasoning. The adoption of Directive (EU) 2024/1385 is closely connected to the European Union's accession to Istanbul Convention, the first internationally legally binding instrument in Europe that systematically regulates the issue of violence against women, and which therefore represents the most significant progress in the protection of women in Europe. Directive (EU) 2024/1385 approaches violence against women and domestic violence as serious violations of fundamental rights and emphasises the need for a gender-sensitive response. It combines criminalisation with a broader framework of victim protection, including individual assessment, access to specialised support services, and measures aimed at preventing secondary victimisation. At the same time, it highlights the importance of prevention. This includes educational initiatives, as well as intervention programmes designed to address the behaviour of perpetrators. Building on the general framework of victims' rights, Directive (EU) 2024/1385 introduces more specific obligations for Member States, particularly about protection measures and perpetrator intervention programmes aimed at reducing reoffending. In this way, it establishes a more structured and comprehensive approach to combat violence against women and domestic violence. Overall, Directive (EU) 2024/1385 represents a significant step forward in strengthening victim protection and promoting a more integrated response to violence, combining legal measures with prevention and support.

2.2.4. The Relationship between EU Directives and the Case Law of the European Court of Human Rights

An analysis of victims' rights in EU law would not be complete without considering the broader system of human rights protection under the European Convention on Human Rights. All EU Member States are parties to the Convention, and the case law of the European Court of Human Rights plays an important role in shaping how victims' rights are understood and applied in practice. Although the Convention itself does not contain an explicit catalogue of victims' rights, the European Court of Human Rights has significantly contributed to strengthening their position. Through its interpretation of Convention rights, it has gradually placed greater emphasis on the protection of victims. This is particularly evident in cases involving serious forms of violence, such as sexual violence, domestic violence, and trafficking in human beings. These offences do not affect only physical integrity, but also touch upon dignity, autonomy, and personal identity. As a result, the protection of victims is increasingly understood not merely as a matter of criminal law, but as an issue of fundamental human rights. This approach is grounded in the interpretation of key Convention guarantees, including the right to life, the prohibition of torture, the prohibition of slavery and forced labour,

and the right to respect for private life. From a historical perspective, the system of human rights was primarily focused on limiting State power and preventing its abuse.²⁸ However, even where the threat to rights does not originate directly from the State, it may still incur responsibility for failing to respond in a timely and effective manner.²⁹ In this context, particular emphasis is placed on the concept of positive obligations, which, in addition to the State's duty to refrain from violating rights, also encompasses the obligation to take active measures to ensure their protection.³⁰ In other words, a positive obligation is one that requires the State to take measures to protect human rights.³¹ This issue arises particularly in the context of relationships between private individuals. In such situations, the State has certain positive duties. These primarily include the duty to establish an appropriate legal framework, to adopt preventive and protective measures, and to ensure the existence of effective judicial procedures through which victims can obtain compensation for violations of their rights. These obligations are generally understood as forming the substantive aspect of the relevant provisions of the European Convention on Human Rights. In cases involving violent acts that violate the most fundamental human rights, such as the right to life, the prohibition of torture, the prohibition of slavery and forced labour, as well as the right to respect for private life (physical and psychological integrity of the individual), the State's positive obligation also includes a procedural dimension (the procedural aspect), namely the conduct of an effective "investigation"³² which is aimed at elucidating all the circumstances of the particular case and bringing those responsible to justice. The case law of the European Court of Human Rights in this area is extensive. Therefore, for the purposes of this paper, only some of the key judgments that have made a particularly significant contribution to the development of the doctrine of positive obligations, and thus to the development of standards of victim protection, are highlighted. One of the earlier and particularly impor-

²⁸ Stoyanova, V., *Positive Obligations under the European Convention on Human Rights, With and Beyond Boundaries*, Oxford University Press, New York, 2023, p. 10.

²⁹ Sicilianos, L.A., *Preventing Violations of the Right to Life - Positive Obligations Under Article 2 of the ECHR*, Cyprus Human Rights Law Review, Vol. 3, No. 2, 2014, p. 118.

³⁰ Batistić Kos, V., *Pozitivne obveze prema Europskoj konvenciji za zaštitu ljudskih prava i temeljnih sloboda*, Narodne novine, Zagreb, 2012, pp. 23–24, and Stoyanova, *loc. cit.*, note 28.

³¹ Harris, David J. *et al.*: *Law of the European Convention on Human Rights*, 2nd ed., Oxford University Press, New York, 2009, p. 4.

³² The concept of an "investigation" in Convention law is an autonomous notion and, as such, is independent of its definition in national law. Accordingly, the requirements of an effective investigation, as developed in the case law of the European Court of Human Rights, apply to criminal proceedings as a whole, including the trial and the sentence imposed (see, among many others, *Gäfgen v. Germany* [GC], no. 22978/05, § 121, judgment of 1 June 2010).

tant case is *Osman v. the United Kingdom*.³³ In that case, the European Court of Human Rights held that a State may be responsible for failing to act where authorities knew, or should have known, of a real and immediate risk to life. In *McCann and Others v. the United Kingdom*,³⁴ the European Court of Human Rights stressed the need for an effective and independent investigation in cases involving a deprivation of life, capable of establishing the relevant facts and any potential responsibility. The standards developed in these judgments were later extended to other Convention rights protecting individuals from violence, particularly Articles 3, 4 and 8. An important development can be seen in *Opuz v. Turkey*³⁵ where the European Court of Human Rights held that a State's failure to respond adequately to repeated domestic violence may violate the right to life and the prohibition of inhuman treatment. The case is also significant for recognising gender-based violence as a form of discrimination. In *M.C. v. Bulgaria*,³⁶ the European Court of Human Rights further clarified the State's obligation to ensure an effective criminal law framework for the protection of victims of sexual violence, with a particular focus on effective investigation and prosecution. In *Kontrová v. Slovakia*,³⁷ the European Court of Human Rights found the State responsible for the police's failure to respond adequately to reports of domestic violence, which resulted in tragic consequences. This was the first judgment delivered by the European Court of Human Rights in a case concerning domestic violence. Building on that judgment, the European Court of Human Rights has developed extensive case law in the field of domestic violence.³⁸ Judgments concerning the protection of victims of trafficking in human beings and sexual exploitation are also of particular importance. In *S.M. v. Croatia*,³⁹ the European Court of Human Rights examined the State's duty to ensure an effective response to sexual exploitation and trafficking and found that there had been significant shortcomings in the procedural response of the domestic authorities to a credible claim, supported by *prima facie* evidence, that the applicant had been subjected to treatment contrary to the prohibition of slavery and forced labour. The case of *Krachunova v. Bulgaria*⁴⁰ is of particular importance, as the European Court of Human Rights recognised that profits derived from the exploitation of victims should not remain with the offender, but should

³³ Case *Osman v. the United Kingdom*, No. 87/1997/871/1083, judgment of 28 October 1998.

³⁴ Case *McCann and Others v. the United Kingdom*, No. 18984/91, judgment of 27 September 1995.

³⁵ Case *Opuz v. Turkey*, No. 33401/02, judgment of 9 June 2009.

³⁶ Case *M.C. v. Bulgaria*, No. 39272/98, judgment of 4 December 2003.

³⁷ Case *Kontrová v. Slovakia*, No. 7510/04, judgment of 31 May 2007.

³⁸ Speed, A. et al., *Research Handbook on Domestic Violence and Abuse*, Edward Elgar Publishing Limited, Cheltenham, 2024, p. 115.

³⁹ Case *S.M. v. Croatia* [GC], No. 60561/14, judgment of 25 June 2020.

⁴⁰ Case *Krachunova v. Bulgaria*, No. 18269/18, judgment of 28 May 2020.

instead contribute to the victim's compensation. In *Y v. Slovenia*⁴¹, the European Court of Human Rights addressed secondary victimisation in criminal proceedings for sexual violence. The applicant argued that the manner of questioning caused her additional distress and humiliation. The European Court of Human Rights agreed, finding that the authorities had failed to protect her from unnecessary retraumatisation, in particular due to repeated questioning and aggressive cross-examination without adequate safeguards. It stressed that proceedings must be organised to protect victims, especially in cases of sexual violence, and to avoid unnecessary repetition of testimony. The judgment is significant in confirming that the Convention framework requires States to protect victims of violent acts from secondary victimisation during criminal proceedings.

From the foregoing overview, it is apparent that the European Court of Human Rights has, through its case law, progressively shaped standards that place increasing emphasis on the position of the victim as a holder of fundamental human rights. These standards require States to prevent violations, conduct effective investigations, ensure accountability, provide victims with access to compensation and protect them from secondary victimisation. They have also influenced the development of the EU legal framework on victim protection, particularly through the directives examined in this paper.⁴² A comparison of the directives shows a clear link between EU victim protection and the standards developed under the European Convention on Human Rights. Their common aim is to ensure effective and accessible protection, in line with those standards, while allowing EU and national law to provide a higher level of protection where appropriate.

3. NORMATIVE FRAMEWORK FOR THE PROTECTION OF VICTIMS IN THE REPUBLIC OF CROATIA

Member States are required to implement EU standards on victim protection in their national systems. In Croatia, this obligation resulted in gradual legal developments aimed at strengthening both the victims' rights and their role in criminal proceedings. The rights of victims of criminal offences in the Republic of Croatia are regulated by a number of legal instruments, most notably the Criminal Procedure Act⁴³, the Criminal Code,⁴⁴ the Act on the Protection from Domestic Vio-

⁴¹ Case *Y v. Slovenia*, No. 41107/10, judgment of 28 May 2015.

⁴² See *supra*, Chapter 2.

⁴³ Criminal Procedure Act, *Official Gazette*, No. 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017, 126/2019, 130/2020, 80/2022, 36/2024, 72/2025, 13/2026.

⁴⁴ Criminal Code, *Official Gazette*, No. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024, 136/2025.

lence,⁴⁵ and the Act on Monetary Compensation for Victims of Criminal Offences.⁴⁶ At the same time, the constitutional framework should not be overlooked. The Constitution of the Republic of Croatia,⁴⁷ as the highest legal act, provides the foundation for the protection of victims by guaranteeing fundamental rights, prohibiting discrimination and imposing a duty on the State to protect individuals from violence. However, the Criminal Procedure Act plays a central role, as it regulates the procedural position of victims and ensures that their rights can be effectively exercised throughout criminal proceedings. It is also the main instrument through which the standards set out in the directives discussed in this paper have been implemented into national law.⁴⁸ For this reason, this section focuses on the provisions of the Criminal Procedure Act governing the rights and protection of victims of criminal offences.

The Criminal Procedure Act establishes the basic framework for victims' procedural rights, including safeguards related to information, safety and participation in proceedings. It is worth noting that victims were only formally recognised as independent procedural subjects with the adoption of the 2008 Criminal Procedure Act, which distinguished them from injured parties.⁴⁹ By recognising victims as distinct legal subjects with their own rights, the Croatian Criminal Procedure Act has become a modern legislative framework and a solid basis for developing a more victim-oriented criminal justice system.⁵⁰ Croatia subsequently began implementing Directive 2012/29/EU.⁵¹ The key provisions governing victims' rights are contained in Articles 43, 43a, and 44 of the Criminal Procedure Act. Article 43 sets out the core rights of victims, including access to support services, psychological and professional assistance, and protection from intimidation and secondary victimisation. It also guarantees their right to be heard without undue delay, to participate in proceedings, and to receive information about important procedural developments, while ensuring respect for their privacy and safety. Article 43a, introduced in 2017, adds an important mechanism of individual assessment. This

⁴⁵ Act on Protection against Domestic Violence, Official Gazette, No. 70/2017, 126/2019, 84/2021, 114/2022, 36/2024.

⁴⁶ Act on Financial Compensation to Victims of Criminal Offences, Official Gazette, No. 80/2008, 27/2011.

⁴⁷ Constitution of the Republic of Croatia, Official Gazette, No. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001, 41/2001 (consolidated text), 55/2001 (corr.), 76/2010, 85/2010 (consolidated text), 5/2014.

⁴⁸ See *supra*, Chapter 2.

⁴⁹ Bezić, R.; Šprem, P., *Zaštita žrtava u kaznenom postupku - praktična implementacija direktive 2012/29/EU* Hrvatski ljetopis za kaznene znanosti i praksu, Vol. 27, No. 2, Zagreb, 2020, p. 609.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

requires the competent authorities to identify specific protection needs and adapt procedural measures accordingly. Particular attention is given to vulnerable victims, especially in cases involving domestic or gender-based violence. Finally, Article 44 strengthens the legislative framework by providing additional safeguards for particularly vulnerable groups, including children, victims of sexual offences and trafficking. These measures include legal representation at the State's expense, protection of privacy, limits on repeated questioning and the use of audio-visual tools to avoid direct contact with the perpetrator. Taken together, these provisions demonstrate a shift towards a more victim-oriented approach, aimed at ensuring that criminal proceedings protect not only the interests of prosecution, but also the dignity, safety and well-being of victims, in line with European standards.

4. AN OVERVIEW OF SELECTED DECISIONS OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

The development of victim protection in the Croatian legal system has been strongly shaped by the case law of the European Court of Human Rights and EU law, in particular Directives 2012/29/EU, 2011/36/EU and 2011/93/EU, which emphasise the need for enhanced protection of victims, especially in cases of serious violence. An analysis of selected decisions of the Croatian Constitutional Court shows how these standards have been applied in practice, but also reveals shortcomings, particularly in the courts' understanding of trauma and their sensitivity towards victims. The decisions analysed were selected using the Constitutional Court's official case law database. The review focused on decisions adopted between 2019 and 2025 concerning the protection of victims' rights in proceedings involving sexual offences, trafficking in human beings and domestic violence, as well as cases raising issues of secondary victimisation and the procedural protection of vulnerable victims. At the same time, it should be noted that the Constitutional Court does not yet have particularly extensive case law specially dealing with victims' rights and secondary victimisation, which additionally influenced the selection of decisions analysed in this paper.

4.1. Decision no. U-III-557/2019 of 11 September 2019 – Misunderstanding of the Psychological Consequences of Gender-Based Violence

The case concerned the applicant who was an Iraqi national and who had sought international protection in Croatia. The decision is particularly significant as the applicant was a potential victim of domestic violence. In the initial proceedings,

she cited war-related circumstances and fear of the terrorist organisation ISIL as the reasons for leaving her country. After her application was rejected, she submitted a new one in which she described long-term domestic violence by her husband, as well as later abuse and threats from her brother. She argued that she could not return to Iraq, as a divorced woman without a male guardian (*mahram*), because she would face a real risk of violence and persecution. She explained that she had been in a forced marriage marked by physical, sexual and psychological abuse, and that even after the divorce the threats and violence continued, particularly from her brother. She explained that she had not disclosed certain details earlier because they were highly sensitive and stigmatising, and she feared the consequences of speaking about them in her social environment. She also described the situation in Iraq, where women without a male guardian cannot live independently and face a serious risk of violence. The authorities rejected her subsequent application, finding her statements not credible because they differed from her earlier account and because she had not raised the alleged abuse in her initial application. The Constitutional Court quashed those decisions and strongly criticised the approach taken by the administrative courts. It found that the assessment of the applicant's credibility had been overly formalistic and failed to consider the psychological effects of trauma. It emphasised that victims of sexual or domestic violence often disclose such experiences gradually, due to shame, fear, social stigma or trauma. The Constitutional Court therefore found that the authorities had not shown sufficient sensitivity towards the applicant or a proper understanding of the psychological effects of trauma. By failing to consider the reasons why she had not disclosed the violence earlier, they effectively denied her the opportunity to substantiate her claims.

When assessed under Directive 2012/29/EU on victims' rights, it is clear that its standards were not applied. Directive 2012/29/EU requires an individual assessment of the victim's vulnerability and a response adapted to her needs. In this case, however, the courts focused on inconsistencies in her statements, without considering the psychological impact of prolonged violence. In such situations, it is unrealistic to expect a fully clear and consistent account, as experiences of violence, particularly against women, often have lasting psychological effects. Trauma may affect memory, the manner of expression and the willingness of a person to disclose certain circumstances, with traumatic memories often being fragmented, incomplete and partially inconsistent, which means that such inconsistencies should not, in themselves, automatically call into question the credibility of the statements.⁵² This is where the principle of the benefit of the doubt becomes

⁵² Davis, D.; Hogan, Alexis A.; Hart, Demi J., *Myths of trauma memory: on the oversimplification of effects of attention narrowing under stress*, *Frontiers in Psychology*, 2024.

particularly relevant. As the Constitutional Court noted, certain inconsistencies in an applicant's account do not automatically undermine its overall credibility. This does not mean that statements should be accepted uncritically, but rather that they must be assessed considering the applicant's position and circumstances. Where the account is broadly credible and consistent with known facts about the country of origin, it is justified to resolve doubts in the applicant's favour, particularly in cases involving victims of violence. While this case arises from administrative rather than criminal proceedings, its relevance here is clear. The standards developed by the Constitutional Court, particularly regarding the assessment of statements, sensitivity to victims and the avoidance of secondary traumatisation, are equally applicable in the criminal law context. For that reason, its inclusion in this analysis is justified, despite the different procedural setting. The approach taken by the Constitutional Court has broader significance and can readily be applied in criminal proceedings as well.

4.2. Decision no. U-III-641/2021 of 12 November 2024 – A Victim of Trafficking in Human Beings and Systematic Sexual Violence and the Purpose of a Civil Claim within Criminal Proceedings

This decision is of particular importance in the development of the rights of victims of the most serious violations of human rights, as it represents the first case in which the Constitutional Court examined a violation of the prohibition of trafficking in human beings in the context of forced prostitution. In doing so, the Constitutional Court confirmed that such forms of exploitation, in which the perpetrator effectively “disposes of” the victim's body and sexual services for the purpose of obtaining benefit, fall within the scope of the prohibition of trafficking in human beings as one of the fundamental human rights. In addition to forced prostitution, the case also concerned the serious criminal offence of rape. Over a prolonged period, the applicant was subjected to systematic sexual violence and exploitation by the perpetrator, who used threats and coercion to force her into sexual relations and to organise the provision of sexual services to others. He also repeatedly raped her vaginally, on average twice a week over a period of two years, even during menstruation, using force and threats against her life and the lives of her family members, and would often force her to perform oral sex afterwards. The perpetrator was ultimately sentenced to 12 years' imprisonment by a final judgment. In the criminal proceedings, the applicant brought a civil claim seeking compensation for non-pecuniary damage resulting from a violation of her personality rights. The criminal courts declined to decide on the claim and referred her to pursue compensation in separate civil proceedings, arguing that the case file did not contain sufficient evidence and that additional evidence would be needed,

which would prolong the proceedings. The Constitutional Court found this reasoning problematic and unacceptable. It emphasised that the case concerned a victim of prolonged and systematic rape and forced prostitution, making the courts' conclusion that there was no evidence of a violation of her personality rights particularly hard to justify. The Constitutional Court considered such reasoning to be problematic and unacceptable. It particularly emphasised that the case concerned a victim of prolonged, systematic rape and forced prostitution, making the courts' assertion that there was no evidence of a violation of her personality rights especially concerning. The Constitutional Court stressed that such reasoning demonstrated a lack of understanding of the nature and gravity of sexual violence, as well as of the psychological consequences that such criminal offences have on victims. The significance of this decision lies in its clear recognition of the victim's right to compensation for non-pecuniary damage as part of effective legal protection. Awarding such compensation acknowledges the seriousness of the harm suffered and its connection to violations of fundamental rights, while also reflecting the State's duty to respond adequately to such violations. In this context, the Constitutional Court criticised the practice of referring victims of serious human rights violations to separate civil proceedings. This would require them to prove their claims and relive their experiences once again, often without the same level of protection and in direct confrontation with the perpetrator. According to the Constitutional Court, such an approach places an additional burden on victims, delays the exercise of their rights and exposes them to renewed trauma. This increases the risk of secondary victimisation, which is not in line with the European standards of victim protection or with the principle of effective legal protection. For this reason, the Constitutional Court emphasised that judicial authorities should use the procedural tools already available to ensure that the victim is protected within the criminal proceedings themselves. In that context, the Constitutional Court elaborated in more detail on the purpose of a civil claim in criminal proceedings. It explained that such a claim serves three functions: a reparative one, allowing the victim to obtain compensation; a function of procedural economy, enabling the issue of compensation to be resolved within the criminal proceedings; and, importantly, a protective function, aimed at protecting the victim from secondary victimisation. It is this third function that seeks to prevent the unnecessary repetition of traumatic experiences in additional proceedings. At the same time, it pointed to the specific nature of assessing non-pecuniary damage, noting that such damage cannot be precisely quantified. It proceeded on the assumption that suffering in such cases may be presumed, making it unjustified to require additional evidence from the victim. Since non-pecuniary damage cannot be measured with precision, its assessment is left to the court's discretion, provided that all the circumstances of the case are taken into account. In the present case, the Constitutional Court

observed that the ordinary courts had not even attempted to assess the damage, despite it being clear that the victim had suffered serious harm. Referring the applicant to civil proceedings, particularly on the ground that there was no evidence of a violation of her personality rights, showed not only a lack of sensitivity towards the victim, but also a failure to understand the psychological consequences of sexual violence.

Such an approach was not in line with the obligations arising from Directive 2011/36/EU on trafficking in human beings and Directive 2012/29/EU on victims' rights, both of which require that proceedings be organised in a way that minimises additional burdens on the victim and prevents secondary victimisation. Against this background, it is particularly interesting to compare the approach taken by the criminal courts in the case examined in decision no. U-III-641/2021 with the established practice in civil proceedings concerning violations of personality rights. Namely, in the criminal proceedings that preceded decision no. U-III-641/2021, the courts refused to decide on the civil claim on the grounds that there was insufficient information to do so, without specifying what additional evidence should be obtained. From the circumstances of the case, it follows that they implicitly likely proceeded on the assumption that a psychiatric expert assessment would be required to establish non-pecuniary damage. Such an approach is difficult to justify. Firstly, in this light, the purpose of any such expert assessment in the specific case must also be questioned. It is difficult to imagine what an expert could actually determine – for example, the number of individual acts of violence, the details of each form of violence, their dynamics or duration – that would have any real significance for assessing the existence and extent of the damage. This line of reasoning is not only methodologically questionable and difficult to justify in light of the need to protect the victim's dignity but may also result in further intrusion into her private life and renewed exposure to trauma. For that reason, insisting on such evidence appears excessively formalistic and ill-suited to the nature of the harm. It is also difficult to reconcile such reasoning with established Croatian case law on violations of personality rights, particularly in cases involving media or social media publications. In those cases, courts typically assess the existence of harm based on the nature, intensity and reach of the violation, without requiring medical or psychiatric expert evidence. Instead, they rely on a free evaluation of the circumstances, taking into account, in particular, the seriousness of the interference and its impact on the individual's honour, reputation and dignity.⁵³ This makes the approach taken by the criminal courts in case no.

⁵³ See, for example, Supreme Court of the Republic of Croatia, Rev-2177/00-2 (9 November 2000); Rev-137/16-2 (8 March 2016); Split County Court, Gž-834/2019-6 (27 April 2020); Zagreb Municipal Civil Court, Pn-1271/2016 (9 March 2018).

U-III-641/2021 even more questionable. If courts can recognise non-pecuniary damage in cases concerning harm to reputation without medical evidence, there is even less justification for imposing stricter evidentiary requirements in cases involving serious forms of violence, where such demands only place an additional burden on the victims and increase the risk of secondary victimisation.

4.3. Decision no. U-IIIBi-227/2023 of 25 September 2025 – The Impermissibility of Limitation Periods in Cases of Violence

This case concerned misdemeanour proceedings against alleged perpetrator of domestic violence. The applicant claimed that she had been subjected to physical and verbal abuse by her husband in the presence of their minor children. The proceedings lasted four years, largely due to the quashing and repetition of the case, and ultimately ended with the dismissal of charges because the limitation period had expired. During that time, the court carried out only a limited number of evidentiary actions - the examination of the parties and one witness, a face-to-face confrontation between the suspect and the victim, and the review of WhatsApp messages. The Constitutional Court found a violation of the right to respect for private life in its procedural aspect (State's obligation to conduct an effective investigation). It stressed that, according to the case law of the European Court of Human Rights, cases involving violence must not end due to the expiry of limitation periods caused by the inactivity or inefficiency of the authorities, as this undermines the effectiveness of legal protection and may foster a sense of impunity. The Constitutional Court was particularly critical of the conduct of the misdemeanour courts, especially the High Misdemeanour Court. It made clear that the excessive length of the proceedings and the expiry of the limitation period were attributable solely to the courts. The first-instance court handled the case slowly and inefficiently, despite its relative simplicity and the need for urgency in cases of domestic violence. The High Misdemeanour Court further prolonged the proceedings through a formalistic approach, ordering the re-examination of a witness even though the defence had already had the opportunity to question him and had not challenged the key parts of his testimony. In doing so, it failed to take account of practical circumstances, such as the witness's unavailability, as well as the interests of the victim and the public in the effective prosecution of the case. The Constitutional Court also criticised the High Misdemeanour Court for its lack of diligence, particularly in delivering its decisions, which ultimately led to the case reaching the limitation period.

Such conduct points not only to a disregard for the time limits of the proceedings, but also to a failure to recognise the State's positive obligations in cases involving

the protection of fundamental rights. It is particularly concerning that the courts failed to show sufficient understanding of the nature of the case, which involved domestic violence and therefore called for heightened sensitivity and urgency. The case also reveals a broader lack of sensitivity towards victims of violence. The excessive length of the proceedings is not merely a procedural issue, but one with serious psychological consequences, leaving the victim in a prolonged state of uncertainty and insecurity. In cases of domestic violence, such delays may further undermine the victims' sense of safety and trust in the justice system. When assessed under Directive 2012/29/EU, the proceedings clearly fell short of its standards, which require timely and effective protection of victims and procedures that avoid causing additional psychological harm.

4.4. Decision no. U-III-7231/2022 of 14 September 2023 – Protection of Child Victim of Sexual Violence from Secondary Victimisation

This case concerned criminal proceedings for sexual abuse of a seven-year-old girl at the time of the incriminated events. The judgment was largely based on the statement of the minor victim, which she had given to court-appointed experts and a gynaecologist, and who did not testify at the hearing because the experts had assessed that confronting her again with the traumatic events could seriously endanger her psychological condition. In the specific case, the Supreme Court upheld the position of the lower courts that, in the circumstances, priority should be given to the victim, primarily based on the principle of the best interests of the child. The lower courts emphasised that the case concerned a very young child whose emotional development did not match her age, and that even a carefully conducted examination could cause further trauma and harm her psychological state. They relied on expert findings, which warned of the risk of additional harm. The Supreme Court endorsed such reasoning. It connected it with the duty to protect children as a particularly vulnerable group, especially in cases of sexual violence. At the same time, it held that the absence of the child's examination did not undermine the fairness of the proceedings or the rights of the defence, as the case could be decided based on other evidence. Priority was therefore given to protecting the child victim from secondary victimisation over the need for direct examination of every piece of evidence.

Such reasoning reflects an effort to avoid further traumatising of a particularly vulnerable victim, in line with the principle of the best interests of the child, as well as with Directive 2011/93/EU, which requires minimising repeated questioning of child victims. It is also consistent with the Convention on the Rights of the Child, which places the child's best interests at the centre of all proceedings

concerning them. Overall, the approach adopted by the courts can be seen as positive. They showed sensitivity to the child victim's situation and a willingness to adapt procedural rules to ensure her protection, while still respecting the rights of the defence. By recognising the risk of further trauma and taking steps to avoid it, they contributed to a practice that aligns with modern standards of protecting child victims. This position was later confirmed by the Constitutional Court, which further clarified the State's obligations in protecting children as particularly vulnerable victims. It accepted that limitations on evidence-taking, including the decision not to examine the child, may be justified where necessary to protect the child's well-being. At the same time, it examined whether sufficient procedural safeguards were in place to compensate for any limits on the defence, especially where the defence had no opportunity to question the child directly.

4.5. Decision no. U-IIIBi-2031/2023 of 7 February 2024 – Disproportionate Imposition of Procedural Costs on Injured Parties (Indirect Victims) in Case of Alleged Violation of the Right to Life

In this case, the constitutional complaint was brought by the next of kin - the son - of a man who died⁵⁴ while working on the roof of an agricultural building. Criminal proceedings were initiated against the employer and another responsible person for a suspected breach of occupational safety rules, but they ended in an acquittal. After the State Attorney withdrew the charges at the final hearing, the

⁵⁴ Under the Croatian Criminal Procedure Act, the concepts of an *injured party* and a *victim* are not identical, although they often overlap in practice. An injured party is a natural or legal person whose personal or property rights have been violated by a criminal offence and who participates in the proceedings as a procedural subject, exercising the rights granted by that status. By contrast, the notion of a victim is narrower and refers to a natural person who has suffered harm because of a criminal offence, as well as the close relatives of a deceased person. In that sense, the concept of an injured party is broader and primarily procedural, while the notion of a victim reflects a more personal and protective approach, focused on the individual affected by the offence. Accordingly, although the person concerned in the present criminal proceedings had the status of injured party within the meaning of the Criminal Procedure Act, from a constitutional and Convention perspective he qualifies as an *indirect victims*, since he was not directly affected by the criminal offence but suffered its consequences through the death of his father (compare, for example, with cases of the European Court of Human Rights *Varnava and others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, judgment of 18 September 2009; *Bljakaj and others v. Croatia*, no. 74448/12, judgment of 18 September 2014; and *Trivkanović v. Croatia*, no. 12986/13, judgment of 6 July 2017). It was precisely this death that gave rise to the criminal proceedings, which concerned a serious criminal offence against public safety resulting in the death of the injured parties' close family members. Such a status is most recognised in relation to the right to life, as the direct victim of a violation of that right is, by definition, often deceased. However, it may also arise in connection with other constitutional and Convention rights, depending on the circumstances of the case (see, for example, cases of the European Court of Human Rights *Karpylenko v. Ukraine*, no. 15509/12, judgment of 11 February 2016; and the abovementioned case *Varnava and others v. Turkey*).

injured parties took over the prosecution as authorised prosecutors. Following the acquittal, the court ordered them to bear the costs of the proceedings jointly and severally, including the costs of the autopsy, expert reports and other expenses. The Constitutional Court found this outcome disproportionate. It pointed out that most of the evidentiary steps had been taken while the State Attorney's Office was still in charge of the case, meaning that the injured parties had no real control over the proceedings or the costs incurred. Applying the rule on costs in a strictly formal way therefore placed an excessive financial burden on the applicant. It concluded that this upset the fair balance between the general interests and the property rights of the individual under Article 48 of the Constitution and Article 1 of Protocol No. 1 to the Convention, particularly given that the proceedings had been initiated and largely conducted by the State.

The reasoning of the Constitutional Court can be linked to the standards set out in Directive 2012/29/EU, which emphasises that victims' participation in criminal proceedings should not expose them to additional and unjustified burdens. Significant financial costs may act as a barrier to access to justice and discourage victims from exercising their rights. In that sense, the decision reinforces the idea that rules on costs must be applied with care, so as not to place a disproportionate burden on victims, in line with the Directive's broader aim of ensuring effective access to justice and preventing secondary victimisation. Moreover, the approach taken by the criminal courts may be problematic from the perspective of Article 47 of the EU Charter, as it can discourage those whose fundamental rights guaranteed by the EU law are violated from participating in proceedings and exercising their procedural rights.

4.6. Lessons from the Case Law: Strengthening Judicial Awareness and Professional Competence

The analysis of these decisions shows that EU standards on victim protection are gradually being incorporated into the Croatian legal system. At the same time, the case law of ordinary courts still reveals certain shortcomings, particularly where those standards are not applied consistently or where the specific needs of victims are not fully recognised. This is especially evident in cases where courts apply procedural rules in a strictly formal manner, without considering the broader context or the impact such an approach may have on the victim. In several decisions, the Constitutional Court has pointed to a lack of sensitivity towards victims and a limited understanding of the psychological effects of trauma. At the same time, the practice is not uniform. Some decisions reflect a more developed approach, with courts showing a willingness to adapt procedures to the needs of particu-

larly vulnerable victims, as seen, for example, in decision no. U-III-7231/2022. However, this does not mean that victims' statements should be accepted without scrutiny. As follows from decision no. U-III-557/2019, a balanced approach is required. The benefit of the doubt does not imply uncritical acceptance, but rather an assessment of the statement in its proper context, taking into account the circumstances in which it was given and the possible effects of trauma. This is what allows both the protection of the victim and the fairness of the proceedings to be preserved. What emerges from the case law is that the main difficulty lies not in the absence of legal standards, but in their consistent, victim-oriented application in practice. The shortcomings identified point to the need for further training of all those involved in such proceedings, particularly in understanding trauma and the specific nature of sexual and gender-based violence. A trauma-informed justice response is an approach to addressing interpersonal harm (e.g., assault, abuse, domestic violence, bullying, community harm) that recognizes the widespread impact of trauma, understands how trauma affects behaviour and relationships, and integrates this knowledge into every aspect of the justice process. This includes policing, investigation, prosecution, adjudication, victim services, and alternatives such as restorative or rehabilitative programs. The role of prosecutors and other judicial authorities is not limited to the effective prosecution of criminal offences but also includes ensuring fairness and protecting the dignity and well-being of those involved in proceedings.⁵⁵ Rather than focusing solely on the legal violation, trauma-informed responses consider the physical, emotional, cognitive, and relational consequences of trauma for both victims and individuals who have caused harm.⁵⁶ These developments reflect broader tendencies towards a more victim-oriented criminal procedure, aimed not only at ensuring effective prosecution, but also at protecting victims from retraumatisation and secondary victimisation during judicial proceedings. At the same time, stronger institutional support and practical adjustments within the justice system remain necessary. Alongside training, greater attention should be given to strengthening institutional support. This could include the development of specialised judicial departments for cases involving violence, closer cooperation with psychological and social services, and clearer procedural guidelines for dealing with vulnerable victims. In Croatia, victim and witness support departments have already been established at the courts to provide emotional support, information on victims' rights, practical assistance and referrals to other competent institutions, depending on the needs of victims and witnesses. However, the existence of such departments alone is not sufficient

⁵⁵ Prata, A.J., *Prosecutorial Interviewing Reform: Applying Victim-Cantered Practices for Trauma-Informed Justice*, 2 JOURNAL ABBR., Vol. 2, 2025, p. 103.

⁵⁶ Smith, B.; Bartick, C.; Mueller, J., *Introduction to Special Issue: Trauma-Informed Justice Responses to Interpersonal Harm*, Journal of Aggression, Maltreatment & Trauma, Vol. 35, No. 1, 2026, pp. 4–5.

to ensure effective victim protection if judicial actors do not understand trauma and its consequences, particularly the risk of secondary victimisation. Ultimately, improving the system's sensitivity towards victims remains essential for ensuring effective protection of their rights. Without a proper understanding of the effects of violence and a willingness to adapt practice accordingly, it is difficult to meet the level of protection required by modern European standards.

5. CONCLUSION

In the traditional understanding of criminal proceedings, two opposing tendencies are emphasised, both reflected in Article 1(1) of the Criminal Procedure Act. One is the pursuit of efficiency (“...that the perpetrator of a criminal offence be imposed a penalty or another measure under the conditions prescribed by law and on the basis of a lawfully conducted procedure before a competent court”), while the other is the aim of preventing the conviction of an innocent person (“that no innocent person be convicted”). The development of criminal procedural law shows that, alongside these two traditional aims, a third has gradually come into focus: the protection of the rights of victims of criminal offences. This is reflected in legislative changes driven by both the implementation of EU law, including Directive 2012/29/EU, Directive 2011/93/EU, Directive 2011/36/EU and its amendment by Directive (EU) 2024/1712, and the case law of the European Court of Human Rights, as well as in the practice of the Constitutional Court of the Republic of Croatia. Under this influence, criminal proceedings are increasingly viewed as a mechanism for ensuring the protection of the dignity and safety of victims through the establishment of their procedural rights. The introduction of this third tendency has led to the need to adapt criminal proceedings, which must now balance three objectives: the efficiency of criminal proceedings (and criminal law more generally), the protection of the rights of the defendant, and the simultaneous protection of the rights of victims, considering their specific needs. In other words, criminal proceedings today must strike a balance between the pursuit of efficiency, the protection of the defendant's rights, and the needs of victims of criminal offences. The balancing required in modern proceedings should therefore include not only the relationship between efficiency and the rights of the defence, but also the protection of victims participating in the proceedings. This concerns, on the one hand, the procedural rights of the defence, such as the right to confrontation, and, on the other, the need to protect the vulnerable victims, particularly children, from secondary victimisation. Achieving an appropriate balance between these interests raises complex legal and procedural questions that go beyond the scope of this paper. The growing recognition of victims' rights, reflecting a broader shift in legal awareness, is closely linked to a change

in the perception of the position of victims in society. For a long time, victims in criminal proceedings were marginalised; their needs were overlooked, and they were regarded merely as a source of information about the facts. This traditional model, in which the victim functioned solely as evidence within the proceedings, has now changed, and that change requires corresponding adjustments in practice, particularly through greater recognition of the rights and needs of victims of criminal offences. Although the Croatian legislative framework provides for a wide range of rights and protective mechanisms for victims, case law shows that formal normative alignment with European standards does not always guarantee their full effectiveness in individual proceedings. In this context, the case law of the Constitutional Court of the Republic of Croatia plays an important role, as it periodically assesses, through constitutional complaint proceedings, whether criminal courts have ensured an adequate level of protection of the fundamental rights of victims. The Constitutional Court frequently emphasises the importance of effective investigation and the protection of victims' dignity, relying in this regard on the standards developed in the case law of the European Court of Human Rights. Despite positive developments, certain challenges can still be observed in practice. Among these, particular attention should be drawn to the limited application of certain procedural protective measures, and an insufficient understanding of the psychological consequences of traumatic experiences suffered by victims. Such circumstances may affect both the assessment of victims' statements and the scope of application of measures aimed at preventing secondary victimisation. For this reason, there is a clear need for the continuous professional training of judicial officials, as well as for the further development of institutional support mechanisms for victims, to ensure a more effective application of the existing legislative framework.

REFERENCES

BOOKS AND ARTICLES

1. Androulakis, I., *European Perspectives on Rights for Victims of Crime*, *Eucrim*, Vol. 9, No. 4, 2014, pp. 111-116
2. Batistić Kos, V., *Pozitivne obveze prema Europskoj konvenciji za zaštitu ljudskih prava i temeljnih sloboda*, *Narodne novine*, Zagreb, 2012
3. Bezić, R.; Šprem, P., *Zaštita žrtava u kaznenom postupku - praktična implementacija direktive 2012/29/EU*, *Hrvatski ljetopis za kaznene znanosti i praksu*, Vol. 27, No. 2, Zagreb, 2020, pp. 603-635
4. Braschi, S., *The new EU Directive on Combating Violence against Women and Domestic Violence*, *Zeitschrift für die gesamte Strafrechtswissenschaft*, Vol. 137, No. 2, 2025, pp. 425-442

5. Buck, K., *Can Theoretical Analysis Contribute to a Future European Framework?* European Journal of Crime, Criminal Law and Criminal Justice, Vol. 2, No. 13, 2005, pp.148-178
6. Burić, Z., *Novi položaj žrtve u kaznenom postupku – u povodu obveze transportiranja odredaba Direktive 2019/29/EU u hrvatski kaznenopravni sustav*, Hrvatski ljetopis za kazneno pravo i praksu, Vol. 22, No. 2, Zagreb, 2012, pp. 383-410
7. Davis, D.; Hogan, Alexis A.; Hart, Demi J., *Myths of trauma memory: on the oversimplification of effects of attention narrowing under stress*, *Frontiers in Psychology*, 2024, Jul 22
8. Drožđan - Kranjčec, A.; Mamula, M., *Sustav podrške žrtvama i svjedocima kaznenih djela u Hrvatskoj - usklađenost s međunarodnim zahtjevima i standardima*, Hrvatski ljetopis za kaznene znanosti i praksu, Vol. 30, No. 2, Zagreb, 2023, pp. 545-568
9. Đurđević, Z., *Lisabonski ugovor: prekretnica u razvoju kaznenog prava u Europi*, Hrvatski ljetopis za kazneno pravo i praksu, Vol. 15, No. 2, Zagreb, 2008., pp. 1077-1127
10. Harris, David J. *et al.*: *Law of the European Convention on Human Rights*, 2nd ed., Oxford University Press, New York, 2009
11. Pavišić, B., *Novi hrvatski Zakon o kaznenom postupku*, Hrvatski ljetopis za kazneno pravo i praksu, vol. 15, no. 2, Zagreb, 2008, pp. 489-602
12. Pemberton, A.; Groenhuijsen, M. S.: *The EU Framework Decision for Victims of Crime: Does Hard Law Make a Difference?* European Journal of Crime, Criminal Law and Criminal Justice, Vol. 17, 2009, pp. 43-59, p. 1
13. Prata, A.J., *Prosecutorial Interviewing Reform: Applying Victim-Cantered Practices for Trauma-Informed Justice*, 2 JOURNAL ABBR, vol.2, 2025, pp. 103-171
14. Sicilianos, L.A., *Preventing Violations of the Right to Life - Positive Obligations Under Article 2 of the ECHR*, Cyprus Human Rights Law Review, Vol. 3, No. 2, 2014., pp. 117-129
15. Smith, B.; Bartick, C.; Mueller, J., *Introduction to Special Issue: Trauma-Informed Justice Responses to Interpersonal Harm*, Journal of Aggression, Maltreatment & Trauma, Vol. 35, No. 1, 2026, pp. 4-12
16. Speed, A. *et al.*, *Research Handbook on Domestic Violence and Abuse*, Edward Elgar Publishing Limited, Cheltenham, 2024
17. Stoyanova, V., *Positive Obligations under the European Convention on Human Rights, With and Beyond Boundaries*, Oxford University Press, New York, 2023

INTERNATIONAL LAW

1. Convention on the Rights of the Child (Konvencija o pravima djeteta), Official Gazette, International Agreements, No. 12/1993

COUNCIL OF EUROPE LAW

1. Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (Konvencija Vijeća Europe o sprječavanju i borbi protiv nasilja nad ženama i obiteljskog nasilja (Istanbulska konvencija), Official Gazette, International Agreements, No. 3/2018

2. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (Konvencija Vijeća Europe o zaštiti djece od seksualnog iskorištavanja i seksualnog zlostavljanja (Lanzarotska konvencija)), Official Gazette, International Agreements, No. 11/2011
3. Convention for the Protection of Human Rights and Fundamental Freedoms (Konvencija za zaštitu ljudskih prava i temeljnih sloboda), Official Gazette, No. 18/1997, 6/1999 (consolidated text), 8/1999 (corr.), 14/2002, 1/2006, 13/2017, 6/2024

EU LAW

1. Charter of Fundamental Rights of the European Union, OJ C 202, 7 June 2016
2. Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6 August 2004
3. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN General Assembly Resolution 40/34, 29 November 1985
4. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17 December 2011
5. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15 April 2011
6. Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ L 2024/1385, 24 May 2024
7. Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L 2024/1712, 24 June 2024
8. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, OJ L 315, 14 November 2012
9. Treaty on the Functioning of the European Union (consolidated version), OJ C 202, 7 June 2016

LIST OF EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW

1. *Bljakaj and others v. Croatia*, No. 74448/12, judgment of 18 September 2014
2. *Karpylenko v. Ukraine*, No. 15509/12, judgment of 11 February 2016
3. *Kontrová v. Slovakia*, No. 7510/04, judgment of 31 May 2007
4. *Krachunova v. Bulgaria*, No. 18269/18, judgment of 28 May 2020.
5. *M.C. v. Bulgaria*, No. 39272/98, judgment of 4 December 2003
6. *McCann and Others v. the United Kingdom*, No. 18984/91, judgment of 27 September 1995.
7. *Opuz v. Turkey*, No. 33401/02, judgment of 9 June 2009
8. *Osman v. the United Kingdom*, judgment 28 October 1998

9. *S.M. v. Croatia* [GC], No. 60561/14, judgment of 25 June 2020
10. *Trivkanović v. Croatia*, No. 12986/13, judgment of 6 July 2017
11. *Varnava and others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, judgment of 18 September 2009
12. *Y v. Slovenia*, No. 41107/10, judgment of 28 May 2015

LIST OF NATIONAL REGULATIONS, ACTS AND COURT DECISIONS

1. Act on Financial Compensation to Victims of Criminal Offences, *Official Gazette*, No. 80/2008, 27/2011
2. Act on Protection against Domestic Violence, *Official Gazette*, No. 70/2017, 126/2019, 84/2021, 114/2022, 36/2024
3. Constitution of the Republic of Croatia, *Official Gazette*, No. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001, 41/2001 (consolidated text), 55/2001 (corr.), 76/2010, 85/2010 (consolidated text), 5/2014
4. Criminal Code, *Official Gazette*, No. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024, 136/2025
5. Criminal Procedure Act, *Official Gazette*, No. 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017, 126/2019, 130/2020, 80/2022, 36/2024, 72/2025, 13/2026
6. Constitutional Court of the Republic of Croatia decision No. U-III-557/2019 of 11 September 2019
7. Constitutional Court of the Republic of Croatia decision No. U-III-641/2021 of 12 November 2024, *Official Gazette*, No. 13/2025
8. Constitutional Court of the Republic of Croatia decision No. U-IIIBi-227/2023 of 25 September 2025
9. Constitutional Court of the Republic of Croatia decision No. U-III-7231/2022 of 14 September 2023
10. Constitutional Court of the Republic of Croatia decision No. U-IIIBi-2031/2023 of 7 February 2024, *Official Gazette*, No. 28/2024
11. Supreme Court of the Republic of Croatia judgment no. Rev-2177/00-2 of 9 November 2000
12. Supreme Court of the Republic of Croatia judgment no. Rev-137/16-2 of 8 March 2016
13. Split County Court judgment no. Gž-834/2019-6 of 27 April 2020
14. Zagreb Municipal Civil Court judgment no. Pn-1271/2016 of 9 March 2018

WEBSITE REFERENCES

1. Website ANON - Croatian case-law database, Available at: [<https://odluke.sudovi.hr/>], Accessed 22 March 2026
2. Website of the Constitutional Court case-law database, Available at: [<https://sljeme.usud.hr/usud/praksaw.nsf>], Accessed 28 March 2026

3. Website of the Council of the European Union, Available at:
[<https://www.consilium.europa.eu/en/>], Accessed 28 February 2026
4. Website of the European Court of Human Rights case-law database (HUDOC), Available at:
[<https://hudoc.echr.coe.int/>], Accessed 28 March 2026
5. Website IUS-INFO legal database, Available at:
[<https://www.iusinfo.hr/korisnicki-profil>], Accessed 28 March 2026
6. Website of Official Gazette, Available at:
[<https://narodne-novine.nn.hr/>], Accessed 28 March 2026
7. Website of Hrvatska enciklopedija, Available at:
[<https://www.enciklopedija.hr/clanak/zrtvoslovlje>], Accessed 30 March 2026