

SECONDARY VICTIMIZATION - REGULATIONS AND RECOMMENDATIONS

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Abstract: *The article begins with the conceptual delimitations of the concepts: primary victimization, secondary victimization, direct victims and indirect victims, secondary and tertiary victims. Several European Directives are analyzed, as well as the Istanbul Convention regarding the regulations of this notion, but also the recommendations to avoid this type of victimization.*

Key words: *primary victimization, secondary victimization, second victims, European Directive, regulations.*

1. Delimitation of concepts

1.1. Victimization

As a new branch of Criminology, Victimology operates with its own concepts. Among these, some of them are essential, as is the term Victimization. This concept has a lot of definitions in dictionaries and specialized literature. We will mention some of them in order to emphasize its specific, and, also, as a base for others types of victimization.

So, one the definition is: the state or process of being victimized or becoming a victim (<https://en.wikipedia.org/wiki/Victimisation>) or it is the process of being victimized, either from a physical, psychological, moral or sexual point of view. (Muratore, 2014, p. 6917–6921)

Another definition also underlines that it is a process that occurs as a direct result of the criminal act, for this reason some authors are speaking about original victimization.

Experiencing violence/ aggression/abuse is associated with negative mental and physical outcomes, including shame, emotion dysregulation, psychological stress, loss of resources and mental health pathology.

The most recognized consequences could be classified in different ranges: the emotional impact, the physical impact, the financial impact, the psychological impact, social injuries and secondary victimization. In my opinion, the most important and relevant in time tends to be the psychological effect.

The psychological impact of victimization, which is almost similar with the emotional impact (<https://www.crcvc.ca/docs/victimization.pdf>) includes a lot of symptoms: shock,

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disbelief and denial, anger or rage, fear or terror, confusion, frustration, guilt or self-blame, numbness, helplessness, vulnerability, disorientation, shame and humiliation, grief or sorrow. Also, this impact correlates in serious cases with several mental health diagnoses including depression, anxiety, suicidality, disordered eating and substance abuse.

The physical impact of victimization (<https://www.crcvc.ca/docs/victimization.pdf>) could be followed at these levels: insomnia, appetite disturbance, lethargy, headaches, muscle tension, nausea, and decreased libido, etc.

In this context, we think that is important to make a difference between the types of victims and the types of victimizations. In this regard we are talking about direct or primary victims (the person who has suffered after the attack or assault in question) and indirect victims (people close to the primary victim, individuals who have a victimized lover or close friend), secondary victims (witnesses to the criminal act) and tertiary victims (people and communities). (<https://pubmed.ncbi.nlm.nih.gov/20212437/#full-view-affiliation-1>)

As to the types of victimization, we may identify the following levels: victimization (the primary one) and secondary victimization.

1.2. Secondary victimization

The father of this concept is considered to be Symonds M., but he speaks about the "second injury" to victims of violent acts (Symonds M., 1980). His approach involves:

- (1) self-hate and shame as the key in posttraumatic distress;
- (2) the ordinary professional attitudes of those who are supposed to help often intensify the traumatized person's self-hate and shame, which is called "second injury";
- (3) to counteract the self-hate and the shame, the professional must adopt a much more active attitude and behavior.

Secondary victimization (also known as post crime victimization or double victimization) refers to further victim-blaming by criminal justice authorities following a report of an original victimization. (Bindu, 2016, p. 33).

Different other definitions used in literature (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6994185/>) are the following:

- victims' post-crime experiences with institutions such as medical staff, justice and the law enforcement systems, or their employers
- additional trauma experienced by rape victims due to victim blaming or otherwise insensitive responses within the criminal justice system
- problems at all stages of the victims' interaction with the representatives of criminal justice system.
- victims are injured once by the crime and then a second time by criminal justice authorities.

As we can notice, all these behaviors refer to insensitive, victim-blaming treatment, and negative victim experiences at various stages of the legal process that often result in greater feelings of trauma. However, most of the available research on secondary victimization has focused on criminal justice authorities (police, prosecutors, judges).

For this reason the professionals termed secondary victimization as institutionalized victimization. Most apparently, it occurs within the criminal justice system and results from intrusive or inappropriate conduct investigation by police officers or other criminal justice professionals. Still, secondary victimization may be the byproduct of interaction with other entities: school personnel may disclosure abused child; doctors may not acknowledge signs of domestic abuse, etc. Even organizations such as victim services, victim compensation systems, refugee services and mental health institutions may implement policies and procedures that could lead to secondary victimization. (https://victim-support.eu/wp-content/files_mf/1673427018NationalFrameworkforComprehensiveVictimSupportcompressed.pdf)

Hence, through the improper attitudes/reactions faced by the victim from the criminal justice system, public authorities or NGO`s, neighbours, media (if they find themselves in the media spotlight, victims become a vulnerable target).

Sometimes, the police convince victims that without the assistance of a lawyer any effective action is not possible and inform them that their chances of finding the perpetrator are minimal, so they discourage them from reporting a crime (<https://www.semanticscholar.org/paper/Empowering-the-Victims-of-Crime%3A-A-Real-Goal-of-the-KlausBuczowski/bdb54f0020f79a5cc4d422a8e9631838782344be>).

Others signs of secondary victimization could be:

- delays times for trials to begin – it takes too long to start a trial
- the lengthy duration of the process – unreasonable time during the trial
- poor/lack of communication
- the communication is misaligned with victims’ needs
- demanding proofs for establishing their credibility
- victim-blaming
- disbelief of victim/survivor testimonies
- inadequate police investigations
- frequent ‘no further action’ outcomes, low charge, prosecution and conviction rates,
- requirements for sharing intimate personal details
- juridical language can be confusing and threatening

2. Regulations

2.1. International regulations

One of the first documents regarding this topic containing such considerations and recommendation since 1985 is the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

In recognition of this term, a lot of international protocols and standards call on states to ensure measures in order to protect complainers and avoid their re-traumatization. As an example, the UN General Assembly, through, the **Declaration on the Elimination of Violence against Women** from 20th December 1993, requires States based on Art.4 to ensure that: “...the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions.”

(<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>)

As regard the European legislation, we will refer at some European directives and to the Istanbul Convention.

2.2. European regulations

A lot of provisions on this matter are included in Recommendation of the Council of Europe concerning the position of the in the framework of criminal law and procedure. As about some European directives in this regard, we will briefly analyze some of them relating with crime victims. For example, *Directive 2011/99/EU on the European Protection Order (EPO) in criminal matters*. (JO-L 338) The directive allows victims of violence, especially domestic violence and harassment, to continue to benefit from protection against perpetrators when they move to another EU country. In order to issue a European protection order, there must be a national protection measure in force in that EU country that imposes one or more of the following prohibitions or restrictions on the person who poses a danger (<https://eur-lex.europa.eu/RO/legal-content/summary/european-protection-order-supporting-crime>), in order to avoid secondary victimization in other countries):

- prohibition to move to certain places or defined areas where the protected person resides or visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by telephone, by electronic means or by regular mail, by fax or any other means;
- a prohibition or regulation of approaching the protected person at a distance smaller than that provided for. (Diaconu, 2022, p. 109-111)

Another directive refers to very vulnerable crime victims, such as victims of human trafficking, namely Directive 2011/36/EU of the European Parliament and of the Council of April 5, 2011, on preventing and combating human trafficking and protecting its victims, replacing Framework Decision 2002/629/JHA of the Council. The Directive establishes minimum rules on the definition of offences and criminal sanctions in the field of human trafficking.

The directive also introduces common provisions, taking into account the gender perspective, to ensure better ways to avoid secondary victimization and prevention of this category of crimes and better protection of their victims. The Directive mentions that human trafficking is a gender-differentiated phenomenon, with men and women often being trafficked for different purposes. For this reason, assistance and support measures should also be gender-differentiated where appropriate.

Triggers may differ depending on the sectors involved, such as human trafficking in the sex industry or labor exploitation, such as construction work, agriculture or domestic servitude. (JO-L 101)

The last European Directive concerning victims' rights is **Directive 2012/ 29/EU** of the European Parliament and the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council

Framework Decision 2001/220/JHA. Named the Victims' Rights Directive, this normative act provides in *Para.53-63 and art. 5, 9, 19, 20, 22,23, 25 a lot of rules during the penal procedure interaction with different types of professionals in order to avoid secondary victimization or revictimization or retaliation.* (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:115:0001:0011:EN:PDF>)

Also, the *Council of Europe Convention on Preventing and Combating Violence Against Women (the Istanbul Convention)* from November 2014, specifies that :

- "all measures to provide protection and support to victims should be with the aim of preventing secondary victimization",
- "Parties shall ensure that measures taken pursuant to this chapter shall:..... – aim at avoiding secondary victimization"; according with Chapter IV – Protection and support, Article 18 – General obligations par.3

The main causes (<https://www.google.com/search?q=causes+of+secondary+victimization&oq=causes+of+secondary+victimization+&aqs=chrome..69i57j0i22i30l2.10073j0j7&sourceid=chrome&ie=UTF-8>) identified in this normative act are:

- repeated exposure of the victim to the perpetrator
- repeated interrogation about the same facts,
- the use of inappropriate language,
- unintentionally insensitive comments made by all those who come into contact with victims,
- insensitive media reporting of cases.

social rejections and insensitivities to acknowledging trauma or violence

3. Recommendations

The most important fact in order to avoid secondary victimization is how to communicate with victims of crime. In this regard we have to mention the efforts of the Human Rights Monitoring Institute, supported by Victim Support Europe, which developed a *Handbook for Officers which highlights key principles to enable law enforcement agencies to better communicate with victims.*

Communication with victims should include the following:

→ **Showing respect:** when victims feel respected and supported by others, they start to understand themselves and their environment better, acquire more confidence, social resilience and the courage to examine their world and make informed choices

→ **Ensuring safety:** crime may cause feelings of helplessness, intense anxiety, fear, etc. Irrespective of the nature of the crime experienced by victims, ensuring psychological and physical safety should be a priority. → Allowing emotions to be expressed: after a traumatic event, the victim usually has a conscious or unconscious need to vent any accumulated emotions, to talk about what happened. To communicate effectively, the victim's emotions – and their causes – and behaviour must be understood, which is not always easy for law officers.

→ **Providing information:** this occurs when for the first time a victim has been involved in a crime. If they (victims) may never have participated in pretrial

investigations or court proceedings, this is a very important step, because these new and unfamiliar situations can contribute to an additional stress and anxiety associated with the victim's experience of the crime. The provision of adequate information reassures and enables victims to be involved enough.

→ **The need to actively listen to victims**, because by doing so, not only that it become easy for victims to express themselves. Also, it is essential to treat them with respect and to give them responses tailored to their particularly situation.

Also, some ideas taken from the Victim's Rights Directive can be used in order to exclude the risk of secondary and repeated victimization, of intimidation and of retaliation by the offender. For example, par.53: "Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public... Member States should be encouraged to introduce measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims.... by summoning victims and offenders to hearings at different times."

The following paragraph also provides other **means** to avoid secondary and repeated victimization, intimidation and retaliation, such as "non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim". Also, as a warning: "all these measures for protecting the privacy and images of victims and of their family members **should** always be consistent with the right to a fair trial and freedom of expression"

As the process of secondary victimization results from different sources, including ignorance of the intensity and complexity of the difficulties that victims face after the crime, the prevention of secondary victimization requires comprehensive support for victims. Efforts must also be made in terms of training and awareness in order to change the attitudes of those around them and of the various actors in the legal, health and social sectors.

Also, in the specialized literature, 2 decades ago, a very renowned professor from the Catholic University of Leuven, Belgium (Peters, 1991, p. 276-277) came up with a list of recommendations as a minimum programme:

- the victim has to be informed by the policeman about what will happen after she reports the event, including a follow-up letter after a certain period of time is could be an essential instrument.;
- the need for a systematic education/training of the police in working with special categories of victims of crime in order to hear them and, then to put them in contact with a specialized service for assistance and/or treatment.
- the police also have to check whether a more informal solution between the victim and the offender would be possible.
- the police need to inform victims about the procedure and the conditions to get a state compensation.

- a permanent collaboration between police officers and all the others professionals and volunteers from authorities and services which provide different types of care and assistance for victims.

4. Conclusions

Looking at the first institutions which come in contact with the victim, we could draw some conclusion in order to avoid secondary victimization.

For this reason, in our opinion, the police have to prevent the starting of a process of secondary victimization (by special trainings), followed by the professionals from medical assistance and continued with the other specialists from public authorities, NGO's and media.

We don't exclude the necessity of education on victimization prevention, but this idea involves interdisciplinarity teams, going all over the country or teams conducting trainings in each county (through face-to face or on-line meetings).

Also, based on art.24-25 of the Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (<https://rm.coe.int/cm-rec-2023-2e-eng-recommendation-trafficking/1680ab4922>) it is important to encourage though and extensive research in the victimization field, such as involving Romanian Society of Victimology (an NGO founded in the year 2022).

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