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## **Protection and support of terrorism victims in the criminal proceedings in Kosovo: The compliance with standards of the Madrid Memorandum**

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### **Abstract**

Victims of terrorism can be considered a special category within the broader and more general group of “victims of crime”. In recent decades, there has been an international trend to develop more specific treatment, both in legal and practical terms, to address their particular needs in unfortunate times of intensification and sophistication of terrorist attacks, with a correlative increase in the harmful consequences for an increasing number of victims of terrorism. At the international level, one such instrument is the Madrid Memorandum, which contains relevant guidelines that serve as a reference for States, who can draw inspiration from them when designing their national standards of protection and support for victims of terrorism. This paper aims to critically analyze the legal framework applicable in Kosovo on the issue of protection and support of victims of terrorism from the pre-trial phase, through criminal proceedings, and after the completion of criminal proceedings, with special emphasis aiming to analyze the compliance of these rules with standards of the Madrid Memorandum. The paper identifies three areas in which the applicable legal framework for the protection and support of victims of terrorism in criminal proceedings needs to be harmonised with the Madrid Memorandum’s standards.

### **Key words**

Victims of terrorism; protection and support of victims of terrorism; Madrid Memorandum

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## Resumen

Las víctimas del terrorismo pueden considerarse una categoría especial dentro del grupo más amplio y general de las “víctimas de delitos”. En las últimas décadas, ha habido una tendencia internacional a desarrollar un tratamiento más específico, tanto en términos jurídicos como prácticos, para abordar sus necesidades particulares en tiempos desafortunados de intensificación y sofisticación de los ataques terroristas, con un aumento correlativo de las consecuencias perjudiciales para un número cada vez mayor de víctimas del terrorismo. En el ámbito internacional, uno de estos instrumentos es el Memorando de Madrid, que contiene directrices relevantes que sirven de referencia a los Estados, que pueden inspirarse en ellas a la hora de diseñar sus normas nacionales de protección y apoyo a las víctimas del terrorismo. El presente trabajo pretende analizar críticamente el marco jurídico aplicable en Kosovo en materia de protección y apoyo a las víctimas del terrorismo desde la fase de instrucción, a través del proceso penal, y una vez finalizado éste, con especial énfasis en analizar la conformidad de estas normas con los estándares del Memorando de Madrid. El documento identifica tres áreas en las que el marco legal aplicable para la protección y el apoyo a las víctimas del terrorismo en los procesos penales necesita ser armonizado con los estándares del Memorando de Madrid.

## Palabras clave

Víctimas del terrorismo; protección y apoyo a las víctimas del terrorismo; Memorando de Madrid

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## 1. Introduction

For a relatively long time, no special attention has been paid to the victims of terrorism, as the treatment of their needs has been done with the same approach as for all other categories of victims of crime. Nevertheless, in recent decades, there has been an international trend to develop more specific treatment, both in legal and practical terms, to address their particular needs in times in which there has been an escalation in the harmful consequences and in the correlative necessities of the victims of terrorism.

This issue is reflected in a number of initiatives at the domestic and international level.

At the global level, the first steps were initially taken to set minimum standards for the treatment of all victims of crime, and in 1985, two instruments were issued seeking the advancement of the status of victims of crime, namely the issuance of the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, as well as the Council of Europe Recommendation on the Victim Position in the Framework of Criminal Law and Procedure (Letschert 2009). Terrorist attacks with serious consequences that have affected many parts of the globe have intensified the need to build standards that provide adequate and effective protection to victims of terrorism. To this end, in the last three decades, many international organizations, such as the UN, the Council of Europe, and the European Union, as well as other organizations, have issued a number of international instruments where they have set minimum standards for the protection and support of victims of terrorism.

Although thirteen conventions and protocols on the prevention of terrorism have been drafted, some of which by the UN, others by the International Civil Aviation Organization or the International Atomic Energy Agency, these instruments do not pay special attention to addressing the needs and remedies that may be enjoyed by victims of terrorist acts (Letschert 2009). A relevant international instrument in this field is the Global Counter-Terrorism Strategy, adopted in 2006 by the UN, structured in four main parts containing measures in addition to a concrete action plan. In particular, the measures whose implementation is being encouraged are: a) measures to address favorable conditions for the spread of terrorism; b) measures to prevent and combat terrorism; c) measures to strengthen the role of the United Nations system in preventing and combating terrorism; and d) measures to ensure respect for human rights for all and the rule of law as the fundamental foundation for the fight against terrorism. Despite the fact that in the first part of the measures contained in this instrument, it is envisaged that states should consider establishing national assistance systems that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives according to UN General Assembly (2006), this issue was of a voluntary nature. It should be noted that, as a General Assembly resolution, this Strategy did not specifically oblige states to comply with any of its provisions whatsoever.

At the regional level, in 2005, the Council of Europe adopted the Convention on the Prevention of Terrorism. The need to provide support and protection to victims of terrorism is recognized from the beginning of this instrument, in its introductory part, which describes the precarious situation in which potential victims of terrorist attacks are located, as well as the need for solidarity with victims of terrorism and their families. This instrument contains a total of 32 articles, which provide protection, compensation, and support for victims of terrorism. It is worth highlighting Article 13, as it states that

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States Parties who accept this instrument must take whatever measures are necessary to protect and support victims of terrorism as a result of terrorist acts committed on their territory. These measures may include, inter alia, financial assistance and compensation for victims of terrorism and their immediate family members (Council of Europe 2021):

Furthermore, an important role in international initiatives is played by EU legislation that contains several important standards for the treatment of victims in general, including the treatment of victims of terrorism. Within the EU, for the first time in 2001, the Council Framework Decision on the position of victims of crime in criminal proceedings was issued. This instrument summarizes the fundamental rights that the victim of a criminal offense should enjoy in criminal proceedings; namely, it provides for the right of the victim of a crime to be treated with respect and to be recognized for his/her status; the right to hearings and providing evidence; the right to information; communication guarantees; victim-specific assistance; victims' costs related to criminal proceedings; the right to protection; the right to compensation during criminal proceedings; and mediation during criminal proceedings (Council Framework Decision 2001/220/JHA). Despite these standards being promoted by this decision, however, not all victims of terrorism could benefit to the proper extent, as this decision only applied to criminal proceedings against suspects, because the number of victims were outnumbered. Terrorist acts are mostly carried out by suicide attacks, making it extremely difficult to catch and prosecute anyone involved (Letschert 2009). Although in 2002, the EU adopted a Framework Decision on combating terrorism, which may include a definition of terrorist acts (Article 11), no explicit reference is made to victims of terrorism (Letschert 2009).

Within the European Union, the ongoing debate on strengthening the role of victims in criminal proceedings resulted in the issuance of Directive 2012/29/EU setting standards for the rights, support and protection of victims of crime, and replacing the Council Framework Decision 2001/220/JHA (Rafaraci 2015). The Directive 2012/29/EU significantly expanded the scope of protection by providing a definition of victim that includes not only an individual who has suffered physical, mental, emotional, or economic harm as a result of a crime, but also the family members of a person whose death was directly caused by a crime and who, as a result, has suffered harm (Alvaro and D'Andrea 2015). This extended directive included many crucial elements that also addressed specific categories of victims, such as the inclusion of victims of terrorism, in which case it was considered the need that victims of terrorism should have greater attention and that special attention should be paid to them due to the special nature of the crime committed against them, as their victimization comes as a result of attacks on society. This instrument qualifies victims of terrorism as a category of vulnerable victims, from which EU Member States must ensure that victims receive an individual and timely assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures during criminal proceedings (Directive 2012/29/EU).

Another key instrument adopted by the EU in relation to victims' rights is EU Directive 2004/80 on Compensation to Victims of Crime. Unfortunately, despite the extensive regulation provided in its content, this instrument does not specifically address the issue of the needs of vulnerable categories of crime victims, including victims of terrorism.

These initiatives demonstrate the importance of involving victims of terrorism in tackling the phenomenon of terrorism within the broader strategy and policies for preventing and combating terrorism (Jupp 2019). The participation of victims in the criminal justice process enables them to publicly present the devastating consequences it brought to their lives. Furthermore, it demonstrates that victims are protected by the state, and the state takes care of meeting their needs through the state criminal justice system. Applying criminal justice instruments for victim protection during trials is the most appropriate and brings justice to its place (Jupp 2019).

There are a number of other international instruments of a non-binding nature that contain significant standards for the treatment of victims of crime in general and, in particular, the support and protection of victims of terrorism. One of these instruments is the Madrid Memorandum, which contains extremely relevant standards by which states can use this instrument as a reference to build their national legislation on the protection and support of victims of terrorism. The Madrid Memorandum dates back to 2012 when, at a conference on victims of terrorism organized by the Global Forum Against Terrorism, the Government of Spain distributed a document entitled “Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings” (hereinafter: the Madrid Memorandum). This forum gathered Spain, Great Britain, and the USA, which also signed this document (Halsell 2016).

The Madrid Memorandum (2014) emphasizes the provision of prompt and efficient assistance and support to terrorist victims from the time the terrorist act causes damage until the end of the criminal proceedings against the perpetrator of the crime. This instrument contains 17 standards of good practices, which are further elaborated in more detail. Due to the importance of the Madrid Memorandum in terms of promoting standards for the protection and support of victims of terrorism in criminal proceedings, in the following we will critically analyze the legal framework applicable in Kosovo in relation to victims of terrorism in the light of good practices contained in this instrument, highlighting the similarities that exist between these standards and legal rules applicable in Kosovo and identifying any non-compliances.

The study will focus on specific areas covered by this instrument, namely standards related specifically to criminal cases that can be categorized into three separate areas, namely: (1) Ensuring the welfare needs of victims during the investigation and prosecution phases; (2) Providing legal advice and representation, as well as enabling participation in criminal prosecution; and (3) Providing retribution to victims.

## **2. Kosovo’s Legislative Framework and Madrid Memorandum Good Practices**

### *2.1. Existing Legislative Frameworks*

The protection and support of victims of terrorism during and after criminal proceedings does not enjoy special treatment special Act in the legal order in Kosovo. This issue is addressed in many legal acts, namely the Criminal Code, the Code of Criminal Procedure, the Law on Prevention of Money Laundering and Combating the Financing of Terrorism, as well as the Law on Compensation to Victims of Crime. All these laws do not reserve any special position for the category of victims of terrorism, for which the

same legal rules apply as for any other victim of crime. Over the years, the criminal legal framework in Kosovo has undergone numerous amendments, and for a period of fifty years, several laws of criminal procedure have been implemented in Kosovo. A significant development of the criminal justice framework has taken place in the last two decades.

In 1999, after the end of the war, and after the intervention of NATO and the establishment of the United Nations Interim Administration (UNMIK) in Kosovo, in order not to create a legal vacuum, the Special Representative of the Secretary-General of the United Nations (SRSG), which was mandated under UN Security Council Resolution 1244 on June 10, 1999, issued UNMIK regulations 1999/1 and 1999/24, which established as legislation applicable in Kosovo the legislation which was in force in Kosovo on March 22, 1989, as well as the relevant regulations to be issued by UNMIK.

The Criminal Procedure Code of the Socialist Federal Republic of Yugoslavia (SFRY) of 1977 was reinstated as the applicable law in Kosovo on criminal procedure issues. During the international administration, a new legal framework began to be built to adapt to the new reality in political and social fields, especially the specifics in the criminal field. Work on the preparation of the Provisional Code of Criminal Procedure began in September 1999, when, after almost four years of intensive work by international and local experts and after consideration in the Assembly of Kosovo, it was signed by the UN SRSG. The Provisional Criminal Procedure Code of Kosovo was approved on July 6, 2003 by UNMIK Regulation 2003/26 and entered into force on April 6, 2004 (Sahiti *et al.* 2014).

Since Kosovo's declaration of independence in 2008, Kosovo has adopted two criminal codes, one in 2012 (Code No. 04/L-082) and one in 2019 (Code No. 06/L-074). The Criminal Code issued in 2019 is currently in force.

## *2.2. Welfare needs of victims of terrorism during investigation and prosecution stages*

The issue of ensuring the welfare needs of victims of terrorism during the investigation and prosecution phases is promoted by the Madrid Memorandum through several standards related to the protection of victims in investigative and criminal proceedings; the provision of access to justice for victims; victims' having the necessary information for investigations, prosecution and participation in trials; having access to a defense lawyer throughout the process; and the prevention of secondary and recurrent victimization within criminal proceedings; providing victim sensitivity training for judges and other participants in the criminal justice system.

The Code of Criminal Procedure contains general rules dealing with the protection of victims during the investigation phase or in criminal proceedings. Article 221 provides that the victim of a criminal offense at any stage of the proceedings may submit to the competent judge a written request for a protection measure or an order for anonymity when there is a serious risk for them or their families. The judge can then decide on the claim based on the arguments presented by the victim of the crime, assessing the concrete circumstances and the real risk that may be posed to the victim or his family members. This act also contains a number of other rules that provide for the conditions for issuing an order for protection measures and for anonymity, which are quite detailed, as they provide a significant framework of protection that can be provided to victims of

crime. Since the Code of Criminal Procedure is a legal act that provides solutions for criminal proceedings for all categories of criminal offenses, it does not contain any special provisions that would apply only to victims of criminal offenses of terrorism.

The protection of victims of crime is specifically addressed in the Law on Witness Protection issued by the Assembly of Kosovo in 2011. The law provides that protection measures may be applied before, during, and after criminal proceedings against a person at risk in relation to investigations for these criminal offenses as follows: a criminal offense against Kosovo, its citizens, and inhabitants; a criminal offense against international law; a criminal offense against the economy; a criminal offense against official duty; and a criminal offense for which the law provides for a sentence of at least five years of imprisonment (Law No. 04/L-015).

Protection of victims of terrorism enjoys protection under this law, as from these categories of criminal offenses, the incrimination of terrorism in the Criminal Code is regulated by Chapter XIV, entitled "Criminal offenses against the constitutional order and security of the Republic of Kosovo."

Protective measures can be applied to the person in relation to the criminal offenses mentioned above if certain conditions are met, namely if there is a serious risk to that person and his relatives, or if the person who has contributed in any way to the commission of the criminal offense admits to working closely with the judiciary (Assembly of Kosovo 2011). The safeguards are as follows: physical protection of the protected person; temporary relocation of the protected person to a safe location; special procedures for access to data and documents related to protected persons by document issuing offices and other formal databases; change of residence, work, or schooling of the protected person; change of identity of the protected person; change of physical appearance of the protected person, including plastic surgery; and financial protection of the protected person (Assembly of Kosovo 2011).

In great detail, the law establishes a special commission in charge of including the endangered person in the program as well as addressing the program's duration and completion. A particularly controversial issue in relation to victims of terrorism may be the coverage provided by law for these categories of victims, as in many cases of terrorism, due to the manner of commission of the criminal offense, the investigation cannot end with any indictment that could bring to the court any potential suspect, while on the other hand, there may be a real risk that may threaten the surviving victim of this criminal offense.

Kosovo has already adopted provisions of Article 2 of the European Convention on Human Rights, Article 6 of the Covenant and Civil and Political Rights, as well as it has Article 25 in its Constitution. In addition to these legal instruments that are applicable to the legal order in Kosovo, case law has taken an important step in addressing the liability of the state in cases where the individual's life or physical or moral integrity is endangered by third parties. According to this practice, Constitutional Court of Kosovo (*Gëzim and Makfire v Municipal Court*, 2012) ruled that in these situations the court has the responsibility to take positive preventive actions in terms of preserving the goods of the individual who enjoys legal protection. In situations where the state authorities are aware or should have been aware of the real and immediate danger that threatens the



individual and causes the consequence of inaction, the state is held accountable in objective terms for causing the consequence.

Although Kosovo doesn't have yet any consolidated practice that deals with the protection of victims of terrorism, in the spirit of addressing this issue as above, victims of terrorism, should enjoy special protection from state authorities immediately if the consequence is caused, as well as during the entire period of the criminal investigation, and during the criminal procedure and after its completion. Risk assessments for victims of terrorism, especially those who testify to the relevant authorities, should be immediate and ongoing.

The Madrid Memorandum on the well-being of victims of terrorism advises judges to receive sensitivity training to help prevent possible secondary and recurring victimization within the criminal justice process. Regarding this issue, prosecutors and judges in Kosovo receive training from the Academy of Justice in the specialized module entitled "Radicalism, extremism, and terrorism". The module is designed to advance the professional knowledge and competencies of judges and prosecutors in first instance and appellate courts, where a training objective is provided to address access to justice from the perspective of victims of terrorism (Academy of Justice 2020). In 2021, which includes the treatment of victims of terrorism, the training session was attended by 22 judges from the courts of first instance and second instance (Academy of Justice 2021). In 2022, the category of officers who can attend this training was expanded to include officers from the police, probation service, and correctional service.

Attendance at the module is not mandatory for prosecutors and judges dealing with terrorism cases. The fact that, according to the legal framework in force in Kosovo, the investigation and prosecution of terrorist offenses is in the exclusive competence of the Special Prosecution acting within the State Prosecutor (Law No. 03/L-052), while the jurisdiction of the trial is the exclusive competence of the Special Department operating in the Basic Court in Pristina (Regulation no. 03/2019) made easier the issue of organizing more specialized and comprehensive training for all prosecutors and judges charged with terrorism criminal cases.

### *2.3. Legal advice, representation, and participation in criminal proceedings*

A noteworthy standard contained in the Madrid Memorandum is the information of the victim about the course of the investigation and criminal proceedings, and the provision of professional and free assistance during the criminal proceedings. In this respect, legal aid is generally a category that is regulated by the Kosovo Constitution and international mechanisms anticipated in Kosovo (Constitution of the Republic of Kosovo 2008). However, Article 31 of the Constitution refers to legal aid only for the defendant, while remaining silent regarding the legal aid that can be used by the victim of a criminal offense (Constitution of the Republic of Kosovo 2008). Despite this, the provision of free legal aid is generally subject to the regulation of the Law on Free Legal Aid, which regulates the types, scope, beneficiaries, and providers of free legal aid, the establishment of the institution of free legal aid; and the competencies, procedures, and conditions for the realization of and financing of free legal aid. The law provides special criteria that should be met by the applicant for free legal aid, namely that the primary criterion is the financial criteria of the entity requesting such assistance. According to the

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financial criteria, primary and secondary legal aid are provided. Primary legal aid is provided to all people who benefit from the right to social assistance or are in a similar situation. While secondary legal aid is provided to all people whose total family income is less than the average family income (Law No. 04/L-017). Despite the potential impact of the regulation provided by this law on free legal aid services, the scope of this act does not comprehensively cover the victims of terrorism, as inter alia, it stipulates the financial criteria when providing this service to entities, while on the other hand, the Madrid Memorandum contains clear instructions that victims of terrorism should be provided with free legal aid unconditionally, regardless of the financial situation of the entity. As per Directive 2012/29/EU of the European Parliament and of the Council on Minimum Standards on the Rights, Support and Protection of Victims of Crime, it also requires states to build effective access to criminal proceedings for victims of crime and to ensure that all court costs arising from defense counsel costs, as well as other costs, should be covered by public funds as far as possible (Directive 2012/29/EU).

Another standard contained in the Madrid Memorandum is the representation and participation in the criminal proceedings of the victim of a criminal offense of terrorism. In this regard, the Code of Criminal Procedure reserves the right of the victim to have the quality of a party in criminal proceedings and provides that the victim of a criminal offense should be treated with respect by the police, prosecutors, judges, or other body that conducts criminal proceedings (Article 62 (1)). In accordance with the practices of the Madrid Memorandum, this act provides that the victim of a criminal offense may be represented by a licensed lawyer, a victim advocate, or self-represented (Article 62). The CPC also contains some relevant provisions where it is reserved for a more active role regarding the exercise of certain rights by the victim of a criminal offense during the criminal proceedings. Thus, according to Article 217, the victim, in the capacity of a party, during the investigation may request the state prosecutor to obtain any concrete evidence if it is relevant to the criminal proceedings. If the state prosecutor deems it unnecessary to administer the evidence requested by the victim, the latter has the right to appeal against the rejection decision to the relevant judge (Article 217). However, although the victim has these rights during the investigation phase, she is not guaranteed any right to be continuously informed by the state prosecutor about the progress of the investigation, or the specific actions taken during the investigation and prosecution. The lack of such a notification mechanism that is promoted according to the practices contained in the Madrid Memorandum can be assessed as a significant lack of adequate treatment under the Code of Criminal Procedure.

Also, during the main trial, the victim of the criminal offense enjoys crucial role provided by the Code of Criminal Procedure. In this case, for each session of the main trial, the victim of the criminal offense is invited to be present during this phase of the procedure, while if the victim does not have the capacity to be a witness, it is notified that the trial will be held without his presence (Article 287 (1) (4)). During the main trial, the victim has the right, based on sound reasoning, to request that new evidence (Article 288 (1)) be introduced that was not included in the prosecution's indictment filed in the competent court. In addition, the victim during this phase has the right to present his or her testimony, as well as the right to question witnesses (Article 299 (1)). Immediately after the state prosecutor, the victim of the crime has the right to repeat the motion for taking evidence if the motion was previously rejected (Article 329 (3)) and also has the

right to propose witnesses to challenge the testimony of the accused party (Article 331 (1)). During the main trial, the victim has the right to cross-examine the defendant in accordance with the interrogation practices provided by the CPC. Even in the final word, the victim has the right to state the damage caused to him by the consequences of the criminal offense and to submit by property claim for compensation of the damage (Article 354) as well as the right to oppose the final word of the defendant and to present his arguments (Article 355 (3)).

According to Article 364, the victim has the right to have a copy of the judgment, while according to Article 381 he has the right to appeal the judgment only against the criminal sanction imposed on the defendant, such as for the costs of the proceedings. This article does not include the right to appeal for the victim of the criminal offense of terrorism, which means victims of this category of criminal offenses cannot appeal against the judgment issued by the court of first instance. Despite the restriction on the right to appeal, during the appeal review procedure, if it is decided to open the hearing before the panel of the court of appeal, then in accordance with Article 392 (2) and Article 414 (1), the victim of the criminal offense must also be notified.

#### *2.4. Compensation, reparation, and rehabilitation programs to victims of terrorism*

The Madrid Memorandum promotes the approach that the victim of terrorism has the right to be compensated for the consequences caused by terrorist acts (The Madrid Memorandum). In this regard, there are a number of other international and regional instruments that address the need to compensate victims of terrorism. Such an example can be drawn from the report of the Special Rapporteur (A/HRC/20/14) of the UN Human Rights Council, which provides for the obligation of the state to compensate victims of terrorism, regardless of whether it is proven or not the positive or negative obligations that the state has for the preservation of the life of the individual. The report explains in detail the obligations that the state has towards the victims of terrorism, emphasizing the necessity of their compensation as an obligation that the state has to the victims of terrorism for the fact that the motivation of a terrorist is related to the policies pursued by the state or values that represent society and not to the personal motivation it may have towards the victim (Emmerson 2012). The Special Rapporteur recommends that each state, from its own funds, establish a compensation scheme for all victims of acts of terrorism (Emmerson 2012).

Some states specifically regulate the program of compensation for victims of terrorism separately from the general program of compensation for victims of crime, e.g. Turkey, France, Italy, Morocco, USA, Spain, etc. (UNODC 2015). Spain has adopted the Law on the Recognition and Integral Protection of Victims of Acts of Terrorism, which summarizes in an integrated manner the assistance, support, and protection to which victims of terrorist acts are entitled. This law explicitly recognizes all victims of terrorism as victims of human rights violations regardless of whether they can prove state responsibility for the consequences caused (Emmerson 2012).

Despite the fact that victims of terrorism are categorized as victims with specific needs due to their personal characteristics, nature of crime, circumstances, and type of crime (McDonald 2021, 6-7) Kosovo's legal framework does not provide rights or any special program for victims of terrorism, as the issue is framed within the retribution of victims

are treated equally for all categories of crime victims. According to the legal framework in Kosovo, the issue of compensation to victims of crime in general, including victims of terrorism, can be sought separately in two separate legal proceedings, namely in court proceedings as well as in administrative proceedings.

The victim of a criminal offense may appear as a party as recognized by the Code of Criminal Procedure and is entitled to reasonable compensation ordered by the court from the defendant who has been found guilty of the criminal offense, where as a consequence it has caused material, physical, and emotional damage (Criminal No. 04/L-123 Procedure Code, 2012). The CPC recognizes the right of every victim of a criminal offense to file a legal property claim no later than the end of the main trial in the basic court (Article 460 (2)). The CPC provides appropriate solutions for all categories of victims of criminal offenses, regardless of whether they are summoned to court as witnesses or not. In situations when victims are not summoned as witnesses, they are, in accordance with Article 287 (4), invited to submit a property claim for damages caused to them by the consequences of the criminal offense. During the main trial, the court takes care to inform the injured party about the possibility of filing a property claim (Article 322 (2)). In his or her closing statement, the injured party or his authorized representative may explain his or her declaration of injury or property claim and call attention to evidence of the criminal liability of the accused (Article 354). In the criminal court procedure, the court is not necessarily related to the request submitted by the victim of the criminal offense that, in addition to deciding on the criminal case, the legal property claim be resolved at the same time. This solution is provided by Articles 262 and 263 of the CPC, which enable the court to determine if the review of the legal property claim would significantly delay the criminal procedure. Then the court instructs the victim of the criminal offense that the legal property claim can be realized in a civil dispute. The civil court procedure is directly related to the resolution of the criminal case with a guilty verdict and is a necessary condition to consider the claim for compensation admissible and to allow the examination of the merits of the claim.

The pursuit of the judicial procedure for the compensation of victims of terrorism can be seen from two points of view. On one hand, it empowers these victims in the face of terrorism and serves as an important mechanism for draining the material resources of the perpetrators and their supporters (Walker 2015).

In this regard, the conduct of court proceedings to objectively compensate victims of terrorism may be impossible to develop for many reasons, including the fact that these acts are committed by suicide attacks, the lack of material assets of those carrying out these attacks, the lack of evidence to prove the commission of these acts by certain individuals, and other significant challenges.

The Assembly of Kosovo has issued Law No. 05/L-036 on Compensation of Victims of Crime, which provides for a special administrative procedure for compensation of victims of crime. This law regulates the right to financial compensation of victims of criminal offenses, decision-making authorities, and procedures for exercising the right to compensation. The law provides for the possibility of compensating the victim of violent criminal offenses for five categories of violent criminal offenses, namely: murder, human trafficking, sexual assault, sexual abuse of children, and criminal offenses that fall within the definition of domestic violence under the Law on Protection from

Domestic Violence. These categories of crime victims do not directly include victims of terrorist offenses. However, there is an alternative legal possibility that even this vulnerable category of victims could benefit from the compensation program. As the law gives the commission the opportunity to review and approve compensation programs for other violent criminal offenses, (Article 6 (2)) in this category, criminal offenses of terrorism may also be included.

The law explicitly sets out the legal requirements that the victim of a criminal offense must meet in order to be able to benefit from the crime victim compensation program. This law also provides for restrictions regarding the possibility of double compensation, namely the benefit that can be realized by the victim of a criminal offense in court proceedings and at the same time in administrative proceedings (Article 4 (3)).

In recent years, a legal initiative has been taken by the Ministry of Justice to replace the law on compensation of victims of crime with a new law that would have a more advanced approach to the position of victims of crime on the issue of compensation in administrative proceedings. This initiative has been assisted by a team of experts in this field and has been supported by relevant institutions. Currently, the draft of the new law is in parliamentary procedure in the Assembly of Kosovo and contains many significant innovations for victims of crime, where it is especially proposed to include all violent criminal offenses, removing the restrictions that are now evident in the current law that apply only to certain types of criminal offenses.

It is now proposed that victims of violent crimes receive immediate compensation of up to 3,000 euros, despite the fact that the criminal case has not been decided by a final court judgment.

This constitutes a significant innovation and relevant basis for the dignity of the crime victim's immediate support for certain issues. The current draft law does not directly address the issue of compensation for victims of terrorism as required by the standards of the Madrid Memorandum or even according to the practices built by some of the states we mentioned above.

### **3. Conclusion**

The starting point of this paper is that victims of terrorism can be characterised as a category with specific needs, different from those of other victims of crime. Bearing in mind the international developments and instruments that refer particularly to them, the Kosovo legal system has been analysed to establish whether or to what extent it responds to these demands.

From the study of the legal framework in Kosovo for victims of terrorism, we can conclude that the Law on Witness Protection does not provide sufficient security guarantees for victims of terrorism, as the program offered for witness protection is conditional on investigations or criminal proceedings, which in cases of terrorism may not always be met. The protection of rights guaranteed by the Constitution is one of the positive obligations that the state of Kosovo has towards the protection of life, physical integrity, and other rights guaranteed whenever there is information or should be that information. Currently, free legal aid for victims of crime, including victims of terrorism, is conditional on the victim meeting certain criteria, which is inconsistent with the

Madrid Memorandum and Directive 2012/29/EU to the EU. Despite the fact that the victim of crime has significant treatment in criminal proceedings, victims of terrorism cannot use the legal remedy of appeal against the decision of the court of first instance, as such a thing is not allowed by the Code of Criminal Procedure.

In general, we can conclude that the legal framework governing victims of crime, including victims of terrorism, needs to undergo the necessary amendments and be harmonized with the standards promoted by the Madrid Memorandum.

## References

- Alvaro, G., and D'Andrea, A., 2015. The Impact of Directive 2012/29/EU on the Italian System for Protecting Victims of Crime in Criminal Proceedings. In: S. Ruggeri, ed., *Human Rights in European Criminal Law* [online]. Cham: Springer. Available at: [https://doi.org/10.1007/978-3-319-12042-3\\_15](https://doi.org/10.1007/978-3-319-12042-3_15)
- Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. *OJ* [online], L 261, 6.8.2004. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0080>
- Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. *OJ* [online], L 082, 22.03.2001. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001F0220>
- Council of Europe Convention on the Prevention of Terrorism, 16 May 2005. *ETS* [online], No. 196. Available at: <https://www.refworld.org/docid/47fdfaf0d.html>
- 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. *OJ* [online], L 315, 14.11.2012. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>
- Emmerson, B., 2012. *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism* (A/HRC/20/14) [online]. Human Rights Council. Available at: [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-14\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-14_en.pdf)
- Global Counterterrorism Forum, 2014. *Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately After the Attack* [online]. Available at: [https://www.thegctf.org/documents/10162/72352/13Sep19\\_Madrid+Memorandum.pdf](https://www.thegctf.org/documents/10162/72352/13Sep19_Madrid+Memorandum.pdf)
- Halsell, K., 2016. Whole Again? Statutory Compensation Schemes as a Tort Alternative in the Aftermath of Terror Attacks. *Temple International and Comparative Law Journal* [online], 30(2), 289-316. Available at: <https://sites.temple.edu/ticlj/files/2017/02/30.2.Halsell-TICLJ.pdf>
- Jupp, J., 2022. Strengthening Protection and Support for Victims of Terrorism in Criminal Proceedings in Afghanistan. *Studies in Conflict & Terrorism* [online], 45(2), 133-152, Available at: <https://doi.org/10.1080/1057610X.2019.1657657>

- Letschert, R., 2009. International Initiatives and Activities Focusing Specifically on Victims of Terrorism, Including Existing International Instruments. In: R. Letschert, A. Pemberton and I. Staiger, eds., *Assisting Victims of Terrorism* [online]. Dordrecht: Springer, 31–71. Available at: [https://doi.org/10.1007/978-90-481-3025-2\\_2](https://doi.org/10.1007/978-90-481-3025-2_2)
- McDonald, M., 2021. *Guide for Lawyers to the Victims Directive & the Criminal Justice (Victims of Crime) Act 2017* [online]. Irish Council for Civil Liberties, Ireland. Available at: <https://www.iccl.ie/wp-content/uploads/2018/11/5871-EU-Victims-Day-Proof-updated-v2.pdf>
- Rafaraci, T., 2015. New Perspectives for the Protection of the Victims in the EU. In: S. Ruggeri, ed., *Human Rights in European Criminal Law* [online]. Cham: Springer. Available at: [https://doi.org/10.1007/978-3-319-12042-3\\_11](https://doi.org/10.1007/978-3-319-12042-3_11)
- Sahiti, E., Murati, R., and Elshani, X., 2014. *Komentari i Kodit të Procedurës Penale*. Prishtina: GIZ.
- The Academy of Justice, 2020. *Programi Trajnues Kornizë 2021-2022* [Framework Training Program, 2021–2022], 65–66. Prishtina: Academy of Justice. Available at: [https://ad.rks-gov.net/Uploads/Documents/PTKRev2021Sq\\_.pdf](https://ad.rks-gov.net/Uploads/Documents/PTKRev2021Sq_.pdf)
- The Academy of Justice, 2021. *Report on the Participation of Judges in Training in the Specialized Program: Extremism, Radicalism, and Terrorism*. Prishtina: Academy of Justice.
- The United Nations Global Counter-Terrorism Strategy: resolution adopted by the General Assembly on September 20, 2006 (A/RES/60/288) [online]. Available at: <https://www.refworld.org/docid/468364e72.html>
- United Nations Office on Drugs and Crime (UNODC), 2015. *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* [online]. Vienna: UNODC. Available at: [https://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good\\_practices\\_victims\\_E.pdf](https://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good_practices_victims_E.pdf)
- Walker, C., 2015. Compensation and Financial Redress for Victims of Terrorism. In: J. Argomaniz and O. Lynch, eds., *International Perspectives on Terrorist Victimisation* [online]. London: Palgrave Macmillan, London. Available at: [https://doi.org/10.1057/9781137347114\\_5](https://doi.org/10.1057/9781137347114_5)

#### *Legal sources*

- Code No. 04/L-082 Criminal Code of the Republic of Kosovo, 2012. *Official gazette* [online], no. 19, 13 July 2012. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2834>
- Code No. 06/L-074 Criminal Code of the Republic of Kosovo, issued by the Assembly of Kosovo in 2019. *Official gazette* [online], Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18413>

- Constitution of the Republic of Kosovo, issued by the Assembly of Kosovo in 2008. *Official gazette* [online]. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=3702>
- Criminal No. 04/L-123 Procedure Code, issued by the Assembly of Kosovo in 2012. *Official gazette* [online]. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2861>
- Law No. 03/L-052 on the Special Prosecution of the Republic of Kosovo was issued by the Assembly of Kosovo in 2008. *Official gazette* [online], 3(27), 3 June 2008. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2526>
- Law No. 04/L-015 on Witness Protection, issued by the Assembly of Kosovo in 2011. *Official gazette* [online], no. 13, 1 September 2011. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2758>
- Law No. 04/L-017 on Free Legal Aid, issued by the Assembly of Kosovo in 2012. *Official gazette* [online], no. 3, 22 February 2012. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2803>
- Law No. 05/L-036 on Crime Victim Compensation, issued by the Assembly of Kosovo in 2015. *Official gazette* [online]. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10936>
- Regulation no. 03/2019 on the organization and functioning of the Special Department within the Basic Court in Prishtina and the Court of Appeals [online]. Approved by the Kosovo Judicial Council on April 23, 2019. Available at: <https://www.gjyqesori-rks.org/regulloret/?r=M&legId=196>
- Regulation no. 1999/1, issued by the United Nations Mission in Kosovo (UNMIK), 25 July 1999 [online]. Available at: [https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999\\_01.html](https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_01.html)
- Regulation no. 1999/24, issued by the United Nations Mission in Kosovo (UNMIK), 12 December 1999 [online]. Available at: [https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999\\_24.htm](https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_24.htm)

#### *Case law*

- Constitutional Court of Kosovo, 2012. Judgment in case no. KI 41/12, applicants *Gëzim and Makfire Kastrati against Municipal Court in Pristina and Kosovo Judicial Council*, 26 February 2012. *Official gazette* [online]. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8727>