

STRUCTURE, CONTENT ANALYSIS AND DIMENSIONOLOGY* OF A VICTIMOGENIC SITUATION

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1. METHODOLOGICAL PRELIMINARY

A necessary condition for effective victimologic prevention of crime is to identify the factors of individual victimisation and establish a mechanism for their interaction in a victimogenic situation. This task must be resolved on a fundamental methodological basis, according to which an individual criminal behaviour arises from the interaction of personality (individual) and specific life situation. But it is necessary to differentiate and further specify this provision in each specific case, comprising a victimogenic situation. This particular variety of criminogenic situation always implies that a specific victim of the crime is one of the main characters of the criminal drama, along with a perpetrator, not just as the target of the offense, but as an actor who, by his/her behaviour and special personality, objectively contributes to the commission of the crime against him/her.

Consequently, in a victimogenic situation, an offender's behaviour interacts with an inadequate personal selfmanifestation of the victim which leads to a crime. It is not hard to see that one of the main features of the victimogenic situation is an "abundance", a certain "redun-

* The neologism "Dimensionology" is used in the essay as a special term to express the spatial dimension of the subject matter of victimogenic situations. In this regard, the term "Phenomenology" will be its closest analogue, but without mentioning the spatial nuance. See M. Ugrekhelidze "The Phenomenology of Post-Criminal Emotional Feelings", Journal "Law and the World", 2017, №7, p. 29.

dancy” of the subjective factor in the genesis of the crime.

2. STRUCTURAL LACE-FRAME

In the situation described above, the task of prevention is complicated for two reasons: the first is the need to neutralize not one, but two completely independent sources of harmful behaviour. And the second reason is that both of these sources by their nature are subjective. However, subjective factors are difficult to predict and then prevent. Two sets of subjective factors with such a coincidence greatly complicate a victimogenic situation and impede its prediction. When mentioning an offender and his/her victim as subjective factors of victimisation, it should be kept in mind that the term “subjective” is only conditional here. Subjective factors can be perceived as much as we can imagine each of them independently, without interrelation. But since a crime is not the result of mere coexistence of the perpetrator and the victim, but the outcome of their very complicated interaction, therefore, the importance of each of them can be clarified only after finding out how they correlate with each other in the process of interaction.¹ No one in the literature has argued that a victim of the crime is an indivisible element of the objective situation where an offender commits his/her criminal activity. It cannot be really denied. But the other side of the question is equally important: are, in particular, the behaviour and personality of an offender treated as a part of the objective situation? Such an issue may naturally be raised for further analysis of a victimogenic situation where the victim is as active as the perpetrator. We believe that a key “author” and “subjective source” of the crime within the system of the perpetrator-victim is not only the perpetrator. The latter is also an objective element of the victimogenic situation with respect to the victim. In this dimension, it becomes clear that the perpetrator and the victim in a vic-

timogenic situation play an external role of the objective factor in relation to each other. At the same time, each of them retains the quality of the “creator” of the crime, its “co-author”, the first one falling within the framework of both so-called “joint culpability”, and the second one – predominantly only in the sense of “concausation”. However, this only partially reveals the dialectical interrelationship between objective and subjective preconditions of victimisation. The next step in the study of this interrelationship is to clarify the specific nature of the circumstances that characterize an offender, on the one hand, and the personality and behaviour of the victim, on the other hand.²

3. THE VICTIMISING ROLE OF THE FACTOR ORIGINATED FROM AN OFFENDER

During the victimologic description of an offender, it is necessary to identify one of his/her personal characteristics, which is usually a specific factor of victimisation. At present, it is somehow doubtful that all the personal qualities, characteristics or attributes of an offender, directly affecting the process of victimisation, can be named. Therefore, it is very difficult to completely differentiate and classify them in terms of creating a generalized model of the mechanism of their impact on the victimful behaviour. Nevertheless, there is still considerable empirical evidence that different perpetrators show (more or less) different abilities to resist, be exposed to, or be affected by influence of the interaction between a particular situation and a victim in a victimogenic situation. In other words, some people are less affected by very attractive or, conversely, deterrent factors, in general, by “situational temptation”, compared to others. Obviously, a universal significance cannot be given to this ability or feature of an offender, which may conventionally be called victim resistance. However, from the point of view of victimologic prevention and theory, it is necessary to consider its importance even

1 Meier B.-D., Täter-Opfer – Ausgleich und Wiedergutmachung im allgemeinen Strafrecht, jus. 1996, S. 431.

2 Ibid., 48.

for impertinent (provocative) behaviour of a victim (affected crime; exceedance of the limits of self-defence), which have a predominant share in the overall structure of victimful delinquency. In such a case, it is very important that the perpetrator “does not follow”, “escapes from”, and “resists” a victim’s provocative action, which is a subjective characteristic of the offender’s personality, which we have called victim resistance. This feature largely determines the real possibility of a victim-provocateur, as well as the degree of intensity of the crime committed against him/her. In this regard, it is also an objective factor of victimisation, a kind of *conditio sine qua non*... This once again shows, in a more crystallized form, the organic connection between the objective and subjective factors of victimisation.

4. THE CONTRIBUTION OF VICTIMISING FACTORS ORIGINATED FROM A VICTIM HIMSELF/HERSELF

The following is a brief analysis of the victim and his/her behaviour. When distinguishing the subjective features of the victim, it is not necessary to return to the aspects of the issue already studied.³ Their classifications are already known and simply, it can be filled with: I-relatively stable (permanent, dispositional); II- variable with two main groups of transitional features. The first group will include personality features, characteristics, or traits such as temperament, emotionality (stiffness and balance), mental pathologies and anomalies, ethnic views, level of legal awareness, social and value orientation, etc. The second group may include moods and spirits, temporary health disorders, fatigue, biorhythmic impairment of psycho-physical strength, etc. Such a classification has not only cognitive value; It is also practically valuable because it helps to rationally plan victimologic prevention (for example, professional-technical selection; carrying out educational or medical activities, etc.) and to

determine the degree of culpability of the offender in order to individualize punishment.

A victimful behaviour in a victimogenic situation must be evaluated objectively as well as subjectively. Both of these substantively differentiate the victim’s behaviour from the offender’s action.

- Subjectively, a victimful behaviour may be both culpable (intentional, negligent) and non-culpable. Therefore, unlike an offender’s behaviour, culpability is not a necessary element of the victimful behaviour. And if, nevertheless, the so-called “culpability of the victim” in the recent past often was referred to as a necessary component of every victimogenic situation, due to the lack of special terminology at that time, this was done conditionally; This expression contained a much broader meaning, which implied almost all cases of causal conditioning on the part of the victim. In this regard, it would be better to completely refuse the use of the term “culpability of a victim” and replace it with the term “victimful behaviour”. That’s what happened. Consequently, a victim’s behaviour is not victimizing only if it does not cause or simply does not contribute to the commission of a crime. This does not fully mean that the identification of culpability, in the *sensu stricto* of this word is superfluous in the victim’s action. It is rather necessary, first, to resolve the issue of liability of the victim himself/herself and, secondly, to determine the degree of culpability and responsibility of the perpetrator.⁴
- Objectively, a victimful behaviour may be simply dangerous (risky) when it creates conditions or poses a real threat of harm to the victim himself/herself (e.g., defiant behaviour of a woman that evokes erotic passions in a man); Or even **socially dangerous** when it creates conditions or poses a real threat to the interests of others, including the offender (for example,

³ For more details see Maeck M., Opfer and Strafzumessung, Stuttgart, 1983.

⁴ See Ebert U. Verbrechensbekämpfung durch Opferbestrafung? JZ, 1983, S. 640.

an unlawful attack on a person, which has led to an affective state of the person). It is very important to find out whether a victimful behaviour was dangerous (risky) or socially dangerous, in terms of both prevention and criminal law to address the victim's responsibility.⁵ This is understandable because criminal measures cannot be applied to a victim if his/her actions were not socially dangerous. In addition, the degree of social danger of the victimful behaviour must be identified in each case, because the crime is mainly separated from other types of lawful or wrongful actions by this criterion (Criminal Code of Georgia, Article 7(2)).

5. THE ESSENCE OF A QUANTITATIVE DIMENSION

It is recognized that the degree of danger of a victimful behaviour collaterally affects the responsibility and punishment of a person, through the influence of the offender's behaviour on the degree of social danger.⁶ We can easily agree that a victimful behaviour increases the probability, chance, and danger of committing a crime against a victim. But the danger of committing a crime and the social danger of the crime as such are not identical things. Therefore, in our opinion, a universal mechanism for influencing the responsibility and punishment of the offender through a victimful behaviour is not the degree of social danger of criminal behaviour, but **the degree of culpability of the offender** that is a moral and legal expression of the degree of his/her free will in each specific case of the crime committed.

Even if social danger implied guilt, it would no doubt be superfluous to further clarify the concept that the danger of victimful behaviour influences the individualization of punishment. But the practical significance of separating these categories from each other will become clear if we recall that socially dangerous actions some-

times may not be imputed to an individual at all. Articles 33 and 34 of the Criminal Code of Georgia clearly state the possibility of non-culpable commission of a socially dangerous action. But, if the action is both dangerous and culpable at the same time, then the degree of culpability of an offender (subjective element) may be affected by not only the social danger of the criminal act (objective element) but also by the danger of victimful behaviour or social danger (objective element). Accordingly, the connection between objective and subjective factors in a victimogenic situation is much more complex and deeper than in ordinary cases.

6. THE SPACE OF VICTIMOGENESIS AND EXPECTATIVE NORMS

Finding out how a victimful behaviour correlates with legal or other social norms, serves to further clarify the objective content of the victim's behaviour. The above understanding of victimful behaviour helps us to solve this problem.

As mentioned above, a victimful behaviour is either dangerous, that is, risky for a victim as such or socially dangerous, that is, jointly dangerous for many others, and perhaps, inter alia, for the victim as well. Such understanding of objective content of victimful behaviour involves a wide range of cases that may contradict not only with legal and moral norms, but also with other types of social norms. Such are, for example, customs, including outmoded, harmful customs (e.g. blood feud, bride-price, etc.), traditions (tribal, family, friendly, criminal, etc.), rules of cultural behaviour, norms of care and prudence, etc. If these norms in society or in microsocial groups were always in harmony with legal or moral norms, the problem would be easily solved: then we could confidently say that dangerous or socially dangerous victimful behaviour within its content may be unlawful (wrongful) or immoral. It was this point of view that prevailed in Soviet legal literature, which was not completely eradicated in the former Soviet Republics. Namely,

5 Ibid., 641.

6 Maeck M., Op.cit., S. 172.

a victim's behaviour is characterized as "negative", "improper", "wrong", "indecent", "rebukable" or «reprehensible».

But the case is much more complicated because some social norms either clearly contradict moral and legal principles (e.g., blood feuds and the custom of bride-pricing), or are not even directly related to the moral or legal content of social prohibitions and requirements, for example, personal safety standards warn people not to harm just themselves, but not the others. In this way, they do not completely lose the purpose of regulating human behaviour and fully function in the limited but fully defined areas of life and activities of citizens – for example, in the middle and small social communities. Failure to comply with such norms by those directly affected may easily become a determinant or contributing factor to the commission of a crime.⁷

Expectations of the members of the relevant social group play a crucial role at this moment, who, by virtue of custom or tradition, tend to assume that the relevant category of people will behave in accordance with the **expectative norms** tailored to a particular situation. These norms may be called expectative in the view that it is they who have a crucial orientation commitment to find out what is and what is not expected from an individual regardless of the social group (community) to which he/she belongs and what are the specifics of the situation. And if expectations are not met, some kind of "sanctions" – collective or individual – may be applied to an actor. Such sanctions are sometimes manifested in an unlawful act in response to the violation of **expectative norms** and as a result, the actor becomes the victim of the crime. A clear example of this is the well-known case of a newly widowed young lady being brutally beaten and tortured in one of the remote mountain villages for refusing to be dressed in black until her death, in contradiction to local customs. The denial of the victimity of such behaviour due to the fact that they do not contradict moral or legal norms, but

are inconsistent with the **expectative norms** of certain micro-social groups (and therefore, with the subjective expectations), would meant overlooking and ignoring the obvious facts. No less well-substantiated is the victimity of behaviour that violates the personal safety and wellbeing rules (for example, leaving an apartment unattended for a long time or without proper alarm). This violation is more a technical deficiency in behaviour than a legal or moral sin. Because of all above, it is not surprising that the causal role of the so-called "culpability of the victim" in judicial practice is not necessarily related to a negative moral or legal assessment of the victim's behaviour.⁸ This is confirmed by the practice of the Supreme Court of Georgia, whose rulings and resolutions often stated that "when passing a sentence, a court shall take into account **the role of a victim's behaviour** in the result of the criminal act (*italics mine – M. U.*).⁹

7. RECIPE FOR SUCCESS: DYNAMIC BALANCE BETWEEN RIGID SUBJECTIVE AND LABILE OBJECTIVE FACTORS IN A VICTIMOGENIC SITUATION

In conclusion, we must study and consider a victimful behaviour in the broad context of its relation to any social norms, and not only in the

⁸ Ibid., 21.

⁹ Judgement of 8 July 1968 issued by the Plenum of the Supreme Court of Georgia on the case of I.K. See "Bulletin of the Supreme Court of the Georgian SSR", 1969, №1, p. 14. See also "The Herald of Justice", 1994, №2, p. 17, where paragraph 29 of Judgment №5 of the Supreme Court of the Plenum of 6 July 1994 on the Case of Intentional Murder states: "It is extremely important to correctly assess the victim's behaviour in order to choose a proportionate, fair punishment for the offender. If the victimful behaviour is substantiated, at the time of sentencing the court must take this circumstance into account as a mitigating circumstance of lesser responsibility for the lesser degree of culpability". The subsequent judicial practice of Georgia confirms, deepens and develops this tendency, according to which a victimful behaviour of the victim (*italics mine-M. U.*) is considered to be a mitigating circumstance if the limits of self-defence are exceeded (See Decisions of the Supreme Court of Georgia, 2005, №4, p. 13-14.).

⁷ See Ugrekhelidze M. The Importance of the Degree of Culpability for the Individualization of Punishment, "Soviet Law", 1978, №6, p. 55.

context of its conformity with the moral and legal requirements.¹⁰ This will enable us to raise and resolve the issue on the following conceptual basis: whether an individual victimisation is a result of a kind of inconsistency between the rigid subjective expectations of a social group (or community) and the labile situation in which a potential victim suddenly manifests himself/herself? In my opinion, there is a reliable basis for such assumption, and then there is a clear need to strike a dynamic balance between objective and subjective factors in the social environment through early prevention. To this end, all the preventive efforts may be implemented in two main strategic directions: I-Maximum approximation of the deviant social expectations of individual social communities (associations) with the general social (moral, legal) standards; II-Identifying the most typical forms of victimful behaviour, imposing social control on them and developing flexible measures for appropriate prevention.*

ABSTRACT

- Victimogenic situation is a private variety of criminogenic situation where one of the main actors of the criminal drama, along with a perpetrator, is a specific victim of the crime, though being not merely a target of the crime, but the person who, thanks to his/her behaviour and particular personal characteristics, objectively contributes to the commission of the crime against himself/herself.
- The study of a victimogenic situation and appropriate prevention must be based on a consistent methodology, according to which an individual criminal behaviour arises from the interaction of personality

(individual) and a particular real-life situation.

- A victim in the victimogenic situation is almost as active as the perpetrator. Therefore, it is necessary to investigate the specific nature of the circumstances in this strange tandem of “perpetrator-victim”, which characterises the personality and behaviour of the offender, on the one hand and the personality and behaviour of the victim, on the other hand.
- The victimological characterisation of an offender makes it necessary to identify a personal characteristic, which is usually a **specific factor of victimisation**. Such determining factor is **victim resistance**, that is, the dispositional ability of the offender to resist, endure, evade, and not to give way to be tempted to commit a crime to the detriment of the alleged victim of the crime.
- A victimful behaviour in a victimogenic situation must be assessed both subjectively and objectively. From a subjective point of view, the victimful behaviour may be either culpable or non-culpable. As for an objective assessment, the victimful behaviour may be simply dangerous (risky) when it creates the conditions or poses a real threat of harm to the victim himself/herself; or it may also be socially dangerous (unlawful) when it creates the conditions or poses a real threat to the interests of others.
- The universal mechanism for influencing an offender’s responsibility and punishment through a victimful behaviour is not the degree of social danger of criminal conduct, but **the degree of culpability of the offender** that is a moral and legal expression of the degree of his/her free will in each specific case of the crime committed.
- We consider the victimity of such conduct, which violates not only the moral and legal requirements, but also **the expectative standards**, for example, the protec-

10 See Schünemann B., Zur Stellung des Opfer im System der Strafrechtspflege, NStZ, 1986, S. 437.

* The above essay was specially prepared for the International Victimological Conference, which was to be held on 29 May this year in Tbilisi under the aegis of the Georgian Academy of Criminology Sciences, but was not carried out due to a sudden pandemic and appropriate restrictions.

tive rules of personal safety and welfare (negligent abandonment of a child or any other good; neglect of alarms, etc.), to be fully recognised. In this regard, a long-term tradition of Georgian judicial practice is worth mentioning.

- It follows from the above stated that individual victimisation is the result of a discrepancy between the rigid subjective

expectations of a particular social group (community) and the unstable situation where a potential victim presents himself/herself inadequately. That's why, there is a clear need to strike a dynamic balance between objective and subjective factors of the victimogenic situation through early prevention.

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