

JUSTICE AFTER THE CRASH: ANALYZING THE ROLE OF JUDICIAL PRACTICE IN SUPPORTING TRAFFIC ACCIDENT VICTIMS

Abstract: This article examines the role of judicial practices in supporting victims of traffic accidents, focusing on the interplay between legal frameworks, victim support systems, and societal values. Through a comparative analysis of global legal systems and an in-depth exploration of domestic laws in Serbia, the study highlights the importance of judicial sensitivity, victim participation, and the integration of public health perspectives in legal responses to traffic accidents. The research reveals substantial variability in the implementation of victim support mechanisms and underscores the potential of restorative justice practices in fostering recovery and reconciliation. Key conclusions advocate for enhanced victim participation in the judicial process, improved accessibility to support services, continuous education for judicial officials, and necessary legislative reforms to strengthen victim rights and protections. The findings aim to contribute to the ongoing discourse on improving judicial practices to better support traffic accident victims, reflecting a broader commitment to justice and human dignity.

Keywords: judicial practice, traffic accident victims, restorative justice, victim support, legal frameworks

1. INTRODUCTION

The aftermath of a traffic accident unveils a complex landscape of grief, loss, and, often-times, a struggle for justice and support by the victims and their families. The intersection of traffic law, victim support systems, and judicial practices in addressing the needs of traffic accident victims presents a multifaceted challenge that societies and legal systems worldwide continue to grapple with. The judicial handling of traffic accident cases not only reflects on the efficacy and sensitivity of the legal system but also embodies the societal values placed on human life, safety, and justice.

In Serbia, as in many parts of the world, the legal discourse around traffic offenses and victim support has evolved significantly, albeit with considerable room for improvement. One insightful examination of the victimization resulting from traffic offenses underscores a pivotal element of contemporary legal discourse - the imperative for a robust, victim-centered approach within the judicial system (Pavlović, 2023). This perspective is essential, recognizing that beyond the immediate physical injuries, traffic accidents inflict profound psychological, emotional, and economic distress on victims and their families. Also, this approach necessitates not only a legal framework that rigorously penalizes traffic offenses but also one that adequately supports and acknowledges the victims of such incidents.

* PhD, Research Fellow, Institute of Criminological and Sociological Research in Belgrade, <https://orcid.org/0009-0005-3121-8752>. E-mail: otolgates@gmail.com. The current paper is part of a research endeavor funded by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia, conducted by the Institute of Criminological and Sociological Research, 2024, number 451-03-66/2024-03/200039.

The discourse on traffic safety and victim support is not isolated to the legal and professional domains. It resonates deeply with the public, often manifesting in spontaneous reactions to tragic traffic incidents. These reactions, while emotional, underscore a fundamental demand for justice and support for victims, reflecting broader societal expectations and the perceived gaps in the judicial response to traffic offenses.

Further compounding the issue is the recognition of traffic accidents as a significant public health concern. According to the World Health Organization (WHO), road traffic crashes are the leading killer of children and youth aged 5 to 29 years and are the 12th leading cause of death when all ages are considered, with more than half of fatalities among pedestrians, motorcyclists and cyclists. There were an estimated 1.19 million road traffic deaths in 2021. The WHO emphasizes that these incidents are not isolated tragedies but rather a preventable public health issue that requires comprehensive interventions spanning legislation, enforcement, and victim support (World Health Organization, 2023).

This research aims to delve into the role of judicial practice in supporting victims of traffic accidents. Through a systematic examination of case studies and legal frameworks, the study seeks to illuminate the intricacies of the judicial response to traffic victimization and explore potential avenues for enhancing victim support within the legal process.

The main research questions and objectives are:

1. How do judicial practices in Serbia address the support and rights of traffic accident victims?
2. What are the gaps and strengths in the current legal frameworks regarding victim support post-traffic accidents?
3. How can legal reforms and judicial practices be enhanced to provide comprehensive support to traffic accident victims, considering the societal impact and public health implications of traffic accidents?

By foregrounding the voices and experiences of victims within the judicial process, the research endeavors to propose actionable recommendations for a more empathetic and effective legal response to traffic accidents.

2. COMPARATIVE AND DOMESTIC LAW PROVISIONS

2.1. Comparative overview of global practices

This chapter examines the diverse ways in which different jurisdictions support traffic accident victims, particularly focusing on their representation in criminal proceedings. The legal frameworks, compensation mechanisms, and the role of victim advocacy vary significantly across countries, reflecting distinct legal cultures and policy priorities.

2.1.1. *United States*

In the United States, traffic accident victims are primarily supported through tort law and insurance claims for compensation. However, in criminal cases involving serious offenses like driving under the influence (DUI) or vehicular manslaughter, victims have the right to be informed, present, and heard at certain stages of the proceedings. Victim advocacy groups and state laws ensure victims' voices are considered in plea bargains, sentencing, and parole hearings. Generally, in the US victims of crime in most states are afforded the following set of

rights: the right to be present at all stages of the criminal justice processes, the right to be compensated for losses suffered, the right to be heard, the right to be informed about the criminal justice processes and other services, the right to be treated fairly and respectfully, and with dignity and privacy, the right to be protected against humiliation from the offender and any other person; and the right to restitution (Boateng, Abbes, 2017: 4). However, it is emphasized that criminal justice officials, as implementers of laws granting victims access to information and participation in the justice process, must undergo compulsory training to enhance their understanding of victims' rights and needs, thereby ensuring victims receive accurate information and support during criminal proceedings.

2.1.2. Australia

Australia's approach combines statutory compensation schemes with victims' rights in criminal proceedings. While compensation schemes offer a non-litigious avenue for support, Australian jurisdictions have also enacted legislation to bolster victims' rights in criminal trials. This includes the right to give victim impact statements at sentencing, contributing to the consideration of victims' experiences and the impact of the offense on their lives. Legal reforms continue to advocate for enhanced representation and participation of victims in criminal justice processes, reflecting a balance between compensation mechanisms and active involvement in legal proceedings (Cook, David, Grant, 1999).

2.1.3. Japan

Japan's system provides basic compensation through compulsory automobile liability insurance (CALI), with additional claims processed through voluntary insurance or litigation (GIROJ, 2023). In criminal proceedings arising from traffic accidents, victims can participate as auxiliary prosecutors in trials involving serious offenses, such as negligent operation of motor vehicle resulting in death or injury. The court will determine whether the participation is appropriate considering the nature of the crime, relationship between the victim and defendant, and other factors, after hearing the opinion of the defendant or defense counsel. This role allows victims or their families to express their views and request specific sentences, enhancing their representation and involvement in the justice process (Matsui, 2011: 77).

2.1.4. India

India has made significant strides in recognizing and enforcing the rights of traffic accident victims within criminal proceedings. The Motor Vehicles (Amendment) Act 2019 not only increases compensation but also strengthens the legal framework for victims' rights. Motor Accident Claims Tribunals (MACT) expedite compensation claims, and recent legal reforms have focused on ensuring victims' voices are heard in criminal trials. The introduction of victim impact statements and the provision for legal aid to victims underscore India's commitment to enhancing victim representation in the judicial system (Ministry of Law and Justice, India, 2019).

2.1.5. European Union

The European Union emphasizes victims' rights across member states, ensuring they receive information, support, and protection throughout criminal proceedings. The EU Directive 2012/29/EU establishes minimum standards on the rights, support, and protection of

victims of crime, including traffic accident victims involved in criminal cases. This Directive encourages member states to provide legal representation for victims, guaranteeing their right to participate actively in criminal trials. Special attention is given to victims with specific protection needs, highlighting the EU's commitment to an inclusive and supportive legal environment (European Parliament and Council, 2012). This harmonized approach reflects the EU's commitment to an inclusive, victim-centered legal culture.

The EU Directive 2012/29/EU serves as a cornerstone, yet the implementation and augmentation of these rights reflect each country's legal culture and policy orientation. For example, Germany offers a unique model where traffic accident victims can join the criminal proceedings as private accessory prosecutors, allowing them an active role in the justice process. This model is particularly empowering for victims, offering them a voice in the proceedings and a pathway to claim compensation directly linked to the criminal case (European Union Agency for Fundamental Rights, 2017).

France's legal system includes a provision for traffic accident victims to become civil parties in criminal trials, enabling them to present their damage claims within the criminal proceedings. This integration of civil claims within the criminal trial underscores France's holistic approach to victim support, ensuring that victims' financial and emotional needs are addressed concurrently with the prosecution of the offender (French Ministry of Justice, 2012). Also, France has developed a network of victim support services that offer legal, psychological, and financial assistance. These services are instrumental in guiding victims through the often complex legal proceedings and in helping them access the compensation and support they deserve. The Guarantee Fund for Victims (*Fonds de Garantie des Victimes*) plays a crucial role in this ecosystem by providing compensation to victims who are unable to receive it from other sources, such as in cases involving uninsured or unidentified drivers (*Fonds de Garantie des Victimes*, 2021).

Sweden's victim-centric policies ensure comprehensive support for traffic accident victims, including legal representation, information about the criminal process, and access to compensation and support services. The Swedish Crime Victim Authority (*Brottsoffermyndigheten*) exemplifies the country's commitment to providing robust support systems for victims. They offer help in various areas, including compensation and damages for injuries, destroyed property, medical costs, pain and suffering, and aggravement. Additionally, they provide information to victims about the offender's status, such as if the offender is granted leave, does not return from leave, escapes, or is released (Swedish Crime Victim Authority, 2024).

Spain's legal system provides comprehensive support for traffic accident victims, integrating legislative reforms and victim assistance services to create a victim-centered approach. The Ley 35/2015 and Organic Law 4/2015 are pivotal, enhancing compensation rights and institutionalizing victims' rights within criminal proceedings, ensuring timely information, legal aid, and psychological support (*Boletín Oficial del Estado*, 2015). These laws, coupled with nationwide victim assistance services, empower victims to actively participate in the justice process, navigating the system effectively and asserting their rights. The comprehensive nature of Spain's victim support mechanisms - combining legislative reforms, compensation schemes, and victim assistance services - illustrates the country's commitment to upholding the rights and dignity of traffic accident victims. This approach not only aids in the victims' recovery and rehabilitation but also enhances the overall effectiveness and fairness of the criminal justice system.

2.1.6. *Global Insights: Advancing Victim Support in Traffic Justice*

This comparative overview reveals a rich tapestry of global and European practices aimed at supporting traffic accident victims, especially concerning their representation in criminal proceedings. From the United States' advocacy-driven model to the European Union's harmonized legal framework, the diversity in approaches underscores a universal recognition of the need for victim-centric justice systems. Countries like Japan and India demonstrate the potential for innovative legal mechanisms that empower victims, while the EU's Directive establishes a foundational commitment to victims' rights that transcends national boundaries.

The synthesis of these varied practices points to a few key conclusions. Firstly, the integration of victim support services with the legal process significantly enhances victims' ability to navigate the justice system. Whether through direct compensation mechanisms or participation in criminal trials, providing victims with the necessary tools and information is paramount. Secondly, legislative reforms, as seen in Spain and France, play a crucial role in institutionalizing victims' rights, ensuring their needs are recognized and met within the criminal justice framework.

However, the discussion also highlights gaps and challenges. The variability in the implementation of victims' rights, even within the EU, suggests the need for continued advocacy, education, and policy development to ensure these rights are fully realized. Moreover, the importance of training for criminal justice officials emerges as a critical factor in effectively supporting victims, pointing to an area for future investment and focus.

In conclusion, while significant strides have been made in supporting traffic accident victims across different jurisdictions, the journey toward fully integrated, victim-centered justice systems continues. The lessons learned from this comparative overview not only shed light on best practices but also pave the way for ongoing reforms aimed at enhancing the dignity, rights, and recovery of traffic accident victims worldwide.

2.2. Domestic Legal Framework

The legal environment in Serbia is evolving to address the needs of traffic accident victims, aligning local regulations with international norms. While efforts are made to support victims, challenges remain in fully realizing their rights and dignity. The process reflects an ongoing journey towards enhancing the legal framework for victim support in traffic incidents.

2.1.1. *Relevant provisions of the Constitution*

The Serbian Constitution (2006) lays the foundational stone for the protection of human rights, including the rights of traffic accident victims. It embodies the principles of equality before the law and the right to legal remedy and protection (Article 36). Everyone has the right to judicial protection if a human or minority right guaranteed by the Constitution is violated or denied, as well as the right to remove the consequences caused by the violation (Article 22, paragraph 1.) and victims' rights are implicitly supported under the umbrella of personal rights and dignity, providing a constitutional guarantee for their protection and support (Article 23) Also, every citizen and especially victims in criminal proceedings have the right to legal aid (Article 67).

2.1.2. National strategic framework

Action plan for the implementation of *the National Strategy for the realization of the rights of victims and witnesses of criminal acts in the Republic of Serbia* for the period 2020-2025, in the period 2023-2025 (2023) is a strategic document which should have been mark a significant step towards enhancing the protection and support provided to victims, including those of traffic offenses. It outlines the goals and measures for improving the legal and institutional framework, ensuring victims' rights are fully recognized and effectively implemented. The Strategy highlights the importance of a coordinated response from all relevant stakeholders, including government bodies, the judiciary, and civil society organizations, to uphold the rights and needs of victims.

It is important to say that the current support system for victims of crime in Serbia is fragmented, leading to many individuals not accessing necessary services. This issue partly arises because victim support primarily targets specific demographics, such as women, or those affected by certain types of crime, like domestic violence or human trafficking. However, a more significant challenge lies in the inadequate geographical distribution of services, coupled with the absence of a centralized referral system and poor coordination among existing services (Kolaković-Bojović, 2016: 361)

The National Strategy represents a pivotal step towards fundamentally improving the support system for victims and witnesses in Serbia. It acknowledges the existing legal alignment with international standards while emphasizing the need for further reforms to address remaining gaps. Through strategic planning and implementation, it aims to establish a comprehensive and accessible support network, ensuring that victims and witnesses are provided with the necessary assistance and protection in accordance with their rights.

2.1.3. Penal legislation

The Serbian Criminal Code (2006) addresses traffic delinquencies with specific emphasis on the protection and support of victims. It outlines the criminal acts against road traffic safety, detailing the legal repercussions for offenders while also focusing on the rights of victims. Serbia's Criminal Code, within its Chapter XXVI, addresses the spectrum of offenses against public traffic safety through nine distinct criminal offenses. The core of these legal provisions (articles 289-297 of the Criminal Code) is the protection of public traffic safety. Despite the challenging state of traffic safety, with a significant number of victims, the primary objective of these laws is to deter traffic delinquency through preventive measures while employing criminal law norms as essential tools for suppression.

Almost all the norms that prescribe the rules of traffic behavior in our penal law are found in legal provisions in the zone of misdemeanor punishment. Once the statutory conditions are met, the responsibility shifts from misdemeanor to criminal law. This transition occurs when a violator's actions compromise traffic safety to the extent of causing an accident that results in bodily injury, property damage, or fatalities. This framework not only represents the current ideology of the Serbian Criminal Code but also indicates a subtle trend towards decriminalization, acknowledging the impact of technological advancements in vehicles (including boats) and traffic safety regulation, from vehicle operation to licensing requirements (Pavlović, 2023: 381-382).

The Law on Juvenile Offenders and Criminal Protection of Minors (2005) provides specialized protection for minors who are victims of traffic accidents, emphasizing the need for

sensitive treatment and the prioritization of their rights throughout all criminal proceedings. It in general outlines procedures designed to minimize trauma and ensure the child's best interests are considered in legal proceedings.

The existing Code of Criminal Procedure - CPC (2011) when it comes to exercising the rights of victims in criminal proceedings in general, including victims of traffic crimes, is largely harmonized with Directive 2012/29/EU. Namely, the very concept of the injured person under the CPC is broader than the concept of victim contained in the Directive since it also includes legal entities, and when it comes to the victim's right to compensation, it is quite clear that the provision of Article 258 of the CPC sets the decision on a property claim as a rule in criminal proceedings (it is a completely different matter that the application of this rule is rare in practice) (Kolaković-Bojović, 2020: 47-48; Stevanović, Vujić, 2020: 93-95).

On the other hand, the right to inform the victim about his rights from the first contact with the competent authority and specify the information that the victim should receive (Article 6 of the Directive) has great significance in the Directive and it is largely contained in the rights that the injured party is in the CPC (Article 50), but not completely and not in a sufficiently systematic way. In theory, it is justifiably proposed that the simplest and at the same time the most effective would be to introduce a special form that would contain all the relevant information explained in simple language about the rights that the injured party has in criminal proceedings (Škulić, 2020: 32). Thus, from the first contact with the competent authority, which is most often the police in the pre-investigation procedure, the victim would receive all the relevant information, by handing over a short brochure, the content of which would be regulated by a by-law, and under Article 50 of the CPC it would be established the special right of the injured party to receive a written instruction from the procedural authority that would explain what rights and duties the injured party has in criminal proceedings.

2.1.4. *Traffic regulations*

The Law on Road Traffic Safety (2009) directly addresses the prevention of traffic accidents and the protection of participants in traffic, including victims. It establishes regulations aimed at enhancing road safety, delineates the rights of traffic accident victims, and specifies the obligations of authorities in responding to accidents. Traffic participants are obliged not to disturb, endanger or injure other participants with their behaviour, as well as to take all necessary measures to avoid or eliminate dangerous situations caused by other traffic participants, if they don't put themselves or others in danger (Article 3, paragraph 1). This law and gives substance to criminal law provisions that are of a blanket nature when it comes to traffic offenses and plays a pivotal role in both the prevention of accidents and the support of victims post-accident.

3. CASE STUDIES

In exploring the intricate dynamics of judicial practices in traffic accident cases, the case study method proves invaluable. This method allows for a deep dive into specific instances where the theoretical frameworks of law intersect with the personal and often traumatic experiences of individuals involved in traffic offenses. By focusing on detailed examinations of actual cases, researchers can glean insights into the practical applications and implications of legal principles and victim support mechanisms.

For this research, the case files were meticulously selected and examined from basic courts in Niš and Požega. The selection process was conducted under the supervision of presidents

of the criminal departments of the mentioned courts, ensuring a focus on cases that are representative of the typical judicial handling of traffic offenses. These cases were specifically chosen based on two criteria: the nature of the offense being traffic-related and the active participation and representation of injured parties in the proceedings. Such criteria ensure that the cases selected provide a rich source of data concerning the legal processes and the extent of victim support and participation within these processes.

Data collection involved a thorough inspection of entire case files, encompassing all documents, evidence, court decisions, and records of interactions between the court and the involved parties. This comprehensive approach allowed for an in-depth understanding of the procedural nuances, judicial decisions, and the implementation of victim support protocols.

3.1. Case Study 1: Challenges in victim support and restorative justice

In 2018, the Basic Public Prosecutor's Office in Požega filed an indictment against the defendant N.N. for the criminal offense of serious crime against the safety of public traffic from Article 297, paragraph 4, in connection with Article 289, paragraph 3, in connection with paragraph 1 of the Criminal Code, due to the existence of justified suspicion that he did not act following traffic signals and signs while driving a motorcycle in critical situations, that he was moving at a higher speed than allowed by the posted traffic sign and that he overtook where it was prohibited by the traffic signal, thereby acting contrary to the provisions of Articles 20, paragraph 1, 43, paragraph 1, and 55, paragraph 3, item 44 of the Law on Road Traffic Safety. As a result of the aforementioned action, at the moment of encountering the part where the works were being carried out, when the traffic light was on, he began overtaking the truck at a speed of no less than 77 km/h using the left lane where the works are being carried out and which is closed for the movement of the vehicle through the visibly placed vertical barriers on the left half of the road in front of the part of the roadway where part of the asphalt was removed and in the middle of the roadway he passed the barriers with his motorcycle, with the intention of returning to the right lane after overtaking, but he lost control of the motorcycle due to encountering the part road where the reconstruction of the road was carried out and where part of the flat curtain was removed. Then the motorcycle drifted, after which N.N. returned to the left lane and hit the guardrail, as a result of which the passenger in the vehicle, M.M., fell on the dirt surface, and the motorcycle with the driver bounced off the impact of the guardrail, hit the beginning of the edge of the bridge, and the motorcycle and the driver fall on the road. Companion M.M. died on the spot due to the destruction of vital brain centers, breathing disorders due to the destruction and bruising of the lungs, and bleeding into the chest cavity from ruptured blood vessels on the spot of multiple fractures of the ribs and spine.

Acting on the indictment, the Basic Court in Požega found the defendant guilty of the criminal offense of serious offense against public traffic safety from Article 297, paragraph 4 in connection with Article 289, paragraph 3 in connection with paragraph 1 of the Criminal Code, and sentenced him to prison for the duration of one year and four months and the imposition of a security measure prohibiting driving a motor vehicle for the duration of one year. In the explanation of the sentencing verdict, based on Article 54 of the Criminal Code, as mitigating circumstances on the part of the defendant, his previous lack of conviction, the fact that he himself sustained injuries in the aforementioned traffic accident, and that the incorrect installation of the vertical barrier contributed to the occurrence of the traffic accident. The court did not find any aggravating circumstances.

The Court of Appeals in Kragujevac, acting on the appeals of the public prosecutor and the defense attorney, confirmed the aforementioned verdict, except for the part of the decision on costs, where it was partially annulled and returned to the first instance court for re-decision.

During the entire criminal proceedings, both before the public prosecutor and at the main trial, the intolerance and misunderstanding of the defendant who was the deceased's partner with the injured parties - the deceased's family, her father, mother, and sister - was evident. In the statements given before the public prosecutor, and then at the main trial, the injured parties unanimously stated that they were against this relationship because the defendant put into first place riding a motorcycle at every opportunity and lived such a lifestyle, and they were afraid for the life of their daughter - sister who recently avoided contact with them under the influence of the defendant and started to live with him. At the main hearing, the sister particularly pointed out that this tragedy had an impact on her business and private life, and that the defendant continued going out with new girlfriends, riding a motorcycle, and partying, and all the time after the accident he posted on social networks about the accident itself, stressing that he is not guilty, and when she asked him to delete her sister's profile, he did not do so, which hurts them greatly. At the main hearing, the injured parties unanimously declared that they join the criminal prosecution of the defendant, without asserting the claim for property rights, and they specifically pointed out that immediately after the accident, the father of the defendant offered a white envelope with an unknown amount of money to the father of the deceased, which he did not want to accept, stating that that act hurt them a lot.

On the other hand, at the main trial, the defendant did not show any kind of empathy in his attitude towards the victims, responding to the sister of the deceased testimony with the words that he could post whatever he wanted on his Instagram profile and that if someone doesn't want to see it, he doesn't have to follow it, then to the statement of the mother of the deceased that she can provide the court with a video recording of their engagement so that it can be seen how "unhappy" the deceased was, and to the part of the statement of the father of the deceased who gave through constant crying, which reads "If you declare that you love someone and that someone is your "flake", you have to take care how you drive a motorcycle, because you can easily get hurt on a motorcycle and if you see a curve, solid line, column, speed limit, you have to take care of all that ", the defendant replied with the words that the will of the deceased was to ride with him on a motorcycle.

In connection with this case, two questions of importance for judicial practice arise:

1. Should the relationship of the defendant towards the injured parties - the family of the deceased - be appreciated when determining the punishment in terms of Article 54 of the CC, as his behavior after the crime, or as the relationship of the defendant towards the victim of the crime?

2. Should the court in the specific case have applied the principles of restorative justice and in what way, as well as whether the injured parties were adequately provided with legal assistance and support?

The answer to the first question is certainly affirmative, because even according to the Directive about victims 2012/29/EU, family members of a person whose death is a direct consequence of a criminal offense and who suffered injury or damage as a result of the death of that person, are victims of a criminal offense in the broader sense (Article 2). As the concept of the injured party according to the Criminal Procedure Code is much broader (Article 2, point 11 and Article 57), in this particular case the relationship of the defendant towards the family of the deceased should certainly have been valued when determining the punishment as the

relationship towards the victim of the criminal offense in the aforementioned sense, which was evidently negative, with constant hurt to their feelings after the accident. In any case, if the concept of victim in Article 54 of the Criminal Code were to be understood in a narrower sense in the sense of Directive 2012/29/EU, it was necessary that the striking relationship between the defendant and the injured parties be considered as his extremely negative attitude after the crime committed and assessed as an aggravating circumstance in the specific case.

It is not possible to give a simple answer to the second question for the basic reason that in our legal system, there are no established and demographically equally distributed services for the support of victims of criminal acts, and especially there are no services related to traffic offenses. The aforementioned services should provide help and support to the injured throughout the entire process, especially in cases of death, including in terms of reconciliation with the perpetrator of the crime.

Otherwise, restorative justice should be defined as a way of responding to criminality, which includes a set of procedures (process) and measures that lead to the repair of damage caused by a criminal act and relationships damaged by a criminal act, which is based on certain principles and is not necessarily in conflict with the traditional, retributive way of responding to criminality, it can already be a form of “diversion” of the criminal procedure or be an integral part of it (Ćopić, 2015: 34). Therefore, both judges and prosecutors can play the role of mediators in criminal proceedings, but based on international standards and comparative legal solutions, it is far more acceptable that in order to achieve dialogue between the victim and the perpetrator, judges and prosecutors refer the case to mediation or some other restorative process where there could be a settlement, apology, agreement on compensation for damages or another restorative outcome. In this particular case, such a possibility was not applied for the simple reason that it does not represent part of court practice, and there is no regulation that would encourage such an activity of the holders’ judicial functions (only in the case of a private lawsuit, Article 505 of the CPC stipulates such an obligation of the acting judge).

On the other hand, as it has been pointed out, services for the support of victims of criminal offenses do not exist in most courts, nor in the non-governmental sector outside the larger city centers (and even then, they are mostly dedicated to gender-based violence and certain forms of serious crime which are in the jurisdiction of some specialized departments of the courts), so that this kind of support was not provided to the injured parties in this case either. Admittedly, from the very beginning, they were represented by an elected representative from the ranks of lawyers, but during the entire procedure, it was never pointed out by any process participant that they should possibly discuss the topic of reaching some kind of agreement and reconciliation.

In this case, after the final conclusion of the criminal proceedings, the impression of bitterness remains, and not of justice, even though the formal sentence was imposed within the legal framework. Namely, the victim passed away, the injured members of her family were deeply hurt by the very consequences, but also by the defendant’s offensive behavior after the crime was committed, and the defendant has not been under any obligation to reconcile and apologize either before, during, or after the criminal proceeding, or after the execution of the prison sentence.

So, this case study of the traffic accident in Požega provides critical insights into the strengths and weaknesses of victim support in Serbian judicial practice regarding traffic offenses:

1. *Need for comprehensive victim support services:* There is an evident need for a more structured approach to victim support that extends beyond legal representation to include emotional and psychological assistance. This should be part of a systemic response that acknowledges the trauma associated with such incidents.

2. *Incorporation of restorative justice:* The absence of restorative justice practices in this case highlights a significant oversight. Integrating these practices could enhance the judicial process by addressing the needs of both victims and the broader community for reconciliation and healing.

3. *Enhancing judicial sensitivity:* The judicial handling of the case points to a need for greater sensitivity and consideration of the victim's family's emotional state and expectations. Training for judges and prosecutors in victim-centered approaches could improve the effectiveness and humaneness of the judicial process.

4. *Policy and legal reforms:* To better support victims, legislative and policy reforms are necessary. These reforms should aim at enhancing victim participation in the justice process, establishing dedicated victim support services, and promoting the use of restorative justice methods.

This case study underscores the imperative for a multifaceted enhancement of the legal and support frameworks for victims of traffic offenses, suggesting a shift towards more empathetic, inclusive, and restorative judicial practices in Serbia.

3.2. Case Study 2: the Niš traffic incident and judicial response

In 2020, the Basic Public Prosecutor's Office in Niš filed an indictment against the defendant N.N. for the criminal offense of endangering public traffic from Article 289, paragraph 3, in connection with paragraph 1 of the Criminal Code, in conjunction with the criminal offense of failure to provide assistance to a person injured in a traffic accident from Article 296, paragraph 1, of the Criminal Code, due to the existence of a justified suspicion that the driver of the passenger vehicle used a motor vehicle in violation of Article 55, Paragraph 3, Point 1 of the Law on Road Traffic Safety. Namely, on critical occasions he overtook a column of vehicles in which there were three vehicles, which he was not allowed to do according to the aforementioned regulation, so he crossed to the traffic lane intended for the movement of vehicles from the opposite direction, and in which lane was moving one vehicle in which managed by the injured M.M. who, in order to avoid a direct collision with the defendant's vehicle, turned to the right, so his vehicle went off the roadway onto the curb on the right side of the roadway and overturned onto the grassy area, as a result of which the driver M.M. and the passenger suffered minor injuries. The defendant continued to drive his vehicle and left the injured parties without help, whose injuries he caused with his vehicle.

Acting according to the aforementioned indictment, the Basic Court in Niš first acquitted the defendant of the charges for the aforementioned acts, but the High Court in Niš overturned that verdict upon appeal by the public prosecutor and sent the case back to the court of first instance for a retrial. In the renewed proceedings, the Basic Court in Niš issued a verdict declaring the defendant guilty of the criminal offense of failure to provide assistance to a person injured in a traffic accident from Article 296, paragraph 1 of the Criminal Code and sentenced him to a fine in the amount of one hundred and twenty thousand dinars, as and the secondary penalty of revocation of driver's license for one year, and he refused the charge regarding the criminal offense of endangering public traffic from Article 289, paragraph 3, in relation to paragraph 1 of the Criminal Code, due to the statute of limitations for criminal

prosecution. In respect of the property claim, the injured parties were sent to civil proceedings. The High Court in Niš, acting on the appeal of the public prosecutor, confirmed the aforementioned verdict.

During the main trial, the accused denied having committed the criminal acts charged against him, stressing that after overtaking he safely returned to his lane and that he did not notice the vehicle that was coming from the opposite direction and left the road. During the entire criminal proceedings, the injured party described how the event in question took place as described in the accusation, joining the criminal prosecution and asserting a property claim. During the entire procedure, it is noticeable that no action was taken by the public prosecutor's office and the court in order to provide assistance and support to the injured parties who were questioned on three occasions - before the police, which was stated in the form of an official note, as well as before the public prosecutor and at the main trial. During the proceedings before the public prosecutor and at the main hearing, the injured party was represented by an elected representative from the ranks of lawyers.

The procedural handling of this case raises several points of concern regarding victim support:

1. *Lack of immediate assistance:* After the accident, the defendant left the scene without providing assistance to the injured parties, M.M. and his passenger, who sustained minor injuries. The legal focus was on the defendant's failure to assist, which is critical but only part of broader victim support.

2. *Inadequate legal support and guidance:* Throughout the trial, there was no indication that the victims received any substantial support or guidance from the judicial system beyond representation by a private attorney. This lack of support was evident despite the victims being repeatedly called to testify, which could have compounded their trauma.

3. *Referral to civil litigation for compensation:* The victims were directed to seek compensation through civil litigation. While this is a standard procedure, it places an additional burden on the victims, requiring them to engage in further legal battles to address their losses and injuries.

4. *Lack of proactive measures by prosecution and court:* The court and prosecution did not take proactive measures to offer psychological or legal support to the victims, nor was there any mention of victim support services that could assist in dealing with the aftermath of the incident.

So, the Niš traffic case highlights also several areas for improvement in victim support within the Serbian judicial system:

1. *Enhanced on-site support:* Immediate support at the accident scene and during the initial legal proceedings can help mitigate the immediate impact on victims. This support could include medical assistance, psychological support, and legal guidance.

2. *Comprehensive victim support services:* Establishing dedicated victim support services within the judicial system could provide continuous support throughout the legal process. These services should offer counseling, legal advice, and assistance in filing compensation claims.

3. *Training for legal professionals:* Judges, prosecutors, and police officers should receive training focused on the needs of victims, especially in handling cases involving physical and psychological trauma.

4. *Streamlining compensation processes*: Simplifying the process for victims to claim compensation through criminal proceedings could reduce the need for separate civil actions, thus lessening the legal burden on victims.

5. *Integrating restorative justice practices*: Introducing restorative justice elements could provide a platform for victims to express their needs and for offenders to acknowledge their actions, potentially facilitating a more comprehensive healing process.

In summary, while the legal proceedings in the Niš case adhered to statutory requirements, they fell short in providing holistic support to the victims. This case serves as a critical reflection point for enhancing victim support mechanisms to ensure a more empathetic and supportive approach within the judicial system.

3.3. Case Study 3: the Požega road incident - legal outcomes and victim advocacy challenges

In 2022, the Basic Public Prosecutor's Office in Požega filed an indictment against the defendant N.N. for the criminal offense of serious offense against public traffic safety from Article 297, paragraph 1 of the Criminal Code and the criminal offense of failure to provide assistance to a person injured in a traffic accident from Article 296, paragraph 2 of the Criminal Code, as well as the criminal offense of preventing and obstructing evidence from Article 336 Paragraph 2 of the Criminal Code. Namely, the defendant is justifiably suspicious that while driving a passenger motor vehicle in critical situations late at night, contrary to Article 35, Paragraphs 1 and 2 of the Law on Road Traffic Safety, he did not move on the right side of the roadway in the direction of movement and did not hold the vehicle while moving, which closer to the right edge of the roadway and that, contrary to Article 187, paragraph 2 of the aforementioned law, he was driving the vehicle under the influence of alcohol of 1.90 per mille, and as a result of not keeping to the right side of the road, the front left side of the vehicle hit the front part of the motorcycle driven by the injured M.M. From that contact, the victim's body was thrown out and came into contact with the windshield of the car, and then he fell from the motorcycle to the ground, during which the victim suffered serious injuries in the form of a fracture of the left femur, a fracture of the left clavicle, a fracture of the cheekbone and maxillary bone, and a concussion. After that, the defendant got out of the vehicle, approached the victim, and after making sure that he was alive because he heard him breathing and "snoring", he left the scene of the accident with his vehicle, leaving the injured victim without help, and before that he picked up only the fallen parts of his vehicle so that they would not be found during the investigation and put them in the back seat of his vehicle.

The Basic Court in Požega, acting on the aforementioned indictment, declared the defendant guilty of the aforementioned three criminal acts and sentenced him to a single prison term of one year and five months and a fine in the amount of one hundred and fifty thousand dinars. The injured party is informed that he can pursue his property-related claim in civil proceedings. In the explanation of the verdict, the first-instance court considered the family circumstances of the defendant as mitigating circumstances, that is, the fact that he is the father of a minor child and also his previous lack of conviction. The court did not find any aggravating circumstances.

Acting on the appeal of the defendant's counsel, the Court of Appeals in Kragujevac overturned the first-instance court's sentence in terms of punishment, sentencing the defendant to a single prison sentence of one year, which will be served in the premises where the convicted

person lives, without the application of electronic surveillance¹. In the verdict's explanation, the appellate court clarified that it reduced the sentence due to several factors not adequately considered by the trial court. Specifically, the appellate court recognized mitigating circumstances including the injured party's manner of driving, which a traffic expert determined contributed to the accident due to his proximity to the roadway's dividing line. Additionally, the court noted that the defendant had acknowledged his serious violation of public traffic safety under Article 297, paragraph 1 of the Criminal Code, demonstrated genuine remorse, and attempted to contact the victim post-accident. These aspects were previously overlooked.

During the main trial, the injured party was represented by an elected representative from the ranks of lawyers. The property claim was highlighted and in the final statement clearly defined in the exact amounts for the mental pain suffered and the reduction of general life activity, given that the treatment is still ongoing, as well as for the physical pain suffered and in the name of the fear which was suffered, but during the criminal proceedings no expert examination was carried out in the aforementioned sense, so the injured party has already been referred to civil proceedings.

In the course of the proceedings, no activity aimed at supporting the victim of this criminal offense was proposed by the public prosecutor or the court, nor was there any contact between the defendant and the injured party in order to settle and repair the damage caused to the injured party by the execution of the aforementioned criminal acts. The defendant stated that after the accident he tried to get in touch with the injured party through his colleagues, but that he did not want to talk to him, so he apologized to the injured party at the main trial, stating that he was sorry for everything that had happened to him and that he was glad to have recovered.

So, several critical issues emerge concerning victim support in this case:

1. *Insufficient immediate assistance*: Post-incident actions by N.N. showed a severe lack of responsibility and empathy. He left the scene without assisting the severely injured victim, only removing evidence potentially detrimental to his case. Such behavior not only exacerbated the victim's physical and psychological trauma but also highlighted the urgent need for robust legal measures to ensure immediate victim assistance at the scene.

2. *Legal representation and compensation claims*: Although the victim was represented by legal counsel, the criminal proceedings directed the compensation claims to civil litigation. This referral necessitates an additional legal battle for the victim, compounding their distress and possibly delaying essential compensation for recovery and rehabilitation.

3. *Lack of proactive victim support*: Throughout the proceedings, there was no indication of any significant efforts by the judiciary or prosecution to provide or even propose comprehensive support mechanisms for the victim. This oversight includes a lack of psychological counseling, victim advocacy, or facilitation of restorative justice measures, which could have helped address the emotional and physical fallout experienced by the victim.

4. *Restorative justice and reconciliation attempts*: The defendant's reported attempts to contact and reconcile with the victim post-incident, while potentially indicative of remorse,

¹ Unrelated to the issue of the victim's position, the question of the adequacy of this sanction in this particular case arises, especially as it concerns the execution of the sentence of house arrest without the application of electronic monitoring, where the control of its execution due to the absence of electronic monitoring in numerous cases proved to be very difficult, and even impossible in the evening hours, at night and on non-working days (Kolaković- Bojović, Batričević, Matić-Bošković, 2022: 40).

were not formally recognized or facilitated by the court. This missed opportunity for restorative justice could have provided a platform for acknowledgment of harm done and potentially facilitated a more meaningful resolution for the victim.

The case from Požega presents a scenario where legal proceedings primarily focused on penalizing the offender with limited structured support for the victim. In conclusion, the following recommendations can be derived to enhance victim support in similar cases:

1. *Immediate and mandatory victim assistance:* Implementing mandatory on-site victim assistance protocols, including medical care and crisis counseling, can significantly mitigate the immediate impact of the incident.

2. *Integration of victim support services in criminal proceedings:* Courts should have mechanisms to integrate victim support services directly into the criminal justice process. This integration could include providing victim advocates and ensuring that psychological and financial assessments are part of the initial proceedings.

3. *Enhanced restorative justice practices:* As it mentioned in previous case studies, establishing formal procedures for restorative justice within the criminal process can aid in healing and provide victims with a sense of closure and justice. This practice should be encouraged and facilitated by the judiciary.

4. *Streamlining compensation processes:* The criminal court system should have the authority to adjudicate compensation claims within criminal proceedings to avoid the need for subsequent civil litigation, thereby reducing the burden on the victim.

The Požega case underscores a critical need for systemic changes in how victims are supported through the judicial process, emphasizing the importance of immediate assistance, comprehensive support, and the potential benefits of integrating restorative practices within the criminal justice system.

4. DISCUSSION AND CONCLUSIONS

The multifaceted role of judicial practices in supporting traffic accident victims represents a significant aspect of legal discourse, demanding a comprehensive understanding of the intersection between legal frameworks, victim support systems, and societal values. Throughout this research, various judicial responses to traffic accidents have been explored, illustrating both the potentials and limitations within different legal systems.

Judicial sensitivity and victim support are crucial. It is evident that the sensitivity of judicial responses can significantly influence the support victims receive. The inclusion of victim impact statements and the provision of legal and psychological support are vital in addressing the comprehensive needs of traffic accident victims. Such practices not only provide a platform for victims' voices but also emphasize the human aspect of legal proceedings, which is often overshadowed by the procedural and punitive components of the law.

Regarding legal frameworks and public health, traffic accidents are recognized not merely as legal issues but also as critical public health concerns. The ability of legal systems to integrate public health perspectives into judicial practices can enhance their response to traffic accidents. Viewing traffic accidents through a public health lens allows legal systems to adopt more preventative measures and focus on comprehensive victim support, rather than solely punitive outcomes.

The comparative analysis of global practices has revealed that while many countries have robust victim support mechanisms, their implementation often varies. This variance under-

scores the importance of not only having laws in place but also ensuring their effective application. Countries that have succeeded in integrating these practices offer valuable lessons on potential improvements in judicial responses to traffic accident victims.

Lastly, the exploration of restorative justice practices has highlighted their potential in addressing traffic accidents. These practices focus on repairing the harm caused by the crime and reconciling the relationship between the victim and the offender. Implementing restorative justice practices could lead to more meaningful resolutions and foster a sense of healing and closure for victims. This research underscores the critical role of judicial practices in shaping the support system for traffic accident victims, reflecting broader commitments to justice and human dignity.

So, this paper's comprehensive examination, including a comparative law analysis and an evaluation of domestic legal provisions in Serbia alongside representative case studies, provides an insightful overview of the strengths and weaknesses within existing frameworks. The key findings are summarized as follows:

1. *Enhanced victim participation*: There is a clear need for enhanced participation of victims in the judicial process. This includes the right to be heard, to present victim impact statements, and to be adequately informed about the proceedings. Ensuring these rights can significantly improve the victim's experience and satisfaction with the judicial process.
2. *Integration of support services*: Integrating support services with legal processes is essential for providing comprehensive support to victims. Services such as legal aid, psychological counseling, and financial compensation should be readily accessible to victims to alleviate the additional stressors associated with their victimization.
3. *Education and training*: Judicial officials must receive ongoing education and training on the rights and needs of victims. This training should focus on sensitivity, understanding of trauma, and the importance of a supportive judicial response to improve the overall effectiveness of the justice system in dealing with traffic accident victims.
4. *Policy reforms*: Legislative reforms should continue to evolve to strengthen the rights and protections afforded to traffic accident victims. This includes revisiting existing laws, implementing new policies based on successful international models, and ensuring that these laws are effectively enforced to maximize their intended benefits.
5. *Restorative justice practices*: Further research and pilot programs should explore the integration of restorative justice principles in cases involving traffic accidents. Such practices could potentially transform the traditional punitive approach into a more therapeutic and rehabilitative process, benefiting both victims and society at large.

By addressing these areas, judicial practices can significantly contribute to the support and rehabilitation of traffic accident victims, ultimately reflecting a society's commitment to justice and human dignity.

REFERENCES

- Action plan for the implementation of the National Strategy for the realization of the rights of victims and witnesses of criminal acts in the Republic of Serbia for the period 2020-2025, in the period 2023-2025, *Official Gazette of the Republic of Serbia*, no. 65/2023 of 4 August 2023.
- Boateng, F. & Abbes, G. (2017). Victims' role in the criminal justice system: A statutory analysis of victims' rights in U.S. *International Journal of Police Science and Management*. 19(4). <https://doi.org/10.1177/1461355717730834>

- Boletín Oficial del Estado (2015). Law 35/2015, of September 22, reforming the system for the assessment of damages caused to people in traffic accidents (Ley 35/2015, de 22 de septiembre, de reforma del sistema para la valoración de los daños y perjuicios causados a las personas en accidentes de circulación). Available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-10197 last accessed 8.4.2024.
- Boletín Oficial del Estado (2015). Organic Law 4/2015, of April 27, on the Statute of the victim of crime (Ley Orgánica 4/2015, de 27 de abril, del Estatuto de la víctima del delito). Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-4606> last accessed 8.4.2024.
- [Constitution of the Republic of Serbia](#), *Official Gazette of the Republic of Serbia*, no. 98/2006 and 115/2021 - amendments.
- Cook, B., David, F. & Grant, A. (1999). *Victims' Needs, Victims' Rights Policies and Programs for Victims of Crime in Australia*. Australian Institute of Criminology. Available at: <https://www.aic.gov.au/sites/default/files/2020-05/rpp019.pdf> last accessed 8.4.2024.
- Code of Criminal Procedure of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 72/2011 ... 62/2021 - Decision of the UC RS.
- Criminal Code of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, no. 85/2005...35/2019.
- Ćopić, S. (2015) *Restorative justice and the criminal justice system: theory, legislation and practice*. Institute of Criminological and Sociological Research, Belgrade.
- European Parliament and Council (2012). 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. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF> last accessed 8.4.2024.
- European Union Agency for Fundamental Rights (2017). Rights of crime victims to have access to justice - a comparative analysis, Country Report Germany. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/germany-rights-of-crime-victims-justice_en.pdf last accessed 8.4.2024.
- Fonds de Garantie des Victimes (2021). Rapport d'activite. Available at: <https://rapportdactivite.fondsdegarantie.fr/2021/> last accessed 8.4.2024.
- French Ministry of Justice - Ministère de la Justice de France (2012). Guide for Victims (Guide sur les droits des victimes). Available at: <https://www.justice.gouv.fr/documentation/ressources/guide-droits-victimes> last accessed 8.4.2024.
- General Insurance Rating Organization of Japan – GIROJ (2023). Automobile Insurance in Japan. Available at: <https://www.giroj.or.jp/english/pdf/Automobile.pdf> last accessed 8.4.2024.
- Kolaković - Bojović M., Batričević, A., & Matić-Bošković, M. (2022). *Analysis of the impact of the application of alternative sanctions and measures in the Republic of Serbia in the period from 2015 to 2020*, Institute for Criminological and Sociological Research, Belgrade
- Kolaković-Bojović, M. (2016). [Victims and Witnesses Support in the Context of the Accession Negotiations with EU](#). In: Scientific and professional meeting with international participation «European integration: justice, freedom and security», collection of papers: Volume 2. Criminalistics and Police Academy; “Hans Seidel” Foundation, Belgrade, pp. 355-366.
- Kolaković - Bojović, M. (2020). Victims' Rights Directive (2012/29/EU) and Criminal Legislation of the Republic of Serbia. In: Bejatović, S. (ed.) *The victim of a crime and criminal protection instruments (international legal standards, regional criminal legislation, implementation and measures to improve protection)*, OSCE mission in Serbia. pp. 41-54.

- Law on Juvenile Offenders and Criminal Protection of Minors, *Official Gazette of the Republic of Serbia*, no. 85/2005 of 6 October 2005.
- Law on Road Traffic Safety, *Official Gazette of the Republic of Serbia*, no. 41/2009...76/2023.
- Matsui, S. (2011). Justice for the Accused or Justice for Victims?: The Protection of Victims' Rights in Japan. *Asian-Pacific Law & Policy Journal*. 13(1), pp. 54-95.
- Ministry of Law and Justice, India. (2019). The Motor Vehicles (Amendment) Act, 2019. Available at: https://morth.nic.in/sites/default/files/notifications_document/MV%20Act%20English.pdf last accessed 8.4.2024.
- Pavlović, Z. (2023) Victimization through traffic offences. In: Batričević, A. & Obradović, D. (ed.) *Traffic, criminality and urban safety*. Thematic conference proceedings of international significance, Institut of Criminological and Sociological Research, Belgrade. pp. 375-388.
- Stevanović, I. & Vujić, N. (2020): International legal standards on criminal law instruments for the protection of injured persons and the reasons for the necessity of their implementation in the national criminal legislation. In: *Injured person and criminal protection instruments (international legal standards, norms and practice): LX regular annual consultation of the association*. Serbian Association for Criminal Law Theory and Practice; "Intermex", Belgrade. pp. 88-108.
- Swedish Crime Victim Compensation and Support Authority - Brottsoffermyndigheten (2024). If you have been a victim of crime. Available at: <https://www.brottsoffermyndigheten.se/other-languages/english/> last accessed 8.4.2024.
- Škulić, M. (2020). Injured person and criminal legal protection instruments (concept and criminal-political reasons for the necessity of foreseeing special criminal legal protection instruments). In: *Injured person and criminal protection instruments (international legal standards, norms and practice): LX regular annual consultation of the association*. Serbian Association for Criminal Law Theory and Practice; "Intermex", Belgrade. pp.11-49.
- World Health Organization (2023). *Global status report on road safety 2023*. Geneva. Available at: <https://www.who.int/publications/i/item/9789240086517> last accessed 8.4.2024.