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THE RIGHTS AND DUTIES OF PERSONS TO WHICH THE DAMAGE BY ILLEGAL DECISIONS, ACTIONS OR INACTION OF BODY OF PRE- JUDICIAL INVESTIGATION, PROSECUTOR'S OFFICE OR COURT IS CAUSED

The article is devoted to the development of theoretical foundations of the current state of criminal procedural investigation proceedings in cases, that concern victims' obligations. In the article are highlighted such problems as the protection of victims' rights and generalized practice of criminal procedural law highlighted in this area.

Keywords: *criminal investigations, victim, justice, criminal proceedings.*

The Constitution claims that a person's life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. The rights and freedoms and their guarantees determine the essence and orientation of the state for which the establishment and implementation these rights and freedoms is the main duty [1].

The criminal procedure science conventionally classifies victims' rights by their essential purpose as follows:

– Those which are directed to solve the crime, to promote the full, complete and objective circumstances research (eg. testimony, giving evidences, requests, outlets, complaints, participation in the investigation, trials, maintenance charges, etc.);

– Those which are directed on protection of our own interests and aspirations (eg. the right to have a representative, the right to have compensation, expression an opinion, requirements for participation in the security debate).

According to O. Tertyshnyk within the meaning and source of origin of law divides them into two groups [2, p. 554–555].

The first group - a natural and legal rights: compensation for the inflicted damage, compensation for moral and physical damage. They occur immediately after the crime and have the same provenance as for the offender to incur liability of : the crime is a legal fact that gives rise to certain rights and responsibilities. The procedural law determines that the victim is the person to whom the criminal acts suffered moral, physical or material damage.

The second group – the procedural rights of the victim, which he endowed to restore violated rights and protect real rights and freedoms: the right to present evidence, to challenge, to participate in the debate and so on. (Ubi jus ibi remedium - where the law gives the right, and he should give way to protect it) [2, p. 554–555].

Obviously, that to protect their legal rights necessary to implement a model of justice, in which the victim would be entirely reasonable (to the same level with the accused) procedural rights and getting the opportunity to take immediate advantage of such rights. Given this problem of protecting the victim at all and the problem of conceptual model rules governing the status of the victim, in particular are most relevant for procedural science. Some changes to legislation (including the provision victim right to participate in the debate in 2001) did not solve the problem. After all, the rights of the victim should be done in terms of implementation of criminal proceedings adversarial principle. The adversarial principle provides procedural equality of the parties. Only then it makes sense [3, p. 29].

Competitiveness is a formation of the process in which interested parties have equal procedural possibilities for finding the truth and defence of their interests. Equal rights and freedom provide evidence of research, testing and proving their authenticity. The investigator and the court, keeping objectivity and impartiality, create the necessary conditions for the parties' rights. The parties to the litigation, namely the prosecution (prosecutor, victim, civil plaintiff and their representatives) and the defense (the defendant, defense counsel and legal representative, civil defendant and his representative) have to use equal procedural rights [3, p. 29].

If we compare the status of the accused and the victim before the adoption of a new Ukrainian Criminal Procedure Codex, it is not difficult to see many deficiencies of legal regulation of the status of the victim in criminal proceedings. For example, according to the art. 140 CPC of Ukraine of 1960 investigator in charge handed the defendant a copy of the relevant resolution, which taught law and a party to the process. It would be logical if this approach existed concerning the the victim.

Procedure of the rights explanation should not be limited to the clarification of some individual or their human groups, drafting of many individual protocols or marks in regulations and protocols. This procedure should be simple, clear and flawless, to provide immediate, full and comprehensive explanation of any and all rights (including procedures for exercising those rights) and give the victim an opportunity to independently analyze and apply. Also, it is important to provide and explain to victim about his rights and determined about the form of their procedural implementation.

Correct is also the view of V. Kolodyazhna that the victim should have the right to get acquainted with the materials of the criminal case proceedings which have been terminated [4, p. 124]. In addition, scientists have repeatedly stated that the government should take the responsibility of partial compensation for harm caused to the victim crime, and after the crime by recourse recover its costs from the convicted. To do this, lawyers noted, it is necessary to establish an appropriate fund.

urrent criminal procedure legislation differs significantly progressive tendencies, which are given according to these shortcomings of the previous legal regulation of the status of the victim and suggestions for its improvement. In particular, in accordance with Art. 56 CPC of Ukraine during the criminal proceedings the victim has the right to:

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- 1) be informed of their rights and obligations under this Codex;
 - 2) to know the essence of suspicion and accusation, to be informed of the election, change or cancellation to a suspect, accused of measures to ensure completion of the criminal proceedings and pre-trial investigation;
 - 3) provide evidence to the investigator, prosecutor, investigating judge of the court;
 - 4) to challenge and petition;
 - 5) on certain grounds – to ensure safety for themselves, relatives or family members, property and housing;
 - 6) give explanations, evidence or refuse to give them;
 - 7) to appeal against decisions, actions or inaction of the investigator, prosecutor, investigating judge of the court in the manner prescribed by this Codex;
 - 8) to have a representer in any given criminal proceedings or abandon its services;
 - 9) give explanations, indications or other native language he is fluent, free of charge by the state to use the services of an interpreter if he does not know the national language or the language of the criminal proceedings;
 - 10) concerning the damage caused by a criminal offense in the manner prescribed by law;
 - 11) access to the materials that are directly related to the offense for a criminal offense in the manner prescribed by this Codex, including after the discovery of materials in accordance with Article 290 of the Codex, as well as the materials of the criminal proceedings that directly related to the offense for a criminal offense, in the case of the proceedings closure proceedings;
 - 12) apply in compliance with this Codex hardware during the proceedings in which it participates. Investigator, prosecutor, investigating judge, the court may prohibit the victim to use technical means at the separate legal proceedings or at a certain stage of criminal proceedings for non-disclosure of data containing secret protected by law whether the intimate aspects of human life, which is made (Resolved) motivated decision (ruling);
 - 13) to receive copies of procedural documents and written communications in cases provided the CPC;
 - 14) exercise other rights stipulated by the CPC.
- During the preliminary investigation the victim has the right to:
- 1) an immediate acceptance and registration of the application for a criminal offense and the recognition of its victims;
 - 2) obtain the document confirming their acceptance and registration from the competent authority to which it is applied;
 - 3) provide evidence in support of his application;
 - 4) participate in the investigation and other legal proceedings, during which ask questions, submit comments and objections to the order of actions that are recorded in the protocols, and get acquainted with the protocols of investigative (detective) and other procedural actions executed for his participation;
 - 5) Receive copies of which are directly related to the offense for a criminal offense after preliminary investigation.
- During the proceedings in any court the victim has the right to:
- 1) be informed in advance of the time and place of the trial;
 - 2) participate in court proceedings;
 - 3) participate in the direct verification of evidence;
 - 4) support the prosecution in court in case of failure of the prosecutor for the state prosecution;
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5) to express an opinion on the question of sentencing the accused, and to express their views when deciding on the use of compulsory measures of medical or educational way;

6) get acquainted with judicial decisions, judicial consideration and technical record magazine of the criminal proceedings in court;

7) challenge decisions in the manner provided by this Codex.

At all stages of criminal proceedings the victim has the right to come to terms with the suspect, the accused and to conclude an agreement on reconciliation. In the Law of Ukraine on criminal responsibility and reconciliation cases this Codex constitute grounds for terminating the criminal proceedings.

In addition to the rights applicable justes establishes the duties of the victim:

1) come to call the investigator, prosecutor, investigating judge, the court, in the case of inability to timely arrival - advance report it, as well as the reasons for the inability of arrival;

2) does not prevent the establishment of the circumstances of the criminal offense;

3) not to disclose without the permission of the investigator, prosecutor, court information that become known to him in connection with participation in criminal proceedings and which are protected by law secret.

Representative of the legal person, who has been the victim may be its leader, another person authorized by law or the constituent documents, an employee of a legal entity by proxy and a person who has a right to counsel in criminal proceedings.

Credentials of representatives to the victim in criminal proceedings are confirmed:

1) documents provided for in article 50 of the CPC – if the victim’s representative is a person who has a right to counsel in criminal proceedings;

2) a copy of the constituent documents of legal entity if the victim is a representative director of a company or other person authorized by law or the constituent documents to the person;

3) proxy if the victim is an employee representative of a legal person who is the victim [5].

Representative uses procedural rights of the victim, whose interests he represents, except for procedural rights, the implementation of which is made directly to victims and can not be assigned representative.

In the legal literature is an ongoing discussion on problems of improving the legal status of the victim. In particular, V. M. Tertyshnyk notes that improving criminal procedure legislation towards guaranteeing the rights and interests of the victim, it is desirable first to realize the principle of competition and equality of arms and to pre-tives victim all the rights that an accused is defender, and secondly to predict directly in criminal procedural law the opportunity to participate in the case, a lawyer of the victim [6, p. 124].

Thus, analyzing the current criminal procedural law and the realities of today has become a victim of one full parties in adversarial criminal process in the administration of justice.

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