

PROCEDURAL OPPORTUNITIES OF THE VICTIM IN A CRIMINAL TRIAL

Popovych Ruslan, Klymchuk Mykhaylo

Annotation. *The scientific study is devoted to clarifying the procedural possibilities of the victim's participation in an adversarial judicial criminal process, based on which recommendations were developed aimed at improving the tactics of conducting certain procedural actions, as well as the provisions of the criminal procedural legislation, which regulate the procedure for the victim's participation at the stage of the trial. It is substantiated that legal guarantees of the realization of the procedural rights of the victim at the stage of the trial are aimed at creating certain opportunities for the victim in the examination of evidence, prevention (prevention) of violations by other participants in criminal proceedings, termination of violations of procedural rights and restoration of the violated right. It was determined that the basic legal guarantees of the victim during the trial include the following procedural possibilities: to be informed in advance about the time and place of the trial; submit evidence to the court and participate in their direct examination; to file objections and motions; to ensure safety for oneself, close relatives or members of one's family, property and housing; give explanations, statements or refuse to give them; to challenge decisions, actions or inaction of authorized persons; support the prosecution in court in case the prosecutor refuses to support the state prosecution; to appeal court decisions in accordance with the procedure provided for by the Code of Criminal Procedure of Ukraine and others. Also, in order to provide additional guarantees for the realization of the rights of the victim in the adversarial criminal process, arguments are given for making relevant changes to the Code of Criminal Procedure of Ukraine in terms of: establishing for the victim the opportunity to be present when the preventive measure is selected, changed or canceled, to provide explanations and evidence to support their position, as well as the right to appeal decisions on the specified issues; indicating that the interrogation of the victim begins with the proposal of the presiding judge to give testimony regarding the criminal proceedings, after which his interrogation is carried out by applying direct and cross-examination.*

Key words: *procedural opportunities, victim, criminal trial.*

1. Formulation of the problem.

One of the centuries-old problems of the development of a democratic, legal society, which is always in the center of close attention of legal opinion, remains the issue of protecting the rights, freedoms and legitimate interests of the individual [1, p. 64]. In Art. 2 of the Criminal Procedure Code of Ukraine declares the task of criminal proceedings, which consists in the protection of individuals, society and the state from criminal offenses, protection of the rights, freedoms and legitimate interests of participants in criminal proceedings [2], which corresponds to the provisions of Art. 3 of the Constitution of Ukraine [3]. The implementation of this task is impossible without the creation of an effective criminal procedural mechanism for ensuring the rights of victims.

In the conditions of resistance to Russia's armed aggression on the territory of Ukraine, it is important to create optimal procedural mechanisms for victims to realize their rights and legitimate interests, to develop modern methodology and master its practice, with increased attention to the issue of compensation for the damage caused, participation in the conduct of investigative (search) actions during court proceedings consideration, compliance with procedural rights and legal interests of the victim.

The procedural activity of the victim during the trial depends on the extent to which the criminal procedural system of guarantees corresponds to reality regarding the realization of the rights and legitimate interests of the victim. Such implementation of rights and legal interests can be carried out both personally and with the help of a lawyer or legal representative (if the victim is a minor) participating in criminal proceedings [1, p. 46]. Therefore, in today's conditions, the procedural possibilities of the victim in a criminal trial do not lose their relevance and require a detailed analysis.

2. Analysis of recent research and publications.

Such scientists as: Yu.P. Alenin, V.G. Honcharenko, Yu.M. Groshevy, Yu.O. Gurdji, S.V. Davydenko, O.V. Kaplina, O.P. Kuchynska, Yu.O. Kuharchuk, O.O. Kochura, A.V. Lapkin, O.V. Martovytska, V.V. Moldovan, V.T. Nor, T.V. Omelchenko, O.V. Panchuk, I.I. Poteruzha, T.I. Prysiashniuk, M.S. Strohovich, S.V. Tolokolnikov, L.D. Udalova, L.I. Shapovalova, O.O. Yuhno et al.

In recent years, the criminal procedural legislation of Ukraine has undergone conceptual and progressive changes, which to a certain extent corresponds to European legal standards in the field of criminal justice. At the same time, the criminal procedural institution of the victim needs further development and improvement.

Today, in the theory of the criminal process, there are different, and sometimes diametrically opposed, scientific positions regarding the procedural possibilities of the victim in the judicial criminal process, ensuring and realizing the protection of the rights, freedoms and legitimate interests of the specified participants in the criminal proceedings. After the implementation of the current Code of Criminal Procedure of Ukraine, certain problematic aspects of the realization of the rights and legitimate interests of the victim in criminal proceedings were not investigated.

3. Forming the purpose of the article (setting tasks) is to outline the procedural possibilities of the victim's participation in an adversarial criminal trial, on the basis of which to develop recommendations aimed at improving the norms of the Criminal Procedure Code of Ukraine, which regulate the procedural rights of the victim and their implementation at the stage of the trial.

4. Presentation of the main research material.

In accordance with the provisions of Art. 55 of the Criminal Procedure Code of Ukraine, a victim in a criminal proceeding can be a natural person to whom moral, physical or property damage was caused by a criminal offense, as well as a legal entity to whom property damage was caused by a criminal offense [2]. From the analysis of the provisions of the Criminal Procedure Code of Ukraine, it follows that the system of criminal procedural rights of the victim is divided into three groups: 1) rights that he has throughout the entire criminal proceedings (Part 1 and Part 4 of Article 56 of the Criminal Procedure Code); 2) the rights he has during the pre-trial investigation (Part 2 of Article 56 of the Criminal Procedure Code); 3) the rights he has during court proceedings (Part 3 of Article 56 of the Criminal Procedure Code) [2]. Let's consider in more detail the procedural possibilities of the victim, which are assigned to the third group we singled out.

Trial is the main and most important stage of the criminal process, in which the court examines and decides the case finally and on the merits, by examining all the necessary evidence and their sources, and renders a final decision on the case [4, p. 274]. The decision of the criminal proceedings finally and essentially means that the court: directly examines and evaluates all the evidence; finally finds out all the essential circumstances that make up the subject of proof in criminal proceedings; pronounces a verdict of guilt or innocence of persons with all the relevant consequences.

By administering justice by examining and resolving the specified issues, the court thereby fulfills the task of criminal justice in terms of protecting the rights and legitimate interests of the persons participating in it, ensuring the correct application of the law so that everyone who has committed

a crime is brought to justice, and no innocent was punished [5, p. 42]. At the same time, as rightly emphasized by L.M. Lobyko, the trial stage has criminal-legal and criminal-procedural significance. Thus, the criminal-legal significance of this stage is that it gives the final answer to questions of a criminal-legal nature, namely: a) whether a crime was committed; b) if so, what are his qualifications; c) whether the defendant is guilty of committing this crime; d) if guilty, whether he is subject to criminal punishment. In turn, the criminal-procedural significance of the trial stage is manifested in the fact that: a) only at this stage can a criminal-legal dispute between the state (the victim) and the defendant be resolved; b) at this stage, the task of the criminal process is finally resolved, the purpose of which is to ensure the correct application of the law so that everyone who committed a crime is brought to justice, and no innocent person is punished; c) at this stage, the results of all pre-trial criminal procedural activity are summarized [6, p. 80-81].

On the conviction of Y.M. Myroshnychenko, the trial can be effective only if it is properly prepared by making organizational and tactical decisions, planning the trial, the information base of which is the materials of the pre-trial investigation [7, p. 142]. Having reached the conclusion that there are grounds for the appointment of a court hearing, the court must resolve a number of issues that provide the necessary conditions for the proper consideration of the proceedings in the court session and the realization of the rights of the parties.

We share the position of some scientists that the parties' presentation of evidence to the court should take place at the preparatory meeting, since at this stage the court is only forming the case, and not giving an assessment and examining the evidence. The submission of evidence by the parties to the court in the preparatory proceedings is required by the need to ensure the effectiveness of the trial (determination of the amount of evidence to be examined and the order of their examination) in order to fulfill the tasks set before it and achieve the ultimate goal - the adoption of a judicial decision [8, p. 44-49].

According to the content of Art. 337 of the Criminal Procedure Code of Ukraine, the trial is conducted only in relation to the person against whom the indictment is brought, and only within the limits of the indictment in accordance with the indictment, except for the cases provided for in this article [2]. At the stage of the trial, the court must investigate and verify all the evidence presented by the parties, all the circumstances of the criminal proceedings within the limits of the reported suspicion. In order to clarify these issues, we will examine the procedural possibilities of the victim in the examination of evidence in criminal proceedings.

Realization of the victim's right to participate in investigative (search) and other procedural actions, during which he has the right to ask questions, submit his comments and objections to the procedure for conducting the action, is important not only for the victim himself, but also for clarifying the circumstances of the criminal case. proceedings The argument for this is that such participation in a number of cases will contribute to: ensuring faster and more efficient conduct of investigative (search) action and court proceedings in general; finding out the motives, reasons and conditions of the committed criminal offense, etc. At the same time, the victim, due to objective reasons, may refuse to actively participate in the research and verification of factual data, while not objecting to participation in other procedural actions.

The testimony of the victim plays a significant role in making a decision in criminal proceedings. Unlike the accused, the victim is warned by the court of criminal liability for giving knowingly false testimony. The victim is interrogated before the questioning of the witnesses according to the same rules as the witnesses. At the same time, in Art. 353 of the Criminal Procedure Code of Ukraine does not explicitly state that the victim is interrogated before the questioning of witnesses. In our opinion, this shortcoming should be eliminated by making appropriate changes to the Code of Criminal Procedure of Ukraine.

The procedure for questioning the victim during the trial is regulated in Art. 353 of the Criminal Procedure Code of Ukraine, part 1 of which states that before questioning the victim, the presiding officer establishes information about his identity and establishes the relationship between the victim and the accused. In addition, the presiding judge finds out whether the victim has received a memo on the rights and obligations of the victim, whether he understands their content, and if necessary - explains them, and also warns him about criminal liability for knowingly false testimony. The chairman of the court session must bring the victim to the oath, if he did not refuse to testify [2].

Also, we believe that Art. 353 of the Criminal Procedure Code of Ukraine should be supplemented with the provision that the interrogation of the victim begins with the proposal of the presiding judge to give testimony regarding the criminal proceedings, after which he is interrogated using direct and cross-examination.

After questioning the victim, the civil plaintiff, civil defendant, their representatives and legal representatives, as well as the presiding judge and judges may ask him questions. The court has the right to require the persons who ask questions to formulate them in a language understandable to the victim. They must be correct, understandable, clear and specific, take into account the intellectual level of the interrogated.

The victim may be interrogated again in the same or the next court session at his request, at the request of a party to criminal proceedings or at the initiative of the court, in particular, if during the trial it becomes clear that the victim can testify about the circumstances for which he was not questioned .

An additional questioning of the victim may also be conducted on issues that were not clarified during the first questioning. The testimony of the victim during the additional interrogation relates to new circumstances, and may also specify or clarify the previous testimony. When testifying, the victim, in addition to factual data, can inform the court of his own opinion about them.

We consider the proposal made by O.O. Solyonova, supplement Art. 224 of the Criminal Procedure Code of Ukraine, according to which a representative of the victim may be present during the interrogation, who has the right to: provide counseling to the victim in the presence of the investigator; with permission, ask investigative questions to the victim to clarify and supplement the answers that are to be recorded in the protocol; to express objections against the illegal actions of the investigator regarding the procedure of his interrogation, which must be recorded in the protocol; apply technical means with the permission of the investigator [9, p. 209].

If the prosecutor has come to the conviction based on the establishment during the trial of the circumstances of the case, which are of significant importance, that the charge specified in the indictment does not correspond to the circumstances of the case. In such a case, the prosecutor prepares a new indictment, copies of which are provided to the accused, his defense counsel, the victim, his representative and legal representatives, as well as the representative of the legal entity in respect of which proceedings are being conducted (Part 2 of Article 338 of the Criminal Procedure Code of Ukraine) [2]. The specified actions affect not only the activities of the prosecutor, but also the activities of other participants in the process, in particular, in the case of the prosecutor's refusal to support the state prosecution, the court is obliged to explain to the victim that he can undertake the implementation of the prosecution instead of the prosecutor to the extent that stated in the indictment.

It should be emphasized that the victim does not have the authority to increase/decrease or change the charges previously presented in the indictment by the prosecutor, as this is the exclusive right of the prosecutor. At the same time, if the prosecutor changes the indictment (in the direction of changing the qualification of the committed illegal act in the direction of mitigating or choosing a less severe type of punishment), the victim still has the right to support the accusation in the previous amount.

At the same time, the victim during court proceedings (for example, in the court proceedings of a private prosecution) is assigned the duty (burden) of proof regarding the propriety and admissibility of evidence and data regarding the amount of procedural costs and circumstances that characterize the suspect, the accused, in the event when the victim submits relevant evidence. Under such conditions, the rights of the victim and the representative lawyer should be regulated in as much detail as possible and conceptually not differ (with the exception of the relevant specifics related to the status of a participant in criminal proceedings) from the procedural rights of the accused and his defense counsel.

In the context of the study, we would like to draw attention to the lack of instructions in the Criminal Procedure Code of Ukraine regarding the consideration of the opinion of the victim by the investigator, prosecutor, investigating judge and court when making procedural decisions or submitting relevant petitions. In particular, in the provisions of Art. 178 of the Criminal Procedure Code of Ukraine does not provide for the participation of the victim in deciding the issue of choosing a preventive measure. However, for example, taking into account the circumstances provided for in Art. 178 of the Criminal Code of Ukraine,

a personal bond is chosen as a precautionary measure for the suspect, the accused, but the victim justifiably fears pressure from him or is dependent on him, which the pretrial investigation body is not always able to establish. In this case, in order to ensure the protection of the victim, it is advisable to choose a stricter preventive measure, in particular in the form of house arrest. Or, on the contrary, when the suspect, the accused has compensated the damage caused by the criminal offense, but the investigator, the prosecutor is not yet aware of such a circumstance and the investigating judge, the court at their request chooses a preventive measure in the form of detention. In this case, the victim may not have any complaints against the suspect, the accused, but his opinion on these issues was not questioned and not taken into account.

Therefore, as rightly noted by C.E. Ablamskyi, giving law enforcement agencies and the court the right to apply preventive measures, the Criminal Procedure Code of Ukraine deprives the victim of the right to take an active part in their election. In this case, only the general rule about the possibility of challenging the procedural actions (inaction) of pre-trial investigation bodies and the prosecutor's office applies [1, p. 42].

The provisions of the Criminal Procedure Code of Ukraine currently do not enshrine such a right for the victim, in connection with which A.V. Lapkin argues that depriving the victim of the right to initiate the application of a preventive measure is not justified, and scientists have previously emphasized the expediency of giving the victim the right to petition the court to choose a preventive measure, and such proposals are fully justified in view of the need to ensure rights and legitimate interests the victim, providing him with additional opportunities to defend his own procedural position, which we also support and believe that the current Code of Criminal Procedure of Ukraine in this part completely unfairly limits the right of the victim to protect his rights and legitimate interests [10, p. 11].

In this regard, we believe that appropriate additions should be made to the current Code of Criminal Procedure of Ukraine, establishing the duty of the investigator and prosecutor to take into account the opinion of the victim, to be present at the selection, change or cancellation of a preventive measure, to provide explanations and supporting evidence his position, as well as the right to appeal decisions on the specified issues.

In conclusion, we note that the requirements for the volume of scientific articles do not allow a comprehensive analysis of all the procedural possibilities of the victim in the criminal court process, in particular, regarding the presentation of claims for compensation for damage, appeals against decisions, actions and inaction of authorized sub-entities of the criminal process, etc. However, we can state the extreme importance of the analyzed issues from the point of view of fulfilling the tasks of criminal proceedings, defined by Art. 2 of the Criminal Procedure Code of Ukraine, protection of the individual, society and the state from criminal offenses, protection of the rights, freedoms and legitimate interests of participants in criminal proceedings, as well as ensuring a quick, complete and impartial investigation and trial, so that anyone who has committed a criminal offense is brought to justice to be held accountable to the extent of their guilt, no innocent person was charged or convicted, no person was subjected to unreasonable procedural coercion, and that due process of law was applied to each participant in criminal proceedings [2].

5. Conclusion.

It is at the trial stage that the most opportunities are provided for a quick, complete and impartial investigation and trial. Legal guarantees of the implementation of the procedural rights of the victim at the stage of the trial are aimed at creating certain opportunities for the victim in the examination of evidence, prevention (prevention) of violations by other participants in criminal proceedings, termination of violations of procedural rights and restoration of the violated right.

The legal guarantees of the victim, which determine his procedural possibilities at the stage of the trial, include those defined in Art. 56 of the Criminal Procedure Code of Ukraine the right: to be informed in advance about the time and place of the trial; submit evidence to the court and participate in their direct examination; to file objections and motions; to ensure safety for oneself, close relatives or members of one's family, property and housing; give explanations, statements or refuse to give them; to challenge decisions, actions or inaction of authorized persons; support the prosecution in court in case the prosecutor refuses to support the state prosecution; appeal court decisions in accordance with the procedure provided for by the Code of Criminal Procedure of Ukraine, etc.

In order to provide additional guarantees for the realization of the rights of the victim in the adversarial criminal process, arguments are given for making relevant changes to the Criminal Procedure Code of Ukraine in terms of: establishing for the victim the opportunity to be present at the selection, change or cancellation of a preventive measure, to provide explanations and evidence in support of their position, and also the right to appeal decisions on the specified issues; indicating that the interrogation of the victim begins with the proposal of the presiding judge to give testimony regarding the criminal proceedings, after which his interrogation is carried out by applying direct and cross-examination.

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Ruslan Popovych,

*Assistant student of the Department of Law
of the Private Higher Educational Institution “European University”*

Mykhaylo Klymchuk,

*Associate Professor of the Department of Law
of the Private Higher Educational Institution “European University”,
candidate of legal sciences, associate professor*