

Corporate raid victim: forensically significant characteristics and specifics of participation in procedural actions

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Law enforcement activities to combat corporate raid need proper scientific support, in particular scientifically based recommendations of a practical orientation, formulated taking into account issues of investigative and judicial practice. Prerequisite for their development is a thorough study of the victim identity, because sometimes it is he who is connected by appropriate correlations with other components of the mechanism of criminally illegal activity. The purpose of this scientific investigation is to find out characteristics of persons who are victims of criminal offenses related to illegal absorption and seizure of assets of economic entities, enterprises, institutions, organizations, corporate rights to, determine tactical specifics of conducting procedural actions under with the participation of victims. Implementation of defined goal necessitated the use of a number of general scientific and special methods. Based on a review of the needs and typical problematic issues of investigative practice: 1) victim identity of criminal offenses related to raiding is characterized, their victimhood is indicated; 2) typical forms of participation of victims and their representatives in criminal proceedings of specified category are singled out; 3) those investigative (search) actions in which the victims most often participate have been clarified; 4) algorithm of activities of the prosecution party is outlined that is expedient to implement in those investigative sit-

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uations when the victim or his representative reported that he has things and documents that relate to the circumstances of the committed criminal offense and therefore it is expedient to include them in the case file. Prospects for further research within the studied issues are indicated.

Keywords: *pre-trial investigation; criminal offense; corporate raid; business entity; manager; land plot owner; victim; interrogation; inspection; temporary access to documents; expert involvement for forensic examination.*

Research Problem Formulation

Priority of protecting the rights, freedoms and legitimate interests of a person and citizen has been declared and established by a number of international and national legislative acts. The main ones are the Universal Declaration of Human Rights (guarantees everyone the right to private property and effective renewal of violated forms through the implementation of jurisdictional forms of protection, free development in the economic field, etc.)¹, International Covenant on Civil and Political Rights (among other things, declares the right to free use of economic rights, ensuring economic development)² and European Convention on Human Rights (provides possibility of applying for an effective remedy to national authorities,

even if such a violation committed by persons exercising their official powers)³.

At constitutional level, in order to implement such a legal basis as the protection and protection of each participant in public relations, obligation of the state to “establish and ensure human rights and freedoms”⁴ is enshrined. In view of this, the protection of a person from criminal offenses, i.e., those unlawful encroachments that are marked by the highest level of public danger, is defined by the legislator as one of the strategic objectives of criminal proceedings⁵.

Currently, Ukraine has a whole security and defense sector, security forces, personified by law enforcement agencies, implement the tasks of creating a security environment in the state, guaranteeing the protection of constitutional rights, freedoms and legitimate interests of a person,

- 1 Загальна декларація прав людини : прийн. і проголош. резолюц. 217 А (III) Ген. Асамбл. ООН від 10.12.1948 р. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text (date accessed: 06.06.2024).
- 2 Міжнародний пакт про громадянські і політичні права : ратифік. Указ. Презид. ВР УРСР від 19.10.1973 р. № 2148-VII (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/995_043#Text (date accessed: 13.08.2024).
- 3 Конвенція про захист прав людини і основоположних свобод (Європейська конвенція з прав людини) : від 04.11.1950 р. ; ратифік. Законом України від 17.07.1997 р. № 475/97-ВР ; чинна для України з 11.09.1997 р. (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (date accessed: 13.08.2024).
- 4 Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр> (date accessed: 01.06.2024).
- 5 Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 08.07.2024).

the state and society as a whole, preserving the sovereignty and territorial integrity of the state, creating appropriate conditions for the speedy restoration of violated rights and freedoms⁶.

Economic sector plays an important role in ensuring harmonious development of legal and social state, as its activities are aimed not only at meeting the needs of the population, but are also an important component of the state's overall functioning. In view of this, the state guarantees protection of the rights of all business entities and individuals engaged in entrepreneurship, and proclaims the social orientation of the economy (Art. 13 of the Constitution of Ukraine), protection of competition in business activities (Art. 42 of the Constitution of Ukraine), etc.⁷ In order to protect public relations in the field of economic activity, the legislator has provided for criminal liability for committing a large group of criminal offenses and crimes, which cause material damage in significant amounts or have other socially dangerous consequences (in particular, for the State).

Law enforcement agencies play an important role in shaping the security environment, guaranteeing the protection of constitutional rights, freedoms and legitimate interests of individuals and society as a whole, preserving sovereignty and territorial integrity of the State and creating right conditions for speedy restoration of violated rights and freedoms. They are responsible for ensuring national security, one of the essential components of which is economic security. Significant negative

consequences for the economic security of the state, the exercise of the constitutional rights of individuals to conduct economic activity, entrepreneurship, protection of private property, development of market relations and maintenance of fair competition are caused by illegal activities of individuals related to the illegal takeover of business entities of various organizational and legal forms, encroachment on their assets, commercial and banking secrets, etc. Law enforcement activities to combat raiding require proper scientific support, in particular, scientifically based recommendations for practical use, formulated with due regard to the problems of investigative and judicial practice. A prerequisite for their development is a thorough study of the victim's identity, since sometimes this component of criminalistic characterization of criminal offenses is starting point that is connected by appropriate correlations with other components of the mechanism of criminal activity.

For a long time, scientists have focused on various aspects of law enforcement activities related to bringing a person to criminal responsibility. Countering criminal offenses related to illegal encroachment on any assets of business entities, i.e., implementation of raider-oriented actions, is extremely relevant. Our attention is drawn to the question of researching identity of the victim of these criminal offenses, determining whether they are characterized by certain signs of victimhood, as well as the peculiarities of their participation in criminal proceedings, in particular, tactics of conducting investiga-

6 Россоха С. В. Правоохоронні органи держави в механізмі захисту прав і свобод людини і громадянина : автореф. дис. ... канд. юрид. наук. Харків, 2016. 17 с. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/9cd2ff8e-6b43-4602-8428-4d0017fb144f/content> (date accessed: 15.08.2024).

7 Конституція України URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (date accessed: 15.08.2024).

tive (search) and other procedural actions with the participation of corporate raid victims, etc.

Article Purpose

The article aims at identifying the characteristics inherent in persons who are victims of criminal offenses related to unlawful takeover and seizure of assets of business entities, enterprises, institutions, organizations and corporate rights thereto and at determining tactical specifics of conducting procedural actions involving victims.

Research Methods

Realization of this goal necessitated the use of a number of general scientific and special cognition methods.

The methods of analysis, synthesis, system analysis, and system-structural analysis were useful in analyzing the system of legal provisions of international legal acts and national legislative acts that are the legal basis for combating criminal offenses related to raiding. The research made possible to determine the legal basis for protecting the rights of business entities, as well as certain participation of victims in criminal proceedings in this category.

Methods of system analysis and system-structural analysis were the main ones used to summarize theoretical work within the chosen research topic and related issues. Along with statistical methods, they were used to process case files of investigative and judicial practice that contributed to identification of typical participation forms of victims in criminal proceedings, procedural actions conduct-

ed with their participation, typical characteristics of victims, etc.

The analysis method of quantitative indicators was used to process investigative and judicial practice (in particular, sentences from the Unified State Register of Court Decisions).

The forecasting method contributed to formation of recommendations on participation of victims in procedural actions carried out at the stage of pre-trial investigation of criminal offenses related to corporate raid.

Analysis of Essential Researches and Publications

Victim's personality has long been an object of forensic cognition, and therefore a subject of forensic research. In the specialized literature, it is paid attention to mainly in the context of the study of an element of the forensic characterization of a particular type or group of crimes. In this context, best practices of V. Bakhin, A. Volobuiev, V. Husieva, V. Zhuravel, V. Konovalova, O. Pchelina, M. Saltevskiy, V. Tishchenko, V. Topchii, S. Cherniavskiy, Y. Chornous, V. Shykanov, N. Shynkevych, V. Shevchuk, V. Shepitko and many others are known.

Yu. Baulina and V. Borysov made a significant contribution to development of the system of criminal law, criminological and forensically significant signs of research on victim⁸.

Recently, criminalistics has begun to gravitate toward cognition of the victim's identity in the victimization aspect. A significant contribution to development of this topic was made by O. Reznikova. The author thoroughly approached the

8 Потерпілий від злочину (міждисциплінарне правове дослідження) / за заг. ред. Ю. В. Бауліна, В. І. Борисова. Харків, 2008. 364 с.

development of scientific foundations of victimization cognition and the use of its results in forensics: she formed scientific and practical forensic recommendations for the development and determination of tactics for conducting investigative (search) and judicial actions⁹. The problem raised by O. Reznikova was actively studied by V. Davydenko¹⁰, V. Maliarova¹¹, I. Tkachenko¹² and some other scholars. Although victimology has offered a certain terminological alternative, using in paral-

lel with the concepts of *victim* and *victim's person* the concept of *victim of crime*¹³, for the sciences of criminal law cycle, in particular criminalistics, this has not yet satisfied the need to identify forensically significant specifics of corporate raid victim.

As for the characteristics of the corporate raid, scientists have already analyzed some of its aspects in their studies. V. Berezniak¹⁴, V. Kikinchuk and V. Husieva¹⁵, S. Stetsenko¹⁶, O. Dudorov with co-authors¹⁷, M. Tsutskiridze with co-au-

- 9 Резнікова О. І. Віктимологічне пізнання особи у криміналістиці : автореф. дис. ... канд. юрид. наук. Харків, 2015. 26 с. URL: https://library.nlu.edu.ua/POLN_TEXT/AFTOREF/Reznikova_O_I_2015.pdf (date accessed: 15.08.2024).
- 10 Давиденко В. Л. Міждисциплінарний характер учення про жертву злочину. *Науковий вісник Херсонського державного університету. Серія: Юридичні науки*. 2015. Вип. 5. Т. 3. С. 124—126. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/fb85941b-82b2-4920-b77a-0b6b74c57a8a/content> (date accessed: 15.08.2024).
- 11 Малярова В. О. Віктимологічний напрям криміналістичного аналізу особи потерпілого від втягнення в заняття проституцією. *Науковий вісник Херсонського державного університету. Серія: Юридичні науки*. 2015. Вип. 3. Ч. 2. Т. 2. С. 220—222. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/a83ea728-566f-4d70-987c-16371680baa4/content> (date accessed: 15.08.2024).
- 12 Ткаченко І. М. Співвідношення потерпілої особи і жертви кримінального правопорушення. *Науковий вісник Ужгородського Національного Університету. Серія: Право*. 2023. Вип. 78. Ч. 2. С. 234—241. DOI: [10.24144/2307-3322.2023.78.2.37](https://doi.org/10.24144/2307-3322.2023.78.2.37) (date accessed: 15.08.2024).
- 13 Потерпілий від злочину С. 205.
- 14 Березняк В. С. Криміналістична характеристика кримінальних правопорушень, пов'язаних із захопленням землі та об'єктів корпоративної власності. *Юридична наука*. 2020. № 9 (111). С. 128—134. DOI: [10.32844/2222-5374-2020-111-9.15](https://doi.org/10.32844/2222-5374-2020-111-9.15) (date accessed: 15.08.2024).
- 15 Кікінчук В. В., Гусева В. О. Особливості розслідування кримінальних правопорушень, пов'язаних протиправним поглинанням та захопленням підприємств, сільськогосподарських земель, порушенням прав їх законних власників (рейдерство) : наук.-метод. рек. Харків, 2020. 58 с. URL: <http://dspace.univd.edu.ua/xmlui/handle/123456789/9813> (date accessed: 15.08.2024).
- 16 Стеценко С. В. Обставини, що підлягають з'ясуванню під час досудового розслідування протиправного заволодіння майном підприємства, установи, організації. *Вісник Кримінологічної асоціації України*. 2024. № 1 (31). С. 288—296. DOI: [10.32631/vca.2024.1.23](https://doi.org/10.32631/vca.2024.1.23) (date accessed: 15.08.2024).
- 17 Дудоров О. О., Каменський Д. В., Титаренко С. С. Кримінально-правова оцінка зловживань державних реєстраторів у контексті протидії рейдерству. *Науковий вісник Національної академії внутрішніх справ*. 2021. Т. 26. №1 (118). С. 118—130. DOI: [10.33270/01211181.118](https://doi.org/10.33270/01211181.118) (date accessed: 15.08.2024).

thors¹⁸, N. Tataryn and Ye. Priakhin¹⁹ and others made a significant contribution to the development of the system of forensically significant signs of the identity of a raiding victim. other scientists. At the same time, the subject of research of the named scientists was somewhat broader, and these authors approached the study of the victim's personality somewhat indirectly, because they aimed to solve more strategic problems. Since our goal is also to develop forensic recommendations on conducting procedural actions in criminal proceedings involving victims, we believe that research on forensically significant specifics of the identity of the victim corporate raid is extremely relevant.

Main Content Presentation

The scientific category: *victim* has long been the subject of interdisciplinary research. Forensic knowledge about victims includes certain information about their forensically significant features, typical forms of behavior, connections and interaction with other participants of criminal procedural relations, and contributes to the development and improvement of technical means, tactics and methodological recommendations for the investigation of criminal offenses and their trial²⁰. In

view of this, we consider it necessary to dwell on the analysis of those forensically significant features of victims of raiding which require their mandatory consideration when developing the mandatory elements of forensic techniques, but this task must be performed taking into account the provisions of criminal and criminal procedure legislation.

As a general rule, the victim in criminal proceedings is *“an individual who has suffered moral, physical or property damage as a result of a criminal offense, a legal entity who has suffered property damage as a result of a criminal offense, as well as an administrator for the issue of bonds, who, in accordance with the provisions of the Law of Ukraine On Securities and Stock Market”*²¹. In addition, *“the victim is also a person who is not the applicant, but who has been harmed by a criminal offense and in this regard, after the initiation of criminal proceedings, he/she filed an application to be involved in the proceedings as a victim”*²².

The victim may participate in criminal proceedings independently or indirectly. To represent an individual who is a victim of a criminal offense, authorized solely by the entity that meets the requirements in criminal proceedings against the defense counsel. If the victim is a legal entity, its interests may be represented by its head on the basis of the relevant constituent

18 Цуцкірідзе М. С., Дударець Р. М., Довгунь С. З. та ін. Розслідування кримінальних правопорушень, пов'язаних з протиправним поглинанням та захопленням підприємств, сільськогосподарських земель, порушенням прав їх законних власників (рейдерство) : наук.-метод. рек. Дніпро, 2021. 72 с. URL: <https://er.dduvs.edu.ua/handle/123456789/9451> (date accessed 15.08.2024).

19 Татарин Н. М., Пряхін Є. В. Методика розслідування самовільного зайняття земельної ділянки та самовільного будівництва : монографія. Львів, 2019. 192 с. URL: <https://dSPACE.lvduvs.edu.ua/handle/1234567890/2545> (date accessed: 15.08.2024).

20 Давиденко В. Л. Зазнач. твір. С. 125. URL: <https://dSPACE.univd.edu.ua/server/api/core/bitstreams/fb85941b-82b2-4920-b77a-0b6b74c57a8a/content> (date accessed: 15.08.2024).

21 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 15.08.2024).

22 Там само.

documents or by another employee of the legal entity on the basis of a power of attorney or by another person or entity authorized by law or constituent documents who has the right to be a defender ²³.

Taking into account specifics of criminal procedural activity aimed at knowing the event of a criminal offense, the need to clarify a set of circumstances that are subject to mandatory proof and have significant tactical significance, we believe that the head of the organization and/or the constituent assembly of the business entity should choose as his representative (representative of the legal entity) the one who is most informed about the activities of the business entity, aware of the specifics of accounting and other reporting at the enterprise, document management, etc. This will increase the effectiveness of investigative (search) actions that will be carried out during the investigation, and in general will ensure efficiency of the tactical tasks of the investigation.

As for the illegal seizure of the property of enterprise, institution, organization, which is typical during the implementation of an intention related to corporate raid, the following should be taken into account: objective side of this composition of the criminal offense assumes that the culprit implements active behavior (action) that consists in seizing the property of an enterprise, institution, organization from the possession, disposal, use of the owner or the person to whom it is legally entrusted, for the benefit of the guilty party or other persons, and this causes

socially dangerous consequences, consisting in property reduction of the owner and enrichment for his account is guilty ²⁴. In view of this, the victim is recognized as the owner of the property to whom material damage was caused.

It is worth noting that not all criminal offenses related to raiding involve victims. Some corpus delicti of criminal offenses in the field of economic activity committed by raiders have a formal composition, and therefore do not necessarily involve socially dangerous consequences. For example, the victim's participation in categories of cases related to forgery of documents submitted for state registration of legal entities and individual entrepreneurs is atypical.

Along with atypical participation of the victim, some categories of criminal offenses of the studied group are characterized by another specific. Thus, according to the provisions of Clause 1 Part 1 of Art. 477 of the Criminal Procedural Code of Ukraine, pre-trial investigation in criminal offenses provided for by separate articles of the Criminal Code of Ukraine, in particular, Part 1 of Art. 206 (opposition to legal economic activity without aggravating circumstances), Art. 219 (bringing to bankruptcy in the context of actions that harm creditors), Art. 229 (illegal use of a mark for goods and services, brand name, qualified indication of the origin of goods), Art. 231 (illegal collection for the purpose of use or use of information that constitutes a commercial or banking secret), Art. 232 (disclosure of commercial

²³ Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 15.08.2024).

²⁴ Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 15.08.2024) ; Грищенко Н. М. Кримінальна відповідальність за протиправне заволодіння майном підприємства, установи, організації : дис. ... канд. юрид. наук. Дніпро, 2019. 216 с. URL: <https://dduvs.edu.ua/wp-content/uploads/files/Structure/science/rada/d2/dissertations/4/1.pdf> (date accessed: 15.08.2024).

or banking secrets), Art. 232-1 (illegal use of insider information, exclusively in relation to actions that harm the rights, freedoms and interests of individual citizens or the interests of legal entities), Art. 232-2 (concealment of information about the activity of the issuer), are initiated exclusively on the basis of the victim's statement, and criminal proceedings are carried out in the form of a private indictment²⁵. Therefore, it is rightly stated in legal literature that in the case of damage exclusively to the interests of a legal entity, regardless of the organizational and legal form, criminal proceedings are opened at the request of the head or other authorized representative of this legal entity. In these categories of cases, with certain exceptions, it is allowed to conclude a reconciliation agreement between the victim and the defense party that after its conclusion is approved by the court with a verdict²⁶.

In those criminal proceedings where a land plot has been the object of raiding, the legal owners of the land plot or land users, who may be individuals and legal entities, a certain territorial community or the state, are recognized as victims, especially when it comes to reserve lands. According to the scientific literature, the legal owners of land plots include: 1) persons who have the right of permanent use of a land plot; 2) land plot lessees; 3) persons who use other people's land plots for agricultural purposes (emphyteusis); 4) concessionaires²⁷.

Thus, the actual grounds for involvement in criminal proceedings as a victim are the infliction of physical, property and/or moral damage to a person, in the context of a legal entity exclusively property damage. If the victim is represented (and in the context of a legal entity, representation occurs in all situations without exception), it is necessary to check the legal grounds for this, certified by the relevant documents that determine the status of the person. It should be noted that criminal offenses related to raiding can also cause damage to the state. The victim's representative in such criminal offenses is most often either the head of a state-owned enterprise or another employee, who in 86% of the criminal proceedings we analyzed had a law degree and held the position of a lawyer or legal advisor.

For criminal offenses related to raiding, fundamental issue in some categories of cases is the infliction of material (property) damage to the victim, and when it is inflicted on a significant scale or other grave consequences, it affects the legal qualification of the act committed, because it aggravates criminal liability. Such a qualifying circumstance is provided for by the criminal offenses defined in Art. 206, 206-2, 219 and 233 of Criminal Code of Ukraine²⁸.

It should be noted that when investigating the identity of victims of criminal offenses related to raiding, it is often

25 Кримінальний процесуальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 15.08.2024) ; Кримінальний кодекс ... URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 15.08.2024).

26 Ришелюк А. М. Коментар до ст. 219 КК України / Науково-практичний коментар Кримінального кодексу України ; за заг. ред. М. І. Мельника, М. І. Хавронюка. 10-те вид., перероб. та допов. Київ, 2018. С. 735—736.

27 Науково-практичний коментар Кримінального кодексу України ; за заг. ред. М. І. Мельника, М. І. Хавронюка. 7-ме вид., перероб. та допов. Київ, 2010. С. 535.

28 Кримінальний кодекс ... URL: <https://zak.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 05.07.2024).

noted that they are characterized by victim behavior²⁹. We consider this to be one of the most important characteristics of victims in this category of cases. We agree with such arguments, because investigative and judicial practice is aware of cases where the victim “voluntarily” transferred ownership of his or her assets to the raiders due to psychological pressure. An example is the case considered by the Zhovtnevyi District Court of Dnipropetrovsk on charges of a group of individuals of committing a crime under Part 3 of Art. 206-2 of the Criminal Code of Ukraine: unlawful seizure, by prior conspiracy, of the property of Interlizinvest LLC, including a share of its founder, Interlizinvest Ukraine B.V. LLC, by means of transactions using forged company documents, which caused damage totaling UAH 920,908,900. In addition, one of the members of this group was charged with committing a crime under Part 2 of Art. 189 of the Criminal Code of Ukraine for extortion, threatening to restrict the rights and freedoms of the victim, transferring corporate rights to Pectoral PE, Pectoral Agro LLC and Wings of Tavria LLC³⁰.

We also agree with the position of O. Sukmanova, who singles out rare “latent raider takeovers”, when the victims (due to a lack of strength and resources

to fight and oppose illegal takeover) agree to make a compromise decision with the raiders³¹. Based on generalization of theoretical provisions, as well as the content of court practice, we can state that model of behavior of a criminal who took advantage of the victim characteristics of the owner of an enterprise, institution, organization, most often consists in the implementation of two lines of behavior: 1) pushing the person to the role of the victim, in particular by intimidation; 2) using a person's trust for their own benefit (abuse of trust), in particular by concluding transactions through intermediaries, entrusting them with the right to dispose of their property and enter into agreements regarding real estate, etc.³²

It is also worth paying attention to the fact that under Criminal Procedural Code of Ukraine, a person who is a close relative or family member of a person who has suffered moral, physical, or property damage due to a criminal offense can be recognized as a victim in criminal proceedings³³. Such facts, as noted in the legal literature, occur when: 1) the death of the victim occurred due to the commission of a criminal offense; 2) person is in a state that makes it impossible for him to submit the corresponding application³⁴. In general, we agree with this position, but given

29 Павлова Н. В. Особливості розслідування шахрайства, пов'язаного із відчуженням приватного житла : дис. ... канд. юрид. наук. Харків, 2007. С. 67.

30 Вирок Жовтнев. райсуду м. Дніпропетр. від 28.09.2022 р. за провадж. № 1кп/201/145/2022. Справа № 208/6312/16-к / ЄДПРП. URL: <https://reyestr.court.gov.ua/Review/106476665> (date accessed: 01.08.2024) ; Кримінальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 15.08.2024).

31 Сукманова О. Кінець епохи рейдерства, який не відбувся / Sayenko. Kharenko. 03.12.2020. URL: <https://sk.ua/uk/publications-uk/reiderstvo/> (date accessed: 01.08.2024).

32 Березняк В. С. Зазнач. твір. С. 128. DOI: 10.32844/2222-5374-2020-111-9.15 (date accessed: 15.08.2024).

33 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 15.08.2024).

34 Абламський С. Є. Захист прав і законних інтересів потерпілого у кримінальному провадженні : монографія / за заг. ред. О. О. Юхна. Харків, 2015. 240 с. (Серія «Бібліотечка

the specifics of the criminal offenses we are investigating, the long period of their pre-trial investigation and the many-year court delay, there are situations when the natural death of the victim occurs, not related to the raiding event. In such situations, close relatives or family members of the owner of the enterprise, institution, organization, whose assets have been raided or whose assets have been raided by other raiders, will further participate in the criminal proceedings.

It is important to consider the issue of participation of the victim or the victim's representative in procedural actions conducted at the pre-trial investigation stage. The participation of victims in interrogations is typical: according to our analysis of investigative and judicial practice materials, we can state that it was conducted in 100% of the criminal proceedings we investigated. We agree that although interrogation is the most common way of collecting evidence in criminal proceedings, it is at the same time one of the most difficult investigative (search) actions, because it requires the investigator to have a high general and professional culture, deep knowledge of people and their psychology, masterful operation of tactical and forensic techniques³⁵. In the context of the criminal offenses investigated by us, it should be noted that in some places the presence of an investigator, detective, and economic education becomes fundamental in matters of prompt and effective resolution of the tasks of criminal proceedings. In other cases, representatives

of the prosecution quite often have to seek advice from knowledgeable persons who are specialists in the relevant fields of scientific knowledge (enterprise economics, economic activity, etc.).

The general subject of the victim's interrogation concerns the following circumstances: the specifics of the establishment and activities of the business entity; information about all founders and managers, as well as the chief accountant, lawyers, security managers, other materially responsible persons and even ordinary employees; information about all assets of the business entity; the presence of personal conflict or hostile relations of the managers of the business entity with other persons; the presence of competitors; type and amount of damage caused; traces of criminal illegal activity identified by the victim. We should mention the "sectoral subject of interrogation", due to the specifics and characteristic features of a particular criminal offense.

In addition to the subject matter, it is important to be guided by other important circumstances when choosing the interrogation tactics. Thus, the testimony of the victim is his right to protect his legitimate interests and they are always important for the investigation of a criminal offense, otherwise there are grounds to assume that the requirements of the law regarding the completeness, comprehensiveness and objectivity of the study have been violated. Finally, the testimony of victim is characterized by a special procedural nature, because this participant in criminal

слідчого і детектива: учасники кримінального провадження»). URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/d6517337-299a-499c-9aa4-1e97f947e72f/content> (date accessed: 15.08.2024).

35 Гусева В. О. Теоретичні основи методики розслідування злочинів проти авторитету органів державної влади у сфері правоохоронної діяльності : дис. ... д-ра юрид. наук. Харків, 2021. С. 257. URL: <http://dspace.univd.edu.ua/xmlui/handle/123456789/10570> (date accessed: 03.08.2024).

proceedings has been harmed, therefore, his testimony can be both a source of evidence and a means of protecting his interests ³⁶.

Victims in cases of the category we are investigating often become participants in reviews, most often those conducted in the office or production premises of a business entity. The objects of inspections are also often land plots and documents.

As for the documents, it should be noted that in many cases they, as well as their copies, are voluntarily provided to the prosecution by the victim or his or her representative during the pre-trial investigation. However, sometimes the defense denies the possibility of recognizing them as evidence, citing violations of the procedural procedure for obtaining them. In view of this, we consider it necessary to refer to the case law. The Grand Chamber of the Supreme Court noted that documents can acquire the status of a procedural source of evidence, provided that the prosecution, referring to such materials, has complied with the requirements provided for by the Criminal Procedural Code of Ukraine regarding admissibility of evidence. In addition, according to the decision of the Constitutional Court of Ukraine No. 12-rp/2011 dated October 20, 2011, in the case on the constitutional petition of the Security Service of Ukraine regarding the official interpretation of part 3 of Art. 62 of the Constitution of Ukraine, factual data proving the commission of a crime or preparation for it may be obtained as a re-

sult of operational and investigative activities of persons authorized by law, accidentally recorded by persons who made their own (private) photo, film, video, sound recordings, or surveillance cameras located both indoors and outdoors ³⁷. Guided by this approach, we can determine the algorithm of actions of the prosecution in situations where the victim or his representative provides documents or other things. We believe that this algorithm should include the following sequential actions:

- 1) having received from the victim or the victim's representative information about things and documents that may be of investigative interest, the prosecution should find out their whereabouts, as well as persons to whom they belong on the right of private property or are at their disposal;
- 2) prosecution should explain to the victim and his representative that if there are materials, their copies that are relevant to prove the existence of circumstances that are subject to proof, they have the right to apply with a corresponding petition for their inclusion in the materials of criminal proceedings in accordance with Art. 220 of Criminal Procedural Code of Ukraine ³⁸, and then attach them to the materials by the relevant procedural decision in the form of a resolution;
- 3) if it turns out that content relevant to the criminal proceedings are avail-

36 Федорчук М. А. Особливості проведення допиту під час розслідування кримінальних правопорушень, пов'язаних із рейдерським захопленням. *Актуальні проблеми держави і права*. 2020. № 86. С. 229—234. DOI: [10.32837/apdp.v0i86.2449](https://doi.org/10.32837/apdp.v0i86.2449) (date accessed: 13.08.2024).

37 Рішення Конституційного Суду України у справі за конституційним поданням Служби безпеки України щодо офіційного тлумачення положення частини третьої статті 62 Конституції України від 20.10.2011 р. № 12-рп/2011. Справа № 1-31/2011. URL: <https://zakon.rada.gov.ua/laws/show/v012p710-11#Text> (date accessed: 13.08.2024).

38 Кримінальний процесуальний кодекс URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (date accessed: 15.08.2024).

lable to the victim (his/her representative) during the interrogation, it is necessary to indicate identification characteristics of these documents and things in the text of the protocol and then to examine them and attach to the criminal proceedings as evidence, formalizing this by relevant decision.

Conclusions

During the investigation of most criminal offenses related to raiding, the victim becomes the starting point in clarifying the circumstances that are relevant to solving the tasks of criminal proceedings. It is he or she who files a statement about the commission of a criminal offense, and in the cases provided for in Clause 1, Part 1, Art. 477 of Criminal Procedural Code of Ukraine, such a statement is the only mandatory reason for initiating criminal proceedings. Based on the generalization of the materials of investigative and judicial practice, the author clarifies who can be recognized as a victim and under what circumstances, and what legal procedures should be followed to involve a victim's representative in criminal proceedings if a legal entity has become a victim of criminal activity.

Based on generalization of best practices published in special literature and taking into account the needs and typical problematic issues of investigative practice in the investigation of criminal offenses related to raiding, we have formulated the following conclusions.

Victimization of the victim of criminal offenses related to raiding, caused by a feeling of fear against the background of applied psychological or physical violence, pressure, threats, as well as distrust of law enforcement agencies or other in-

dividual psychological characteristics of a specific person is indicated.

Typical forms of participation of victims and their representatives in criminal proceedings of the investigated group of crimes are outlined. It was found out that the actual grounds for involvement in criminal proceedings as a victim are the infliction of physical, property and/or moral damage to a person, in the context of a legal entity, exclusively property (material) damage. If there is a representation of the victim (and in the context of a legal entity, representation occurs in all cases without exception), then there is a need to check the legal grounds for this, certified by the relevant documents that stipulate the status of the person.

It was found that typical investigative (search) actions involving victims include interrogation and examination. It was found out that the subject of the victim's interrogation is information about the following circumstances: the specifics of the creation and activities of the business entity; information about all founders and managers, as well as the chief accountant, lawyers, security managers, financially responsible persons and other employees; information about all assets of the business entity; the presence of personal conflict or hostile relations of the managers of the business entity with other persons; the presence of competitors; type and amount of damage caused; traces of criminal illegal activities of raiders found by the injured party, etc.

Algorithm for the activities of the prosecution is proposed, which is advisable to implement in situations where the victim or his representative reported that he has things and documents relating to the circumstances of the committed criminal offense, and therefore it is advisable to include them in the materials of the criminal proceedings.

We believe that prospects for further research should be to find out the correlation between the victim and other elements of the forensic characteristics of corporate raid, tactical specifics of conducting simultaneous interrogations with participation of victims and witnesses or suspects who provide conflicting testimony, and other tactical features of the participation of victims in procedural actions. Fulfillment of these tasks is a priority, since it is the victim who can provide the most significant information about the business entity itself and the events of the criminal offense.

**Потерпілий від рейдерства:
криміналістично значущі
характеристики й особливості
участі у процесуальних діях**

Сергій Тюленев

Правозастосовна діяльність щодо протидії рейдерству потребує належного наукового забезпечення, зокрема науково обґрунтованих рекомендацій практичної спрямованості, сформульованих з урахуванням проблем слідчої та судової практики. Обов'язковою умовою їх розроблення є ґрунтовне вивчення особи потерпілого, адже інколи саме він пов'язаний відповідними кореляційними зв'язками з іншими складовими механізму кримінально протиправної діяльності. Мета цієї наукової розвідки — з'ясувати ознаки, притаманні особам, потерпілим від кримінальних правопорушень, пов'язаних із протиправним поглинанням і захопленням активів суб'єктів господарювання, підприємств, установ, організацій, корпоративних прав на них, визначити тактичні особливості проведення процесуальних дій за участю потерпілих. Реалізація окресленої мети зумовила застосування низки загальнонаукових і спеціальних методів. З огляду

на потреби та типові проблемні питання слідчої практики: 1) схарактеризовано особу потерпілого від кримінальних правопорушень, пов'язаних із рейдерством, зазначено їхню віктимність; 2) виокремлено типові форми участі потерпілих і їхніх представників у кримінальних провадженнях означеної категорії; 3) з'ясовано ті слідчі (розшукові) дії, у яких найчастіше беруть участь потерпілі; 4) окреслено алгоритм діяльності сторони обвинувачення, який доцільно реалізовувати в тих слідчих ситуаціях, коли потерпілий або його представник повідомив, що він має речі й документи, які стосуються обставин учиненого кримінального правопорушення, а тому їх доцільно долучити до матеріалів справи. Зазначено також перспективи подальших досліджень у межах досліджуваної проблематики.

Ключові слова: досудове розслідування; кримінальне правопорушення; рейдерство; суб'єкт господарювання; керівник; власник земельної ділянки; потерпілий; допит; огляд; тимчасовий доступ до документів; залучення експерта для проведення судової експертизи.

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References

- Ablamskyi, S. Ye. (2015). *Zakhyst prav i zakonnykh interesiv poterpiloho u kryminalnomu provadzheni* [Protection of the rights and legitimate interests of the victim in criminal proceedings] : monohrafiia / za zah. red. O. O. Yukhna. Kharkiv. (Seriiia «Bibliotekha slidchoho i detektyva: uchashnyky kryminalnoho provadzhenia»). URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/d6517337-299a-499c-9aa4-1e97f947e72f/content> [in Ukrainian].
- Berezniak, V. S. (2020). Kryminalistychna kharakterystyka kryminalnykh pravoporushen, pov'iazanykh iz zakhopleniam zemli ta ob'ektiv korporatyvnoi vlasnosti [Concerning criminal offenses committed in the field of land relations and corporate property]. *Yurydychna nauka*. № 9 (111). DOI: 10.32844/2222-5374-2020-111-9.15 [in Ukrainian].
- Davydenko, V. L. (2015). Mizhdysyplinarnyi kharakter uchennia pro zhertvu zlochyну [The interdisciplinary nature of the doctrine of the victim of a crime]. *Naukovyi visnyk Khersonskoho derzhavnoho universytetu*. Seriiia: Yurydychni nauky. Vyp. 5. T. 3. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/fb85941b-82b2-4920-b77a-0b6b74c57a8a/content> [in Ukrainian].
- Dudorov, O. O., Kamenskyi, D. V., Tytarenko, S. S. (2021). Kryminalno-pravova otsinka zlovzhyvan derzhavnykh reiestratoriv u konteksti protyдии reiderstvu [Criminal Law Assessment of Abuses of State Registrars in the Context of Counter-acting Raiding]. *Naukovyi visnyk Natsionalnoi akademii vnutrishnikh sprav*. T. 26. № 1 (118). DOI: 10.33270/01211181.118 [in Ukrainian].
- Fedorchuk, M. A. (2020). Osoblyvosti provedennia dopytu pid chas rozsliduvannia kryminalnykh pravoporushen, pov'iazanykh iz reiderskym zakhopleniam [Features of interrogation in the investigation of criminal offenses related to the raid]. *Aktualni problemy derzhavy i prava*. № 86. DOI: 10.32837/apdp.v0i86.2449 [in Ukrainian].
- Hryshchenko, N. M. (2019). *Kryminalna vidpovidalnist za protypravne zavolodinnia mainom pidpriemstva, ustanovy, orhanyzatsii* [Criminal responsibility for misappropriation of property of the enterprise, institution, organization] : dys. ... kand. yuryd. nauk. Dnipro. URL: <https://dduvs.edu.ua/wp-content/uploads/files/Structure/science/rada/d2/dissertations/4/1.pdf> [in Ukrainian].
- Husieva, V. O. (2021). *Teoretychni osnovy metodyky rozsliduvannia zlochyнуv proty avtorytetu orhaniv derzhavnoi vlady u sferi pravookhoronnoi diialnosti* [Theoretical bases of a methods of investigating crimes against authority of public authorities in terms of law enforcement activity] : dys. ... d-ra yuryd. nauk. Kharkiv. URL: <http://dspace.univd.edu.ua/xmlui/handle/123456789/10570> [in Ukrainian].
- Kikinchuk, V. V., Husieva, V. O. (2020). Osoblyvosti rozsliduvannia kryminalnykh pravoporushen, pov'iazanykh z protypravnym pohlynanniam ta zakhopleniam pidpriemstv, silskohospodarskykh zemel, porushenniam prav yikh zakonnykh vlasnykiv (reiderstvo) [Peculiarities of investigation of criminal offenses related to illegal takeover and seizure of enterprises, agricultural land, violation of the rights of their legal owners (corporate raid)] : nauk.-metod. rek. Kharkiv. URL:

- <http://dspace.univd.edu.ua/xmlui/handle/123456789/9813> [in Ukrainian].
- Maliarova, V. O. (2015). Viktymolohychnyi napriam kryminalistychnoho analizu osoby poterpiloho vid vtiahnennia v zaniattia prostytutsiieiu [Viktymolohychnyy direction forensic analysis person victims of involvement in prostitution]. *Naukovyi visnyk Khersonskoho derzhavnoho universytetu. Serii: Yurydychni nauky*. Vyp. 3. Ch. 2. T. 2. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/a83ea728-566f-4d70-987c-16371680baa4/content> [in Ukrainian].
- Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy* [Scientific and practical commentary of the Criminal Code of Ukraine] (2010) ; za zah. red. M. I. Melnyka, M. I. Khavroniuka. 7-me vyd., pererob. ta dopov. Kyiv [in Ukrainian].
- Pavlova, N. V. (2007). Osoblyvosti rozsliduvannia shakhraistva, pov'iazanoho iz vidchuzhenniam pryvatnoho zhytla [Specifics of investigation of fraud related to the alienation of private housing] : dys. ... kand. yuryd. nauk. Kharkiv [in Ukrainian].
- Poterpilyi vid zlochyynu (mizhdystsyplinarne pravove doslidzhennia)* [Victim of crime (interdisciplinary legal research)] (2008) / za zah. red. Yu. V. Baulina, V. I. Borysova. Kharkiv [in Ukrainian].
- Reznikova, O. I. (2015). Viktymolohichne piznannia osoby u kryminalistytsi [Victimological cognition of a person in criminalistics] : avtoref. dys. ... kand. yuryd. nauk. Kharkiv. URL: https://library.nlu.edu.ua/POLN_TEXT/AFTOREF/Reznikova_O_I_2015.pdf [in Ukrainian].
- Rossokha, S. V. (2016). Pravoookhoronni orhany derzhavy v mekhanizmi zakhystu prav i svobod liudyny i hromadianyna [Law enforcement authorities in the mechanism of protection of rights and freedoms of man and citizen] : avtoref. dys. ... kand. yuryd. nauk. Kharkiv. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/9cd2ff8e-6b43-4602-8428-4d0017fb144f/content> [in Ukrainian].
- Rysheliuk, A. M. Komentar do st. 219 KK Ukrainy / *Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy* [Commentary on Art. 219 of the Criminal Code of Ukraine / Scientific and practical commentary of the Criminal Code of Ukraine] (2018) ; za zah. red. M. I. Melnyka, M. I. Khavroniuka. 10-te vyd., pererob. ta dopov. Kyiv [in Ukrainian].
- Stetsenko, S. V. (2024). Obstavyny, shcho pidlihaiut z'iasuvanniu pid chas dosudovoho rozsliduvannia protypravnoho zavolodinnia mainom pidpriemstva, ustanovy, orhanizatsii [Circumstances to be clarified during the pre-trial investigation of misappropriation of property of an enterprise, institution, organization]. *Visnyk Kryminolohichnoi asotsiatsii Ukrainy*. № 1 (31). DOI: [10.32631/vca.2024.1.23](https://doi.org/10.32631/vca.2024.1.23) [in Ukrainian].
- Sukmanova, O. (2020). *Kinets epokhy reiderstva, yakyi ne vidbuvsia* [The end of the era of raiding, which did not take place] / Sayenko. Kharenko. 03.12.2020. URL: <https://sk.ua/uk/publications-uk/reiderstvo/> [in Ukrainian].
- Tataryn, N. M., Priakhin, Ye. V. (2019). *Metodyka rozsliduvannia samovilnoho zainiattia zemelnoi dilianky ta samovilnoho budivnytstva* [The method of investigation of unauthorized occupation of a land plot and unauthorized construction] : monohrafiia. Lviv. URL: <https://dspace.lvduvs.edu.ua/handle/1234567890/2545i> [in Ukrainian].
- Tkachenko, I. M. (2023). Spivvidnoshennia poterpiloi osoby i zhertvy kryminalnoho pravoporushennia [The relationship between the victim and the victim of a criminal offense]. *Naukovyi visnyk Uzhhorodskoho Natsionalnoho Universytetu. Serii: Pravo*. Vyp. 78. Ch. 2. DOI: [10.24144/2307-3322.2023.78.2.37](https://doi.org/10.24144/2307-3322.2023.78.2.37) [in Ukrainian].
- Tsutskiridze, M. S., Dudarets, R. M., Dovhun, S. Z. ta in. (2021). *Rozsliduvannia kryminalnykh pravoporushen, pov'iazanykh z protypravnym pohlynanniam ta*

zakhoplenniam pidpryiemstv, silskohospodarskykh zemel, porushenniam prav yikh zakonnykh vlasnykiv (reiderstvo) [Investigation of criminal offenses related to the unlawful takeover and seizure of

enterprises and agricultural land, violation of the rights of their legal owners (corporate raid)] : nauk.-metod. rek. Dni-pro. URL: <https://er.dduvs.edu.ua/handle/123456789/9451> [in Ukrainian].

Tiulieniev, S. (2024). Corporate raid victim: forensically significant characteristics and specifics of participation in procedural actions. *Theory and Practice of Forensic Science and Criminalistics*. Issue 3 (36). Pp. 52—67. DOI: 10.32353/khrife.3.2024.05.