

Formation and Essence of Representation Institution in Criminal Procedure of Ukraine

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This research is to define institution essence of victim representation in criminal proceedings, and to clarify peculiarities and historical stages of its formation in the territory of modern Ukraine. Based on research performed using historical and legal method, methods of analysis and synthesis, logical and structural, and dialectic, the author finds that institution establishment of victim representation, which was based on the principle of blood revenge, dates back to the times of Ukraine-Ruthenia. It is proved that principles of social justice contributed to the formation of foundations of detective activities which for a long time had the character of private activity. It is determined that professional bar in Ukraine emerged in the Polish-Lithuanian period under the influence of the Magdeburg Law and the Lithuanian Statutes; significant changes in the genesis of the bar and the institution of victim representation in Ukraine occurred in the XX century with the adoption of Criminal Procedural Code of Ukraine (1960) and Criminal Procedural Code of Ukraine(2012), the Laws of Ukraine “On the Bar” (1992) and “On the Bar and Legal Practice” (2012) and some other acts. The author proposes that representation of victim’s interests in criminal proceedings should be understood as a form of legal practice which consists in providing the victim of a criminal offense with professional legal assistance to ensure his/her rights and legitimate interests during pre-trial investigation, court proceedings and procedural actions which may be

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carried out prior to the pre-trial investigation. The author argues that the focus of the victim's representative's activities is broadly determined by the tasks of criminal proceedings, and narrowly, by satisfaction of the victim's interests in protection and restoration of his/her violated rights and compensation for damage.

Keywords: criminal proceedings; victim; victim's representative; lawyer; powers; trial; genesis; historical method; representation.

Research Problem Formulation

Human rights activities occupy a prominent place among the forms and areas of activity of each modern state, which positions itself as social as legal one. It is human rights activities that aim to create appropriate conditions for the effective implementation of human and civil rights and freedoms, as well as the confirmation or restoration of the disputed or violated human rights¹. Human rights activities are implemented in various forms, which are understood as the procedures provided for by normative legal acts, carried out on a professional basis by specially authorized entities and aimed at restoring violated human rights and freedoms². The main subject that carries out human rights activities at the professional level is a lawyer.

In accordance with the provisions of the current regulations, "advocacy is the independent professional activity of a lawyer in the implementation of defense, representation and provision of other types of legal assistance to a client"³. According to the Law of Law of Ukraine: On the Bar and

Legal Practice, representation is a kind of advocacy aimed at ensuring the implementation of the rights and obligations of the client in civil, economic, administrative and constitutional proceedings, as well as in other state bodies, before individuals and legal entities, the rights and obligations of the victim during the consideration of cases of administrative offenses, as well as the rights and obligations of the victim, civil plaintiff, civil defendant in criminal proceedings⁴.

Given the given definition, we conclude that within the limits of criminal proceedings, a lawyer can represent the interests of such participants in criminal procedural relations as the victim, civil plaintiff, civil defendant. This approach to protection and restoration of violated individual rights is well-considered and justified, because it is the professional representative who is able to fully contribute to the speedy and full performance of the tasks of criminal proceedings. We agree that establishment of guarantees of competition and procedural equality of parties in criminal proceedings is facilitated by

1 Вишковська В. І. Форми здійснення правозахисної діяльності в Україні. *Науковий часопис НПУ ім. М. П. Драгоманова. Серія 18: Економіка і право*. 2014. Вип. 25. С. 137. URL: http://nbuv.gov.ua/UJRN/Nchnpu_018_2014_25_20 (date accessed: 21.05.2024).

2 Там само. С. 140.

3 Про адвокатуру та адвокатську діяльність : Закон України від 05.07.2012 р. № 5076-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text> (date accessed: 23.05.2024).

4 Там само.

the representation of the subjects of criminal proceedings⁵.

In the modern world, there is a tendency to involve a lawyer not only in matters of protecting a person from criminal prosecution, but also in matters of representing the interests of victims of criminal offenses. However, this practice varies significantly in different States.

In Ukraine, there has long been an approach according to which the victim is the least protected by the State party to a criminal offense, and this is due to a certain imbalance between the procedural guarantees of the suspect and the rights of the victim⁶. Given the need to improve the theoretical and pragmatic foundations of victim representation in criminal proceedings, the author makes an urgent attempt to thoroughly analyze compliance of the legal and organizational framework for victim representation with international standards. We believe that the solution to this task is impossible without a historical analysis of the process of institution formation of victim representation. This will make possible to identify the factors that negatively affected its formation and still have a negative impact on the implementation of the guarantees provided by law.

Article Purpose

Essence determining representation institution of the victim's interests in crim-

inal proceedings, finding out peculiarities of its genesis on the lands of modern Ukraine.

Research Methods

Given that this research is related to implementation of historical analysis, the main method that contributed to the realization of the purpose of the article was the historical and legal approach. Since any legal phenomenon develops consistently and is directed and marked by introduction of innovations, preservation of the results achieved, succession and denial, and the historical method guarantees the possibility of reproducing the peculiarities of the development of the legal phenomenon and reconstructing the explanations lost by science of certain stages of its development⁷, it was the historical and legal method that made it possible to find out the peculiarities of the formation of the institution of representation of the interests of the victim in criminal procedure of Ukraine.

In addition, a complex of general scientific and special methods was applied for the purpose of textual analysis of normative legal provisions regulating activities of lawyers for the protection of crime victims. For formulating research conclusions, dogmatic, comparative legal, logical methods were used, as well as methods of generalization and legal analysis.

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- 5 Ємельянов Р. О. Адвокат-представник потерпілого у кримінальному процесі : дис. ... д-ра філос. у галузі права. Кропивницький, 2023. С. 25. URL: https://dnuvs.ukr.education/wp-content/uploads/2023/05/yemelyanov-r._dys_1.pdf (date accessed: 20.05.2024).
 - 6 Крапивін Є., Сотник О., Гузь О., Семків Т. Justtalk#15. У якій ти ролі... адвокат потерпілого? / *Justtalk*. 13.11.2020. URL: <https://justtalk.com.ua/post/justtalk15-u-yakij-ti-rol-i-advokat-poterpilogo-discussion-paper> (date accessed: 20.05.2024).
 - 7 Костицький М. В. Ключові підходи до методології пізнання української історико-правової дійсності. *Науково-інформаційний вісник Івано-Франківського університету права імені Короля Данила Галицького. Серія: Право*. 2015. № 12. С. 14. URL: http://nbuv.gov.ua/UJRN/Nivif_2015_12_3 (date accessed: 23.05.2024).

Analysis of Essential Researches and Publications

Some Ukrainian scholars have already studied the establishment and development of the institution of victim representation. However, certain aspects of the genesis of this institution and its essence are still controversial and have different interpretations in the literature. Some believe that in the history of legal life of mankind, the bar and legal representation are two different institutions designed to meet different needs, which developed separately from each other and even today exist independently in many European countries⁸. Some emphasize that advocacy (in the modern sense, human rights protection) and representation have their own histories of development, content and respective subjects for their implementation⁹. In other words, the subjects of activities related to representation of the interests of a victim are another feature of this institute of criminal procedure.

Legal literature notes the possibility of distinguishing two types of activities related to the exercise of the rights, obligations and legitimate interests of the victim in criminal proceedings by other persons. Among them, in particular, *representation*, which is understood as the legal and human rights activities of a law-

yer to provide qualified legal assistance to a victim on the initiative of the latter and *legal representation* that is not related to the provision of legal assistance¹⁰. This approach raises additional questions about the correlation of the activities of authorized entities and the definition of the specifics of the implementation of the legal status of these participants in criminal proceedings in the context of ensuring victim interests.

R. Iemelianov made a significant contribution to development of the issues under research. The author singled out the following periods in the historical development of the institution of representation of the victim: “I) *Customary one* (XI century — II half. XIV century.); II) *Cossack one* (1529 — II half. XVIII century); III) *imperial one* (1864—1917)); IV) *Soviet one* (1917-1960)); V) *classical one* (1960-1992); VI) *independent one* (1992—2012); VII) *modern one* (2012— our time)”¹¹. However, we consider it appropriate to note that the scientist singled out these periods on the basis of a generalization of regulatory sources that mostly regulated procedure for the defense activities and not specifically the victim representative.

In addition to historical analysis, scientists are also actively exploring the praxeological foundations of the activities of a lawyer representing the interests of the victim (for example O. Kuchynska

8 Ємельянов Р. О. Зазнач. твір. С. 26—27. URL: https://dnuvs.ukr.education/wp-content/uploads/2023/05/yemelyanov-r_dys_1.pdf (date accessed: 20.05.2024).

9 Кирилюк Л. В. Адвокат — представник потерпілого, цивільного позивача та цивільного відповідача у кримінальному судочинстві України. *Форум права*. 2009. № 1. С. 252. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/1f245714-45cf-4d29-92c8-b10c86a673b6/content> (date accessed: 21.06.2024).

10 Червінський В. В. Зміст представництва інтересів потерпілого від дорожньо-транспортної пригоди у кримінальному провадженні. *Юридичний науковий електронний журнал*. 2022. № 11. С. 705. DOI: 10.32782/2524-0374/2022-11/169 (date accessed: 21.06.2024).

11 Ємельянов Р. О. Зазнач. твір. С. 2, 22, 44—45, 189—190. URL: https://dnuvs.ukr.education/wp-content/uploads/2023/05/yemelyanov-r_dys_1.pdf (date accessed: 20.05.2024).

and Iu. Tsyhaniuk¹², N. Rohatynska¹³, V. Kaniuka and R. Oliinychuk¹⁴ et al.). However, the close attention of scientists to formation and functioning of this institute has not yet fully resolved the existing problematic issues of a theoretical nature that arise in law enforcement activities that actualizes the need for their further study.

Main Content Presentation

Specialized literature indicates that first mentions of investigative activities, such as the search and the pursuit of a trail, contained in "Ruska Pravda" (XI century)¹⁵. The plot consisted in conducting a proactive search by the victim for the alleged criminal and the stolen property: through a public statement about the crime in public places — *summons* and *gatherings* of different people — face-to-face bet to find out the origin of the property claimed by the victim. *Trail chasing* is a form of investigative activity that consists in establishing the identity and whereabouts of a suspect-

ed criminal by following the tracks left by him¹⁶. These forms of search activity were implemented by the victims themselves, i.e., one should pay attention not only to the form of activity, but to the entity authorized to carry it out, the ultimate goal. In fact, the norms mentioned above stipulated that the victim had to independently find out the essence of the circumstances of the case, search for the culprit in order to find out the location of the stolen property or receive compensation for it. Thus, the prototypes of modern tasks of criminal proceedings were laid already in the period of the princely era, but it was the injured person whose interests were encroached on who had to perform them.

Novgorod and Pskov charters contained provisions of civil and criminal substantive and procedural law and provided for the right of the plaintiff to involve his representative in the case: monks, women, children, deaf and elderly people were granted this right¹⁷. The prototype of legal representation was that women's interests could be represented by sons or husbands.

- 12 Кучинська О. П., Циганюк Ю. В. Щодо окремих питань удосконалення правового регулювання участі захисника у кримінальному провадженні. *Юридичний науковий електронний журнал*. 2023. № 5. С. 344–347. DOI: [10.32782/2524-0374/2023-5/85](https://doi.org/10.32782/2524-0374/2023-5/85) (date accessed: 21.06.2024).
- 13 Рогатинська Н. Процесуальні особливості інституту представництва у кримінальному провадженні. *Актуальні проблеми правознавства*. 2022. № 4 (32). С. 174–179. DOI: [10.35774/app2022.04.174](https://doi.org/10.35774/app2022.04.174) (date accessed: 21.06.2024).
- 14 Канюка В. Є., Олійничук Р. П. Загальна характеристика представництва у кримінальному провадженні: поняття та види. *Наукові записки. Серія: Право*. 2023. № 14. С. 178–182. DOI: [10.36550/2522-9230-2023-14-178-182](https://doi.org/10.36550/2522-9230-2023-14-178-182) (date accessed: 21.06.2024).
- 15 Див.: Хрестоматія з історії держави і права України : навч. посіб. / упоряд.: А. С. Чайковський (кер.), О. Л. Копиленко, В. М. Кривоніс, В. В. Свистунов, Г. І. Трофанчук. Київ, 2003. С. 27–35. URL: https://law.sspu.edu.ua/files/documents/books/library/12/chaykovskiy__kopilenko__krivonis_-_hrestomatiya.pdf (date accessed: 21.06.2024).
- 16 Аброськін В. В., Албул С. В., Єгоров С. О., Поляков Є. В., Форнальчук І. Л., Щурат Т. Г. Основи оперативно-розшукової діяльності в Україні : посіб. / за заг. ред. В. В. Аброськіна. Одеса, 2020. С. 8. URL: <https://dspace.oduvs.edu.ua/server/api/core/bitstreams/0e849ed3-0995-4496-a500-5095ec0dabe2/content> (date accessed: 24.05.2024).
- 17 «Правда Руська» Ярослава Мудрого: початок вітчизняного законодавства : навч. посіб. 2-ге вид., змін. та допов. / уклад. Г. Г. Демиденко, В. М. Єрмолаєв ; вступ. сл. В. Я. Тація. Харків, 2017. С. 65.

The main rights of representatives included the right to file petitions, present exculpatory arguments, and seal protocols¹⁸.

The principles of the private nature of investigative activity have been in effect for quite a long time. Thus, according to the Lithuanian statutes of 1529, 1566, 1588, the duty to investigate the murder of a person is assigned to his close relatives¹⁹. Therefore, victims of murders began to be involved in the investigation process as subjects trying to find out the truth in criminal proceedings: they represented the interests of the injured party. It is important that until today according to Part 6 of Art.55 Criminal Procedural Code of Ukraine, if the death of a person has occurred due to a criminal offense or he is in a state that makes it impossible for him to submit a corresponding statement, then in criminal proceedings the status of the victim is extended to close relatives or family members of such a person²⁰. Thus, in particular, "one person from among close relatives or family members who submitted an application to be included in the proceedings as a victim is recognized as a victim, and several persons may be

recognized as victims upon a corresponding petition"²¹.

In addition, the adoption and extension of the Magdeburg Law and Lithuanian Statutes to certain lands of modern Ukraine led to the formation of the bar here. According to scientists, the professional advocacy on the territory of our state was founded in the Polish-Lithuanian era²².

The next fundamental act, which used the lawyer term was a draft Code of Ukrainian procedural law "Rights by which the Little Russian people are judged" (1743)²³, although it remained only a draft, contained certain norms that were applied in practice.

Statute of Criminal Procedure (1864) enshrined in law some fundamental principles, in particular: publicity, presumption of innocence, adversarial proceedings, guarantees of the accused's right to defense, participation of defense counsel in the process, comprehensive objective examination and evaluation of evidence according to the judges' internal conviction, cassation and appeal of sentences, as well as the procedure for their execution²⁴. In the context of our research, it is

18 Варфоломеева Т. В., Святоцький О. Д., Кульчицький В. С., Багринівський З. М., Кисельова Т. В. Історія адвокатури України. Київ, 2002. Ч. 1. С. 219—223.

19 Литовські статuti 1529, 1566, 1588. *Суспільно-політичні процеси*. 2016. Вип. 3. С. 206—221. URL: http://nbuv.gov.ua/UJRN/pubpolpr_2016_3_9 (date accessed: 24.05.2024) ; Вуйма А. Г. Використання спеціальних знань під час розслідування вбивств : дис. ... д-ра філос. у галузі права. Харків, 2023. С. 32. URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/6461d379-53e1-41ea-961e-0d5081163b63/content> (date accessed: 24.05.2024).

20 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: 24.05.2024).

21 Там само.

22 Святоцький О. Д., Михеєнко М. М. Адвокатура України : навч. посіб. Київ, 1997. С. 15—16 ; Погорєцький М. Становлення та розвиток інституту гарантій адвокатської таємниці в Україні. *Юридична Україна*. 2015. № 4—5. С. 124—129. URL: http://nbuv.gov.ua/UJRN/urykr_2015_4-5_24 (date accessed: 24.05.2024).

23 Сокальська О. В. Генеза інстанційних відносин між судовими установами українських земель у XVI ст. *Південноукраїнський правничий часопис*. 2010. № 2. С. 251—253.

24 Маляренко В. Т. Реформування кримінального процесу України в контексті європейських стандартів. Теорія, історія і практика : монографія. Київ, 2004. С. 75.

worth noting that the introduction of the institute of private attorneys in 1874²⁵, i.e., attorneys who could participate in cases on the basis of a power of attorney from one of the parties to the dispute and with court permission²⁶ was a decisive step for the establishment of the institute of representation in criminal proceedings. Importantly, status of a private attorney could be obtained exclusively by a male citizen who had reached the age of 18. In order to obtain a certificate to practice law, one had to pass an exam in a district court or a judicial chamber, where one received a certificate for the right to conduct court cases²⁷.

Since October 1924, the Fundamentals of the Judicial System of the USSR and Union Republics came into force, according to which the collegiums of human rights defenders (defenders) were established, designed to provide the population with legal assistance and judicial protection. From June 1925, collegiums of defenders began to operate at the district courts, and from October 1929 the Charter: *On collective forms of work of the collegium of defenders in connection with the abolition of private practice* came into force, which recognized the work of the collegium of defenders as a professional activity. Consequently, the activities of the victims' representatives acquired a professional character that necessitated their appropriate special training.

The requirements that lawyer had to meet were significantly detailed in the Regulation on the Bar of the USSR, ap-

proved by the Council of People's Commissars of the USSR dated on August 16, 1939. They, in particular, provided that members of the bar association should have higher legal education and practical experience in the relevant bodies (authorized to carry out law enforcement activities) for at least one year, and in the absence of legal education at least three years in such positions.

Activities of victim representatives underwent significant changes after the adoption of the Criminal Procedure Code of Ukraine in 1960, which stipulated that the prosecutor, defendant, defense counsel, victim, civil plaintiff and civil defendant, as well as their representatives in court proceedings, have equal rights to present evidence and motions, and participate in the examination of evidence. Thus, representatives were recognized as equal participants in criminal proceedings with the following procedural rights to submit evidence; to file motions; to familiarize themselves with the case file from the moment the preliminary investigation is completed and in cases where no preliminary investigation was conducted, after the accused is brought to court; to participate in the trial; to challenge; file complaints against the actions of the person conducting the inquiry, the investigator, the prosecutor and the court; to support the prosecution in certain cases, to defend a minor accused, to support or deny a civil action²⁸.

25 Майстро Д., Стойчев В. Нариси з історії адвокатури Запорізької області. Запоріжжя, 2024. С. 4. URL: <https://unba.org.ua/assets/uploads/files/Essays%20on%20the%20History%20of%20the%20Bar%20of%20Zaporizhzhia%20Region.pdf> (date accessed: 24.05.2024).

26 Майстро Д. Адвокати на захисті інтересів міста Олександрівська (Запоріжжя). Вісник Національної асоціації адвокатів України. 2022. № 12 (87). С. 60–64. URL: https://unba.org.ua/assets/uploads/news/visnyky/2022-12-28-v-snik-naau_63ac2470021c8.pdf (date accessed: 24.05.2024).

27 Майстро Д., Стойчев В. Зазнач. твір. С. 5.

28 Кримінально-процесуальний кодекс України від 28.12.1960 р. (утрат. чин.). URL: <https://zakon.rada.gov.ua/laws/show/1001-05#Text> (date accessed: 21.05.2024).

In addition to Art. 69 of Criminal Procedural Code of Ukraine of Ukraine, a new paragraph 2 (1984), subjects of attorney-client privilege about the circumstances that became known to him in connection with the performance of his duties as a representative of the victim, civil plaintiff and civil defendant, recognized a lawyer, a representative of a trade union and other public organization ²⁹.

According to the Law of Ukraine: *On the Bar* (1992), lawyers were authorized to provide advice and explanations on legal issues, oral and written information on legislation; to draw up applications, complaints and other documents of a legal nature; to certify copies of documents in cases they conduct; to represent in court, other state bodies, before citizens and legal entities; to provide legal assistance to enterprises, institutions, organizations; to provide legal support for entrepreneurial and foreign economic activities of citizens and legal entities, to perform their duties in accordance with criminal procedural legislation in the process of pre-trial investigation ³⁰.

The current Law of Ukraine *Law of Ukraine: On the Bar and Legal Practice* (2012) establishes the concept of representation of the client's interests and other aspects of the professional duties of a lawyer ³¹. It is noteworthy that it has been amended as many as 13 times, although the legislator and other stakeholders, in our opinion, still have something to improve ³².

It should be noted that the amendments of 2016 to the Constitution of Ukraine legalized a certain lawyer's monopoly, according to which the representation of another person in court and protection from criminal prosecution in court is carried out only by a lawyer, at the same time provided for exceptions to representation in some types of disputes (labor and minor, for the protection of social rights, elections and referendums) and the interests of minors or minors and persons whom the court recognized incapacitated or whose legal capacity is limited ³³. Thus, the Constitution of Ukraine guarantees the right of everyone to legal assistance, which professional lawyers have the right to provide. We believe that representation by a lawyer of the interests of the victim in criminal proceedings is the main means of protecting his rights and legitimate interests.

According to the modern doctrine of the criminal procedure, representative of the victim in criminal proceedings is granted a derivative status that guarantees him the right to use only those rights that are granted to the victim. At the same time, the representative is prohibited from exercising the rights that can only be directly exercised by the victim. Based on the analysis of legislative norms and theoretical developments, we come to the conclusion that the representative of the victim in criminal proceedings is authorized to: 1) provide legal advice to the victim;

29 Про внесення змін і доповнень до Кримінально-процесуального кодексу Української РСР : Указ Презид. ВР УРСР від 16.04.1984 р. № 6834-X (утрат. чин.). URL: <https://zakon.rada.gov.ua/laws/show/6834-10#Text> (date accessed: 01.06.2024).

30 Про адвокатуру : Закон України від 19.12.1992 р. № 2887-XII (утрат. чин.). URL: <https://zakon.rada.gov.ua/laws/show/2887-12#Text> (date accessed: 01.06.2024).

31 Про адвокатуру та адвокатську діяльність URL: <https://zakon.rada.gov.ua/laws/show/5076-17#Text> (date accessed: 23.05.2024).

32 Там само.

33 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-вп> (date accessed: 01.06.2024).

2) ensure compliance with legality during the conduct of procedural actions (in the form of control over compliance with the legislation on the part of employees authorized for pre-trial investigation of criminal offenses and other participants in the case, appeal of inaction of the latter, etc.); 3) take measures to restore violated rights, submit a request for procedural actions, engage an expert on a contractual basis to conduct an examination; 4) collect and submit evidence in the case; 5) participate in court debates; 6) appeal court decisions in the manner prescribed by law; 7) sign conciliation agreements in criminal proceedings.

It should be noted that the Western European community did not ignore the issue of ensuring the rights and legal interests of crime victims. Back in the 19th century, in international practice, the issue of compensation for damage caused to a victim of a criminal offense has begun to be normatively regulated. Currently, this is stipulated by the provisions of Resolution (77) 27 of the Committee of Ministers of the Council of Europe: *On compensation to victims of crime*³⁴. In 1983, European Convention on Compensation for Victims of Violent Crime was adopted³⁵. Some principles for protection of the rights of crime victims and the features of the implementation of justice in relation to them were defined by the United Nations, in particular, in November 1985, it adopted the Declaration on the Basic Principles of Justice for Victims of Crime. The main ideas of this document are fair treatment of the

victim, guaranteeing the victim's right to access justice, ensuring compensation for the damage caused to him by a criminal offense³⁶.

At the same time, we should note that the mentioned international legal documents have not been ratified by our state, and therefore, to this day, there is no law in Ukraine that would regulate the state's provision of compensation to victims of criminal offenses for which the perpetrators have not been found guilty. In view of this, multi-volume criminal proceedings, in which the pre-trial investigation continues until statute expiration of limitations for bringing a person to criminal responsibility, actually do not give the victim any guarantees regarding the restoration of his violated rights. In addition, in many such cases, the relatives of the victims are involved as victims, because there are not only cases when the natural death of the victims occurs due to reasons unrelated to the event under investigation, that is, during the life of the victim, he did not get an actual opportunity to restore his rights, although he suffered mutilation or disability as a result of a criminal offense committed against him. Therefore, certain tasks of the criminal proceedings may not be fulfilled, and the legislative provisions on the protection of the interests of the victims remain declarative ones.

In the following years, the international community took significant measures to ensure the possibility of representation of the victim of a criminal offense: in particular, the Basic Provisions on the Role

34 Resolution (77) 27. On the compensation of victims of crime. Council of Europe. Committee of Ministers. 28 Sept 1977. 2 p. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804f3e59> (date accessed: 01.06.2024).

35 European Convention on the Compensation of Victims of Violent Crimes. Strasbourg, 24.XI.1983. 5 p. / Council of Europe. URL: <https://rm.coe.int/1680079751> (date accessed: 01.06.2024).

36 Ibid.

of Lawyers adopted by the Eighth United Nations Congress on Crime Prevention (1990) enshrined such a requirement for representation of the victim as professionalism³⁷. Subsequently, the Council of the European Union adopted a binding Decision on the status of victims in criminal proceedings for all member states (2001) which enshrined the right of victims to access information, legal assistance, as well as the right to so-called mediation (representation)³⁸.

In addition, on 14.06.2006, the Committee of Ministers of the Council of Europe issued *Recommendation Rec (2006) 8 of the Committee of Ministers to member states on assistance to crime victims* providing for the development of standards for the selection and training of employees and volunteers who provide direct assistance to victims in order to provide assistance to victims of crime in accordance with professional standards, to ensure their protection from secondary victimization³⁹. Thus, realizing the importance of legal advice for citizens, the authorities consolidated the procedure for training specialists who could provide it at a professional level on a volunteer basis, which is not yet available in Ukraine.

The next decisive step towards regulating the legal status of victims was Directive 2012/29/EU, according to which all countries — members of the European Union — are obliged to standardize the list of rights of victims of crimes and provide them with diverse support and assistance⁴⁰.

The rules of representation of victims in the International Criminal Court (hereinafter referred to as the *ICC*) should be considered tested and promising for implementation in national judicial practice. According to them, the registrar of this court should assist victims in obtaining legal advice and organizing their legal representation, providing their legal representatives with appropriate support, assistance and information. The victim is free to choose a legal representative. If there are multiple victims, the Chamber may, with the help of the Registry, select a joint legal representative for all victims. This is done in order to ensure the effectiveness of the proceedings, the request of victims or certain groups of victims, as well as to promote the formation of a unified legal position of all victims in the case.

The ICC Secretariat may also assist the survivor (group of survivors) in selecting a representative (by providing a list of registered lawyers or by proposing one

37 Основні положення про роль адвокатів : прийняті VIII Конгрес. ООН із запобіг. злочин. 01.08.1990 р. URL: https://zakon.rada.gov.ua/laws/show/995_835#Text (date accessed: 01.06.2024).

38 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) / EUR-Lex. URL: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=cel-ex%3A32001F0220> (date accessed: 01.06.2024).

39 Recommendation Rec (2006) 8 of the Committee of Ministers to member states on assistance to crime victims : Council of Europe. Committee of Ministers. 2006. (This Recommendation is replaced by Recommendation CM/Rec(2023)2, adopted at the 1460th meeting of the Ministers' Deputies 15 March 2023). URL: <https://rm.coe.int/16805afa5c> (date accessed: 01.06.2024).

40 Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA : European Union: Council of the European Union, 14 Nov 2012 / Refworld. Global Law & Policy Database. URL: <https://www.refworld.org/legal/reglegislation/council/2012/en/96856> (date accessed: 01.06.2024).

or more joint legal representatives). If the victims cannot elect a joint representative (representatives) within the period specified by the Chamber, the court may entrust this to the Secretary of the ICC, and the victim (group of victims) who does not have (do not have) the necessary funds to pay for the services of a representative may receive legal assistance from the ICC Secretariat.

Regarding the peculiarities of the legal status of the victim's representative in the ICC, he is guaranteed the presence and participation in the hearing and hearing of the case, unless, in the circumstances of the case, the relevant chamber recognizes that the intervention of the representative should be limited to written comments or submissions. The representative of the victim is given the right to ask questions to the prosecutor and the defense, if necessary, to interrogate a witness, expert or accused ⁴¹.

Conclusions

Thus, institution establishment of victim representation in Ukraine dates back to the times of Ukraine-Ruthenia (the principle of blood revenge). The principle of social justice became the basis for the formation of the principles of detective activity, which for a long time was of a private nature, when the victims independently found out the identity of the offender and represented their interests. In the Polish-Lithuanian era, under the influence of the Magdeburg Law and the Lithuanian Statutes, a professional advocacy arose on the territory of Ukraine. The decisive steps towards regulating the legal status of the victim's representative in Ukraine were

the adoption of the Criminal Procedural Code of Ukraine (1960), Law: *On Advocacy* (1992), the Criminal Procedure Code of Ukraine (2012), Law of Ukraine: *On the Bar and Legal Practice* (2013).

In view of current normative provisions, we believe that representation of the victim interests in criminal proceedings is a form of advocacy consisting in providing the victim of a criminal offense with professional legal assistance to ensure his rights and legitimate interests at the stages of pre-trial investigation and court proceedings, as well as during procedural actions that can be carried out before the start of the pre-trial investigation. Activity direction of the victim representative in a broad sense is determined by the tasks of criminal proceedings, and in a narrow sense by the satisfaction of the interests of the victim in the protection and restoration of his violated rights, compensation for damage caused by a criminal offense. In order to perform the above-mentioned tasks, the representative of the victim is authorized to: 1) provide legal advice to the victim; 2) ensure compliance with legality during procedural actions (in the form of control over compliance with legislation by employees authorized to pre-trial investigation of criminal offenses and other participants in the case, appeal of inaction of the latter, etc.); 3) take measures to restore violated rights, submit a request for procedural actions, engage an expert on a contractual basis to conduct an examination; 4) collect and submit evidence in the case; 5) participate in court debates; 6) appeal court decisions in the manner prescribed by law; 7) sign conciliation agreements in criminal proceedings.

41 Rules of Procedure and Evidence. International Criminal Court, 2019. 99 p. URL: <https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf> (date accessed: 01.06.2024).

Становлення та сутність інституту представництва у кримінальному процесі України

Іван Ємець

Мета дослідження — визначити сутність інституту представництва інтересів потерпілого у кримінальному провадженні, з'ясувати особливості й історичні етапи його становлення на землях сучасної України. На підставі наукових пошуків, проведених із застосуванням історико-правового методу, методів аналізу й синтезу, логіко-структурного й діалектизму, з'ясовано, що становлення інституту представництва потерпілого, підґрунтям якого став принцип кровної помсти, сягає часів України-Русі. Доведено, що принципи соціальної справедливості сприяли формуванню засад розшукової діяльності, яка тривалий час мала характер приватної. Визначено, що професійна адвокатура на теренах України виникла в польсько-литовську добу під впливом Магдебурзького права та Литовських статутів; суттєві зрушення в генезисі в Україні адвокатури й інституту представництва потерпілих припали на ХХ ст.— із прийняттям Кримінально-процесуального (1960) і Кримінального процесуального кодексу України (2012), законів «Про адвокатуру» (1992) і «Про адвокатуру та адвокатську діяльність» (2012) та деяких інших актів. Запропоновано підпредставництвом інтересів потерпілого у кримінальному провадженні розуміти форму адвокатської діяльності, яка полягає в наданні жертві кримінального правопорушення професійної правничої допомоги із забезпечення її прав і законних інтересів під час досудового розслідування, судового провадження та процесуальних дій, які можуть проводити до початку досудового розслідування. Аргументовано, що

спрямованість діяльності представника потерпілого у широкому сенсі обумовлено завданнями кримінального провадження, а у вузькому — задоволенням інтересів потерпілого із захисту та поновлення його порушених прав, відшкодування завданої шкоди.

Ключові слова: кримінальне провадження; потерпілий; представник потерпілого; адвокат; повноваження; судовий розгляд; генезис; історичний метод; представництво.

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