

Communication of the victim in the criminal proceedings of Ukraine in the conditions of martial law

Comunicación de la víctima en el proceso penal de Ucrania en las condiciones de la ley marcial

Comunicação da vítima no processo penal da Ucrânia nas condições da lei marcial

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Abstract

The article examines the doctrinal understanding of the concept of 'communication' in criminal procedural law. It was concluded that communication in the criminal process (criminal-procedural communication) is an end-to-end exchange of information, which is characteristic of the criminal-procedural communicative space of both law-making and law-enforcement spheres. In a broad sense, it consists in law enforcement (judicial, doctrinal) interpretation before, during and after the application of the criminal procedural norm. In a narrow sense, this is the exchange of procedurally significant information by the participants of criminal procedural activities between themselves and the court in connection with the progress of criminal proceedings. Such an exchange consists in the provision of information, joint participation in the conduct of procedural actions and their mutual perception of each other, which is implemented in the procedural forms provided for by law.

It is noted that the implementation of criminal proceedings in the conditions of martial law in Ukraine reinforces the relevance of the problem of the victim's communication. It also requires the creation of human rights sectoral mechanisms that would ensure the protection of the victim's rights. In particular, regarding compensation for damage caused to him/her as a result of criminal offenses due to the conduct of military operations on the territory of Ukraine. It is emphasized that the reloading of the 'image of the victim' in criminal procedural law should take place on the basis of the victim-centered approach proposed by the Advisory Mission of the European Union in Ukraine.

Keywords: Criminal proceedings; victims' rights; martial law; legal communication; victim.

Resumen

El artículo examina la comprensión doctrinal del concepto de 'comunicación' en el derecho procesal penal. Se concluyó que la comunicación en el proceso penal (comunicación penal-procesal) es un intercambio de información de extremo a extremo, lo cual es propio del espacio comunicativo penal-procesal tanto del ámbito legislativo como del orden público. En sentido amplio, consiste en la interpretación coercitiva (judicial, doctrinaria) antes, durante y después de la aplicación de la norma procesal penal. En un sentido estricto, este es el intercambio de información procesalmente significativa por parte de los participantes de las actividades procesales penales entre ellos y el tribunal en relación con el progreso del proceso penal. Dicho intercambio consiste en el suministro de información, la participación conjunta en la realización de acciones procesales y su percepción mutua, que se implementa en las formas procesales previstas por la ley.

Se observa que la implementación de procedimientos penales en las condiciones de la ley marcial en Ucrania refuerza la relevancia del problema de la comunicación de la víctima. También, requiere la creación de mecanismos sectoriales de derechos humanos que aseguren la protección de los derechos de las víctimas. En particular, con respecto a la compensación por los daños causados a la víctima como resultado de delitos penales debido a la realización de operaciones militares en el territorio de Ucrania. Se destaca que la recarga de la 'imagen de la víctima' en el derecho procesal penal debe realizarse sobre la base del enfoque centrado en la víctima, propuesto por la Misión Asesora de la Unión Europea en Ucrania.

Palabras clave: procedimientos criminales; derechos de las víctimas; ley marcial; comunicación jurídica; víctima.

Resumo

O artigo examina o entendimento doutrinário do conceito de 'comunicação' no direito processual penal. Concluiu-se que a comunicação no processo penal (comunicação penal-processual) é uma troca de informações de ponta a ponta, característica do espaço comunicativo processual-penal tanto da esfera legisladora quanto da policial. Em sentido amplo, consiste na interpretação da lei (judicial, doutrinária) antes, durante e

depois da aplicação da norma processual penal. Em sentido estrito, trata-se da troca de informações processualmente significativas pelos participantes de atividades processuais penais entre eles e o tribunal em conexão com o andamento do processo penal. Tal troca consiste na prestação de informações, na participação conjunta na condução dos atos processuais e na percepção mútua entre eles, que se concretiza nas formas processuais previstas em lei.

Salienta-se que a implementação do processo penal em regime de lei marcial na Ucrânia reforça a relevância do problema da comunicação da vítima. Requer também a criação de mecanismos setoriais de direitos humanos que assegurem a proteção dos direitos das vítimas. Em particular, no que diz respeito à compensação por danos causados a ela como resultado de infrações penais devido à condução de operações militares no território da Ucrânia. Ressalta-se que a recarga da 'imagem da vítima' no direito processual penal deve ocorrer com base na abordagem centrada na vítima proposta pela Missão Consultiva da União Europeia na Ucrânia.

Palavras-chave: procedimentos criminais; direitos das vítimas; lei marcial; comunicação jurídica; vítima.

I. INTRODUCTION

Communication (from the Latin *communico* – «I communicate with someone») is interpreted by the *Dictionary of Foreign Words* as “communication, transfer of information”¹. According to the philosophical encyclopedic dictionary, ‘communication’ is defined as a message, connection, communication. In a broad sense, it is a term that describes human interaction in the world; indicates external (manipulative) and internal (concerns deep meaningful orientations) communication². As for the philosophical and indicative definition of communication, it is “a sign of constructive interaction of individuals, social groups, nations and ethnic groups, which unfolds on the basis of tolerance and understanding”³.

Communication in a broad sense is the basis of any human activity, including legal, criminal procedural activity. Without criminal-procedural communication, there can be no conscious criminal-procedural activity, which is carried out through communication between its participants.

II. MATERIALS AND METHODS

The tasks of the research were solved with the use of different methods – the general scientific and special-legal methods of scientific knowledge. Authors have used general scientific methods such as the dialectical method, which accompanied the

1 O. Melnychuk. *DICTIONARY OF FOREIGN WORDS*. Ukrainian Soviet Encyclopedia. (1974).

2 V. Shinkaruk. *PHILOSOPHICAL ENCYCLOPEDIC DICTIONARY*. Abrys. (2002).

3 D. Kislov. *MARKETING COMMUNICATION AS A MECHANISM FOR THE IMPLEMENTATION OF STATE POLICY*. Interregional Academy of Personnel Management. (2018).

entire process of this study and allowed for the consideration of the communications of victims in criminal proceedings in Ukraine. This method helped to formulate ways for the improvement of the current legislation of Ukraine. The method of system analysis gave an opportunity to investigate the nature of the communication in criminal proceedings. The special-legal methods included the method of comparative legal analysis, which allowed to compare the system of the legal communications within the legal framework of different countries. With the help of the formal legal method, the content of the norms of law regulating social relations in this area was disclosed.

III. COMMUNICATION IN THE CRIMINAL PROCEEDINGS OF UKRAINE

The effectiveness of communication in law, including criminal procedural law, is determined by “the level of implementation of the normative principles of communication – justice, equal rights and an adequate obligation to create symmetrical relationships and formal tolerance, which provide guarantees of ensuring the basic rights of a person and a citizen”⁴.

We agree with the definition of legal communication as a method of “verbal and non-verbal interaction within the framework of the law with the aim of achieving a synergistic balance in clarifying disputed problematic issues, interpreting meanings and normalizing the conflict, ensuring a person’s right to communication”⁵. At the same time, we consider criminal procedural law as a communicative indivisible integrity and consider the research of criminal procedural communication, its concept, meaning, peculiarities of regulation and implementation to be relevant. The criminal-procedural communication of the victim in criminal proceedings is of particular scientific interest, because it is intended to be human rights communication – to ensure the protection of the rights and legitimate interests of the victim of a criminal offense. In the conditions of martial law and armed conflict on the territory of Ukraine, the problem of victim communication in criminal proceedings causes concern and needs to be resolved.

The regime of legal protection of a person in the field of criminal justice is one of the most important goals of the branch procedural and legal regulation. Its creation and strengthening provide for a system of means that would ensure the human rights

4 A. Tokarska. *Legal Communication in the Context of Post-Classical Legal Understanding*. Doctoral Dissertation, Kyiv National University of Internal Affairs. 2008. P. 117.

5 *Id.* P. 212.

enforcement activity of the law enforcer in criminal proceedings, the formation and realization of an active legal position of the participant in the criminal process⁶.

Criminal procedural legislation contains information, material means of preservation of which are sources of criminal procedural law, including the Criminal Procedure Code of Ukraine, precedent practice of the European Court of Human Rights, the practice of the Supreme Court, and the decisions of the Constitutional Court. Speaking about communication in the criminal process, with the help of which criminal procedural activity is implemented, we understand that these are also processes related to law making and law enforcement, as well as law enforcement interpretation before, during and after the application of the criminal procedural norm. Communication, thus, ensures the transmission and processing of information. And the victim's human rights communication should ensure the transformation of information into such forms of criminal procedural activity of the victim of a criminal offense, the purpose of which should be the protection of the rights and legitimate interests of the victim in criminal proceedings.

Therefore, not only participants in criminal procedural activities should be classified as subjects of criminal procedural communication. We believe that the latter should also include scientists, proceduralists-practitioners, without whom full purposeful communication in the criminal process is not possible. After all, any sectoral issue, before being resolved, goes through certain stages of discussion, development of proposals for making changes and additions to the current criminal procedural legislation. There is a communication process with the aim of identifying gaps/conflicts in the criminal procedural law and effective implementation of changes and additions to the current branch legislation. The discussion on effective procedural mechanisms for realizing the rights and legitimate interests of the victim is also in the area of criminal procedural communication. Therefore, all proposals for changes and improvement of the provisions of the criminal procedural law, which are developed in the doctrine and form the basis of new reforms of the criminal procedural legislation, emphasize the importance and significance of industry communication in the plane of the formation of the communicative paradigm of the criminal procedural doctrine.

We believe that communication in the criminal process can be considered in a broad and narrow sense. Communication in the criminal process in the broadest sense (criminal-procedural communication) is an element of criminal-procedural reality – end-to-end exchange of information, characteristic of the criminal-procedural communicative space of both law-making and law-enforcement spheres, including law

6 Yu. Gurdji. *Legal Protection of a Person in the Criminal Process of Ukraine: Theory and Methodology*. Doctoral Dissertation, Odesa National Law Academy. 2007. P. 91.

enforcement (judicial, doctrinal) interpretation before, during and after the application of the criminal procedural norm. Communication in the criminal process in the narrow sense is the exchange of procedurally significant information by the participants of the criminal-procedural activity between themselves and the court in connection with the movement of criminal proceedings, which consists in the provision (exchange) of information, joint participation in the conduct of procedural actions and their mutual perception of each other, which is implemented in the legal procedural forms⁷.

The communicative paradigm in criminal procedural law allows us to point out the advantages of using a dynamic approach to the interpretation of criminal procedural norms – without denying ensuring the stability of legal regulation as a result of using a static approach:

After all, unlike a legislative act, the text of which is frozen, able to lag behind social life, law itself is a dynamic phenomenon. Bringing the law into line with changed social conditions and people's needs is possible in two ways — by adopting a new legislative act, which, given the peculiarities of the legislative process and other factors, cannot always be done in time, and by interpretation, adapting the unchanged text of the normative act or its individual provisions to new conditions and changed relations.⁸

Thus, in some cases, a dynamic approach to interpretation can help improve the victim's communication. For example, when it comes to the participation in criminal proceedings of the legal successor of the victim. Another example is the victim's right to mediation according to the Law of Ukraine "On Mediation", which is not regulated by the Criminal Procedure Code of Ukraine, but corresponds to the philosophy and essence of conciliation agreements in criminal proceedings. In other cases, it is necessary to talk exclusively about the need to make changes to the text of the criminal procedural law or other laws of Ukraine, in order to ensure the protection of the rights of the victim by implementing his/her rights protection communication in criminal proceedings.

7 I. Rakipova. HUMAN RIGHTS COMMUNICATION OF THE VICTIM IN CRIMINAL PROCEEDINGS OF UKRAINE. Helvetica Publishing House. (2021).

8 V. Honcharov. DYNAMIC INTERPRETATION OF LEGAL NORMS. Spolom. (2013).

IV. LEGAL REGULATION OF COMMUNICATION OF THE VICTIM IN CRIMINAL PROCEEDINGS OF UKRAINE

The types of human rights communication of the victim in criminal proceedings, which are consistent with the legally regulated rights of the victim in criminal proceedings, should include the following:

- mandatory participation of the representative of the victim (individual) in criminal proceedings in cases defined by the Criminal Procedure Code of Ukraine;
- the victim's request for involvement of his/her representative by the investigator, prosecutor, investigating judge or court to provide representation as assigned;
- involvement of the victim's representative as appointed by the investigator, prosecutor, investigating judge or court at their discretion, if the circumstances of the criminal proceedings require the participation of a representative, and the victim did not involve one;
- deposition of testimony of a victim of a crime against sexual freedom and sexual integrity in order to protect him/her from secondary victimization;
- mediation in criminal proceedings;
- creation of special confidential support services for victims in order to provide them with access to free psychological, legal counseling, and social rehabilitation assistance immediately after the commission of a criminal offense.

However, the implementation of such types of human rights communication of the victim is not possible today in criminal proceedings according to the legislation of Ukraine. Therefore, comprehensive changes should be made to the Criminal Procedure Code of Ukraine and the laws of Ukraine.

Taking into account the victim-centered approach, we believe that victims of criminal offenses should be at the center of criminal proceedings. They should have an appropriate legal status that would protect them from secondary victimization and serve as a reliable support in adversarial criminal proceedings, where the defense side and the victim are two equidistant poles.

The rights of the victim must be guaranteed no less than the rights of the suspect, the accused. This follows from the provisions of Article 3 of the Constitution of

Ukraine, from the provisions of Article 2 of the Criminal Procedure Code of Ukraine. The legislator, formulating the tasks of criminal proceedings, provides provisions that are designed to demonstrate special attention to the rights of the victim. First, protection of the victim, like any other person, from criminal offenses. Secondly, the protection of the rights, freedoms and legitimate interests of the victim as a participant in criminal proceedings, who has the right to expect access to justice and justice itself. Therefore, "the absence of the principle of criminal proceedings, which would determine the guarantee of providing the victim with professional legal assistance in cases identical to the mandatory participation of the suspect's lawyer, is a gap in the Code of Criminal Procedure of Ukraine"⁹.

One of the main directions of improving the legal foundations of the victim's human rights communication is ensuring the victim's rights to representation and protection from secondary victimization at the level of the fundamental principles of criminal proceedings.

It is necessary to demonstrate appropriate attention to the rights of the victim, regulating the general principles of criminal proceedings, provided for in Article 7 of the Criminal Procedure Code of Ukraine, as well as to indicate the provision of the right to protection and representation (Articles 7, 20 of the Criminal Procedure Code of Ukraine) and the provision of the victim's right to protection from secondary victimization (Article 11 of the Criminal Procedure Code of Ukraine).

The legislator made changes to Article 14 of the Law of Ukraine "On Free Legal Aid" regarding the expansion of the list of persons entitled to free secondary legal aid. Thus, according to its provisions, victims of criminal offenses against sexual freedom and sexual integrity, torture or ill-treatment during hostilities or armed conflict have the right to free secondary legal assistance in criminal proceedings initiated as a result of the commission of such criminal offenses (paragraph 13, part 1, Article 14 of the Law). Legal assistance to victims, the scope of which is defined in the above-mentioned law, includes such types of legal services as representation in courts, other state bodies, local self-government bodies, and drawing up procedural documents (clauses 2, 3, part 2, Article 13 of the Law).

However, the imperfection of the wording used by the legislator, the lack of regulation of the grounds and procedure for involving the representative of the victim (including for conducting a separate procedural action) indicate an insufficient level of preparation and processing of the draft law. Taking into account the types of legal services that are covered by free secondary legal aid, the possibility of representation

9 M. Ostrovska. **COMBATING CRIME THROUGH IMPROVING THE PROCEDURAL STATUS OF THE VICTIM**. National Academy of the Prosecutor's Office of Ukraine. (2018). P. 63.

of victims at the stage of pre-trial investigation generally seems controversial. In addition, it remains unclear why the right of certain categories of victims to free legal aid was not reflected in the Criminal Procedure Code of Ukraine – the main legal act that defines the procedure for criminal proceedings¹⁰.

In our opinion, the current Code of Criminal Procedure of Ukraine should be supplemented with a separate article 58 “Mandatory participation of the representative of the victim, legal successor of the victim (individuals)”¹¹, as well as a separate article 58 “Engagement of a representative by an investigator, prosecutor, investigating judge or court for the purpose of representation”. Such additions should determine the cases of mandatory participation of the victim’s representative, the victim’s legal successor (natural persons) and the cases where the investigator, prosecutor, investigating judge or court involves a representative for representation in criminal proceedings as assigned.

In addition, changes should also be made to the Law of Ukraine “On Free Legal Aid” regarding the recognition of the victim, his/her legal successor in criminal proceedings as subjects of the right to free legal aid. The above should take place in the event that the investigator, prosecutor, investigating judge, or court engages a representative to provide representation as assigned, as well as in the event that the participation of the representative of the victim, his/her legal successor is mandatory in accordance with the provisions of the Criminal Procedure Code of Ukraine (clauses 7, 13, Article 14 of the Law).

As G. Didkivska notes, “the majority of the victims we interviewed believe that the legislative regulation of the rights of the victim is such that it does not correspond to the constitutional guarantee of his rights to compensation for the damage caused by a criminal offense. 78 victims out of 120 (which is 65%) spoke in favor of strengthening guarantees from the state regarding compensation for damage to the victim”¹². And there is an explanation for this – the existence of a deliberate gap in the criminal procedural legislation, related to the non-determination of cases and the procedure for compensation to the victim of damage caused by a criminal offense (Part 3, Article 127 of the Criminal Procedure Code of Ukraine). The latter requires a solution

10 O. Shchygol. *Transformation of Guarantees of the Rights of the Victim during Martial Law: Praxeological Aspect*. In: CRIMINAL JUSTICE IN UKRAINE: REALITIES AND PROSPECTS. Institute of Law at University of Latvia. (2022). P. 255.

11 I. Rakipova, O. Torbas, V. Voloshyna, D. Shylin, A. Pidgorodynska. *Ensuring Rights of Victims Under the Criminal Procedure Code of Ukraine: Current Issues and Prospects*. PRECEDENTE 1. 2023. P. 133.

12 H. Didkivska. *International Experience of the Legal Position of the Victim in Criminal Proceedings*. In: CRIMINAL PROCEDURE CODE 2012: IDEOLOGY AND PRACTICE OF LAW ENFORCEMENT. Helvetica Publishing House. (2018). P. 187-188.

to this problem by adopting the Law of Ukraine “On Compensation to the Victim, Legal Successor of the Victim (Individuals) for Damage Caused by a Criminal Offense at the Expense of the State Budget”. There is also a need to develop the State Program for Assistance to Victims of Criminal Offenses in Ukraine and to create a Compensation Fund for Assistance to Victims of Criminal Offenses within its framework. The latter would actually ensure the requirement of the law to compensate the victim in criminal proceedings, even when the criminal offense is not disclosed or when it is impossible to carry out appropriate penalties from the culprit.

In accordance with the provisions of the Declaration of the Basic Principles of Justice for Victims of Crime and Victims of Abuse of Power, in order to fulfill their obligations to victims, states must promote the creation, strengthening and expansion of national funds. If they are not able to compensate the victim for the damage caused to him/her, then the creation of other funds (formed according to communal and regional principles) is allowed¹³.

Today, the corresponding compensation funds operate in almost all developed countries of the world – the USA, Canada, Germany, Austria, Australia, Japan, etc. As mentioned above, these countries have adopted relevant laws that provide for the right of victims to receive state compensation for damage caused by a criminal offense. These laws also define ways of reconciling the victim with the suspect/accused and professional medical and psychological assistance to victims of criminal offenses.

The doctrine also quite rightly states that in Ukraine it is expedient to create a compensation fund for the compensation of victims caused by criminal offenses. Such a fund can be created under the Ministry of Justice of Ukraine and be formed at the expense of the state budget. In turn, the latter should be filled with funds from fines and other payments within criminal proceedings, including confiscation of property or voluntary contributions and donations¹⁴.

Here, it should be said that the National Agency for the Identification, Search and Management of Assets Obtained from Corruption and Other Crimes (ARMA) was created and is actively functioning in Ukraine, whose activities could significantly supplement the Compensation Fund for Victim Assistance. According to Article 2 of the Law of Ukraine “On the National Agency of Ukraine for Identification, Search and Management of Assets Obtained from Corruption and Other Crimes”, is the central body of the executive power with a special status. This agency ensures the formation

13 V. Tulyakov. *Victim of Crime Doctrine: Social and Legal Fundamentals*. Doctoral Dissertation, Odesa National Law Academy. 2001. P. 19.

14 M. Pohoretskyi, D. Sergeeva. *Problematic Issues of Implementation of the Procedural Status of the Victim in Criminal Proceedings*. SCIENTIFIC BULLETIN OF THE UZHGOROD NATIONAL UNIVERSITY 2. 2017. P. 120.

and implementation of state policy in the field of identification and search of assets that may be seized in criminal proceedings or in the case of recognition of assets as unfounded and their collection into state revenue, and/or in the management of assets seized in criminal proceedings. Also, it ensures the formation and implementation of state policy in the case of recognition of assets as unsubstantiated and their collection into the state income, or which were confiscated in criminal proceedings or collected by a court decision into the state income as a result of their recognition as unfounded.

Let's emphasize that ARMA was created to implement the 38 recommendations of the International Group for Combating Dirty Money Laundering (Financial Action Task Force on Money Laundering), according to which member states are recommended to form bodies that could promptly respond to requests from similar foreign bodies to detect, freezing, arrest and confiscation of illegally obtained property. ARMA has access to 46 registers and information databases with limited access. It is a partner of universal international organizations and cooperation mechanisms¹⁵.

It should also be noted that the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operative-Investigative Activities, Pre-Trial Investigation Bodies, Prosecutor's Office and Court" (dated December 1, 1994) does not contain any provisions on compensation for damage to the victim from a criminal offence. Therefore, the concept of "restitution" in the national criminal process of Ukraine does not correspond to the understanding of this concept according to the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, where restitution is considered as compensation for damage caused by illegal actions of officials.

In this regard, we also consider it necessary to introduce amendments to this law regarding the right of the victim, his/her successor in title to compensation for material and/or moral damage. The latter should be applied as a result of illegal non-recognition of a person as a victim, legal successor of the victim, illegal non-compliance with reasonable terms during criminal proceedings; illegal refusal to engage a representative to perform representation as assigned; illegal conduct of criminal proceedings in the absence of a representative of the victim, whose participation is mandatory; illegal refusal to open appeal proceedings or the return of an appeal.

15 Such as: Interpol (International Criminal Police Organization); Europol (European Police Office); StAR, a partnership initiative of the World Bank Group and the United Nations Office on Drugs and Crime, which supports international efforts aimed at ending the practice of hiding assets received from corruption crimes; CARIN (Camden Interagency Asset Recovery Network), an informal network of law enforcement representatives and legal practitioners, specialists in the field of asset detection and tracing, freezing, seizure and confiscation; BAMIN (Interdepartmental Asset Management Network of the Balkan Region).

In order to adopt the Law of Ukraine "On Compensation to the Victim, Legal Successor of the Victim (Individuals) for Damage Caused by a Criminal Offense at the Expense of the State Budget", its structure should include provisions regarding:

- extension of the law to the victim, his/her successor;
- the amount and order of compensation for the damage caused to the victim, his/her legal successor, as a result of the commission of a criminal offense, if the person who committed the crime has not been identified by the competent state authorities within the period defined by law from the moment of its occurrence, or such a person is insolvent;
- the extension of the law to compensation for moral damage (as a one-time payment);
- the duty of the investigator, the prosecutor to explain to the victim, his/her legal successor, the right to apply for compensation for the damage caused from the State Budget in the cases provided for by law;
- implementation of compensation from the special Compensation Fund for assistance to victims, which is formed at the expense of donor funds, part of the State Budget revenues from the payment of state duty and other revenues, confiscation of assets, recovery of assets in the state income in criminal proceedings, forced sale of property, etc.;
- preventing the refusal to pay the victim funds from the Compensation Fund due to their absence, and making such payments for the purpose of compensation for damage in accordance with the Law of Ukraine "On Compensation to the Victim, the Legal Successor of the Victim (Individuals) for Damage Caused by a Criminal Offense at the Expense of the State Budget" and the Law of Ukraine "On the Procedure for Compensation of Damage Caused to a Citizen by Illegal Actions of Bodies Carrying out Operational and Investigative Activities, Pre-Trial Investigation Bodies, Prosecutor's Office and Court".

Accordingly, provision should be made for the creation of confidential support services to provide access to victims and their family members. Such support should be provided according to specific needs and the degree of damage caused by the criminal offense. It should consist of free psychological, medical, social rehabilitation, consultation, legal and mediation assistance. We have to talk about targeted and comprehensive support for victims of criminal offenses immediately after they have been committed.

V. FEATURES OF COMMUNICATION OF VICTIMS IN CRIMINAL PROCEEDINGS UNDER MARTIAL LAW

The special regime of criminal proceedings under martial law, provided for by Section IX-1 of the Criminal Procedure Code of Ukraine, is an exception to the general procedure for carrying out criminal proceedings, and should refer to the form of judicial proceedings with enhanced procedural guarantees. In particular, the relevant guarantees should also take place in the aspect of human rights communication of the victim in criminal proceedings.

A change in territorial jurisdiction is possible due to the impossibility of administering justice during martial law, the availability/unavailability of technical means of video communication or the absence of Internet connection at all, being in the occupied territory and the psychological state of the victim in connection with the events dictated by martial law. Other features of a procedural nature can significantly complicate or even make it impossible for victims to exercise their rights provided for by the criminal procedural law. For example, concerns are caused by:

- appeal by the victim within the term provided for by the Code of Criminal Procedure of the decision to stop the pre-trial investigation in the event that “there are objective circumstances that make it impossible to conduct a further pre-trial investigation in the conditions of martial law” (paragraph 4, part 1, Article 280 of the Criminal Code of Ukraine);
- impossibility for the victim to appeal the decision to stop the pre-trial investigation in the event that “the authorized body made a decision to hand over the suspect for exchange as a prisoner of war and the suspect was given written consent for such an exchange” (paragraph 5, part 1, Article 280 of the Criminal Procedure Code of Ukraine);
- consideration of the victim’s request to perform any procedural actions during the pre-trial investigation within the terms stipulated by the Criminal Procedure Code of Ukraine (Article 220);
- the right of the victim to familiarize himself/herself with the materials of the pre-trial investigation before its completion, the opportunity to make the necessary extracts and copies (Article 221 of the Criminal Procedure Code of Ukraine);
- the right to file a complaint against the decision, actions or inaction of the investigator, inquirer or prosecutor within the terms provided for by the

Code of Criminal Procedure of Ukraine, and accordingly the right of the victim to appeal the decision of the investigating judge on the refusal to open proceedings or the decision to return the complaint (Article 304 of the Code of Criminal Procedure of Ukraine);

- the victim's right to appeal to a higher-level prosecutor about non-observance of reasonable deadlines by the investigator, inquirer, and prosecutor during the pre-trial investigation and to be notified of the results of consideration of his/her complaint within the time limit stipulated by the Criminal Procedure Code of Ukraine (Article 308);
- the victim's right to appeal the court decision within the time limits stipulated by the Criminal Procedure Code of Ukraine (Article 395);
- the victim's right to cassation appeal of the court decision within the terms stipulated by the Criminal Procedure Code of Ukraine (Article 426);
- the rights of the victim during a remote examination ("with the use of available technical means of video communication") of a request for the selection of a preventive measure under martial law conditions (in particular, the right to participate in the consideration of such a request, to ask questions and receive answers, availability/unavailability of technical means of video communication connection) (paragraph 6, part 1, Article 615 of the Criminal Procedure Code of Ukraine).

O. Kaplina in her works defines the vulnerable points related to the statement, proof and consideration of a civil claim in criminal proceedings in the event of damage caused by armed aggression. The scientist notes that military actions can prevent the investigator from going to the scene and inspecting the house or other property destroyed as a result of shelling. The most vulnerable point during the filing and resolution of a civil claim is related to the impossibility of filing a civil claim against the suspect, the accused, or against a natural or legal person who, by law, bears civil responsibility for the damage caused by the actions of the suspect, the accused¹⁶.

According to Article 79 of the Law of Ukraine "On Private International Law", filing a claim against a foreign state, involving a foreign state in the case, imposing a seizure on property, and using other means of securing a claim in relation to such property is impossible due to jurisdictional immunity.

16 O. Kaplina. *Armed Aggression: Whether the Victims Will be Compensated for the Damage Caused within the Criminal Proceedings*. In: **CRIMINAL JUSTICE IN UKRAINE: REALITIES AND PROSPECTS**. Institute of Law at University of Latvia. 2022. P. 164.

Today, different points of view are expressed regarding the possibilities of solving this issue. These are: 1) the need to make changes to the specified Article 79 of the law; 2) adoption of a law on immunities; 3) development of judicial practice without amending the law; 4) adoption of a law on lifting immunity from a specific country for certain categories of cases.

It is definitely necessary to take into account that in cases of martial law, the state has the right to withdraw from certain international obligations in the field of ensuring human rights. Article 4 of the International Covenant on Civil and Political Rights declares:

During a state emergency in which the life of the nation is threatened and the existence of which is officially announced, States Parties to this Covenant may take measures to derogate from their obligations hereunder only to the extent dictated by the urgency of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not entail discrimination solely on the basis of race, color, sex, language, religion or social origin [...]

Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms also provides that: "In times of war or other public danger threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention, exclusively within the limits required by the urgency of the situation, and provided that such measures do not conflict with its other obligations under international law".

In Ukraine, the Supreme Court explained that during the period of the special regime, investigating judges must take into account the circumstances of martial law. In particular, in the presence of the necessary grounds, at the request of the suspect, it is appropriate to make a decision to change the preventive measure in the form of bail to a personal commitment, if the corresponding request is justified by the desire to use the funds transferred as bail, for their further deposit into special accounts of the National Bank of Ukraine for the purposes defense of Ukraine. Also, based on the state of hostilities, in places of active hostilities, at the request of the suspect, it is appropriate to consider the issue of changing the preventive measure in the form of house arrest to a preventive measure in the form of personal commitment¹⁷ (clause

17 Supreme Court of Ukraine. Regarding Certain Issues of Conducting Criminal Proceedings under Martial Law. Letter dated March 3, 2022. Available at: <https://ips.ligazakon.net/document/VSS00820?q=>

10 of the Supreme Court Letter dated March 3, 2022 “Regarding certain issues of conducting criminal proceedings under martial law”).

At the same time, we emphasize that the purpose of applying a preventive measure is, in particular, to prevent an attempt by the suspect, the accused to illegally influence the victim in a specific criminal proceeding or to obstruct the criminal proceeding in another way (Article 177 of the Criminal Procedure Code of Ukraine). The tasks of criminal proceedings are to protect the individual, society and the state from criminal offenses, to protect the rights, freedoms and legitimate interests of the participants in criminal proceedings, including the victim (Article 2 of the Criminal Procedure Code of Ukraine).

According to Part 1 of Article 56 of the Criminal Procedure Code of Ukraine, the victim during criminal proceedings has the right to compensation for damage caused by a criminal offense in the manner prescribed by law. Measures to ensure criminal proceedings are applied in order to achieve the effectiveness of these proceedings. The latter is impossible without protection of the rights, freedoms and legitimate interests of the victim of a criminal offense. Explanation of procedural rights and obligations to the victim should in no case be of a formal nature in this case.

VI. CONCLUSION

1) Only comprehensive amendments to the legislation will allow to solve the problem of effective provision of communication of the victim in criminal proceedings in the conditions of martial law, in order to protect the rights of victims of a criminal offense. In particular, the relevant amendments are systemically necessary to the Criminal Procedure Code of Ukraine, the Law of Ukraine “On Free Legal Aid”, the Law of Ukraine “On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operative-Investigative Activities, Pre-Trial Investigation Bodies, the Prosecutor’s Office and the Court”. It is also necessary to adopt the Law of Ukraine “On Compensation to the Victim, Legal Successor of the Victim (Individuals) for Damage Caused by a Criminal Offense at the Expense of the State Budget”.

2) The problem of compensation for the damage caused to the victim of a criminal offense caused by the conduct of hostilities in Ukraine has acquired significant dimensions. Assistance to numerous victims of criminal offenses caused by military operations in Ukraine should be organized at the highest state level. In addition, this should include assistance at the expense of donor funds, confiscation of assets, recovery of assets in criminal proceedings, forced sale of property, etc. To do this, it is

necessary to resolve the issue of the creation and functioning of the Compensation Fund for assistance to victims. Within its framework, it is necessary to separately provide for compensation for damage to victims of criminal offenses caused by the conduct of hostilities in Ukraine.

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