

ENSURING PROTECTION OF THE RIGHTS OF THE AGGRIEVED PERSON IN CRIMINAL PROCEEDINGS THROUGH THE PRISM OF REQUIREMENTS OF INTERNATIONAL LAW ACTS

Serhii Ablamskyi, Kharkiv National University of Internal Affairs
Hennadii Hlobenko, Kharkiv National University of Internal Affairs
Ruslan Chycha, Kharkiv National University of Internal Affairs
Olena Martovytska, Kharkiv National University of Internal Affairs
Iryna Burlaka, Judge in Kharkov Court of Appeal

ABSTRACT

The article is devoted to the analysis of international law acts, which guarantee the protection of the rights of aggrieved persons in criminal proceedings. It is emphasized that, in recent decades, the international community has adopted a number of important international legal documents in the field of protecting human rights and freedoms, including aggrieved persons (crime victims). The norms of both universally recognized documents and documents of the regional level, that is, those developed by the Council of Europe and set forth in the relevant Recommendations have been cited and analyzed. The need for further implementation of international norms and principles to compensate the victim for harm caused by a criminal offense against him is noted. It is established that the provisions of the Code of Criminal Procedure of Ukraine 2012 regarding the protection of the rights of the aggrieved person require further improvement. According to the results of the study, three main stages of the development of international law acts to ensure the protection of the rights of the aggrieved person in criminal proceedings have been identified. Also, the priority directions of the elimination of legislative gaps on the investigated issue are indicated.

Keyword: Criminal Process, Aggrieved Person, Crime Victim, Defense, Rights and Freedoms, International Legal Acts.

INTRODUCTION

As historical events testify, the Second World War radically changed views on guarantees of world peace because humanity understood the true value of human rights and freedoms, which led to a fundamental update of the legal mechanism for their protection. Starting from this time, the protection of human rights is not a purely internal competence of states and has gained international significance, embodied in the idea of creating a new international law and order, the basis of which is the respect for fundamental rights and freedoms (Mazur, 2006). At the same time, despite the fact that in our time most countries of the world are moving in a democratic, legal direction of their development, this issue will remain very relevant

since crime has a significant negative impact on the economic situation of the country, society, and above all on those who have suffered from crimes (Lapkin et al., 2019).

The problem of effective provision of the protection of the aggrieved person's rights in criminal proceedings has always existed, and even despite the ratification by Ukraine of a number of international documents that guarantee every person fundamental rights and freedoms. Under these conditions, the key issue should be the development and introduction of an effective legal mechanism for protecting the rights of the aggrieved person in criminal proceedings on the one hand and their updating on the other. This will be evidence that the state as a whole and its law enforcement bodies are ready to fulfill their international obligations.

LITERATURE REVIEW

The problematic issues of protecting the rights of aggrieved persons in criminal proceedings in the aspect of international legal standards are highlighted in the works of Kaplina and Grigorovich, who rightly noted that the strengthening of the procedural status of the aggrieved person remains one of the priority areas of the state (Kaplina, 2004; Grigorov, 2012). In turn, Nikonenko (2001), Orlov (2004) & Plachkov (2011) investigated the types and content of criminal procedural guarantees of compensation for material damage caused by a crime, on the basis of which they came to the conclusion that it is necessary to further improve the current legislation of Ukraine in this issue (Nikonenko, 2001; Orlov, 2004; Plachkov, 2011). Scientists Reznik et al. analyzed the legislation of countries such as Ukraine, Russia, and the Republic of Belarus, the norms of which provide for a system of measures to combat corruption in law enforcement agencies and their responsibility for committing offenses (Reznik et al., 2017).

In general, the study of scientific literature indicates that for a long time the issue of the right to protection of the aggrieved person, as well as its procedural status, remained without the attention of scientists, practitioners, and the legislator. Along with this, considerable attention is paid to protecting the rights of the suspected and the accused.

METHODOLOGY

When writing this scientific study, a set of methods used in legal science was used. The historical and legal method made it possible to trace the historical aspects of the development of international law acts in the field of ensuring human rights. Using comparative legal and formal legal methods, international documents that guarantee the protection of the rights of the aggrieved persons have been analyzed. The search and bibliographic method provided a search for literary sources on research issues, which provided definitions of the main stages of development of international law acts in the field of protecting the rights of aggrieved persons in criminal proceedings.

FINDINGS AND DISCUSSIONS

Globalization of law may be defined as the worldwide progression of transnational legal structures and discourses along the dimensions of extensity, intensity, velocity, and impact (Terence & Osinsky, 2006). With the expansion of international law and its increased

specialization, it is no longer the case that it is made by a finite number of entities (states) through a handful of intergovernmental processes (Pronto, 2008).

In recent decades, the international community has adopted a number of important international legal documents in the field of protecting human rights and freedoms, namely: the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms; International Covenant on Civil and Political Rights and others. The significance of these documents is difficult to overestimate even today since for the first time at the international level the fundamental norms and requirements were enshrined, which guaranteed each person the protection of inalienable rights and freedoms, the right to life, dignity, personal and family life, freedom and personal integrity, equal access to court and equality before the court, fair trial and the like.

Since the 20th century, international legal standards for the protection of human rights have also begun to be actively developed at the regional level, which is associated with the activities of the Council of Europe. Since Ukraine joined the Charter of the Council of Europe (The Law of Ukraine, 1995), our state has committed itself to harmonize national legislation in accordance with international law. First of all, this is due to the fact that, in Article 3 of the Charter, respect for human rights is a fundamental principle of participation in the Council of Europe. In case of violation of such rights, the Committee of Ministers of the Council of Europe is authorized to apply sanctions in the form of suspension of the participation of a member state or its complete exclusion from the Council of Europe (Council of Europe Charter, 1949).

One of the first documents that focused on the rights of crime victims was the Convention on Compensation for Damage to Victims of Violent Crimes, Article 2 of which noted the need to strengthen liability for harm caused to a person as a result of intentional violent crimes. Later, the UN General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Legislation, 1985), which summarized the most progressive achievements in the field of human rights protection. In particular, states are encouraged to establish and strengthen judicial and administrative mechanisms to ensure that victims receive compensation through formal or informal procedures, which should be expeditious, fair, and affordable (Kaplina, 2004). Therefore, the provisions according to which offenders or third parties responsible for their behavior should provide fair restitution to crime victims, their families or dependents should be recognized as progressive. This type of restitution should include the return of the property, payment for harm caused, reimbursement of expenses incurred as a result of victimization, provision of services, and restoration of violated rights. In this respect, the recommendations set out in United Nations General Assembly Resolution 45/107 dated 14 December 1990 should be taken into account. In particular, officials are recommended to develop legal mechanisms that should include a list of comprehensive measures to protect the rights of aggrieved persons, provide them with legal assistance, as well as redress (compensation) for harm caused by the crime (Legislation, 1990).

The provisions of Articles 68, 75 of the Rome Statute of the Criminal Court on the protection of the rights of aggrieved persons, their participation in the proceedings, and redress of harm (Law, 1998) are important for redress (compensation) of harm in criminal proceedings. When improving national legislation, Ukrainian legislators should also take into account the regulatory provisions of this Charter since on January 20, 2000, it was signed by the Government of the country. Moreover, in 2010, the Resolution on the impact of the Rome Statute system on

aggrieved persons was adopted, which defined the following rights of aggrieved persons: equal and effective access to justice; protection and support; prompt and adequate redress (compensation) of damage; access to relevant information on violated rights and the legal mechanism for its compensation (Law, 2010). However, today norm-setting work in this direction, unfortunately, remains at a rather low level.

One of the types of legal guarantees that provide full compensation for material damage caused by a criminal offense is criminal procedural guarantees (Nikonenko, 2001). These guarantees are manifested in the principles of criminal proceedings, the procedural form, legal institutions, and norms that regulate the forms of compensation for harm, as well as the proper implementation of prosecutorial supervision and judicial control (Orlov, 2004). That is why, according to the fair assertion of Plachkov, one of the ways to strengthen legal guarantees to protect the rights and legitimate interests of aggrieved persons is to improve the legislative regulation of compensation for harm caused by crime. First of all, this concerns the procedural mechanisms of criminal law and civil law nature (Plachkov, 2011). In this regard, the decision of the XI Congress of the International Criminal Law Association, which first formulated the initial provisions and general principles for compensation of harm caused by crime to an aggrieved person, is essential. In particular, it was noted that effective compensation is the task of social solidarity, especially in cases where the offender is unknown or the trial was not instituted against him or he was sentenced but he was insolvent. The above indicates the constant calls of the international community to strengthen the protection of the rights and legitimate interests of the aggrieved person in criminal proceedings.

Recommendation R (85) 11 of the Committee of Ministers to member states on the situation of the aggrieved person in criminal law and criminal procedure dated 28 June 1985 indicates the need within the criminal justice system to pay more attention to physical, psychological, material, and social damage caused to the aggrieved person, as well as consider measures that should be taken in this regard to meet its needs (Legislation, 1985). The need for redress for the aggrieved person in relation to the recognition of the offender's needs for its social status is contained in Recommendation R (92) 16 on European rules on general sanctions and measures adopted by the Committee of Ministers of the Council of Europe on 19 October 1992 (Legislation, 1992).

The piecemeal approach introduced in 2009 in the Council's Roadmap Resolution has resulted in an impressive number of common minimum norms on procedural rights for defendants and victims of crime, adopted under the heading of Article 82(2) TFEU. However, the extent of EU competence to harmonize defence rights is too limited to justify major new steps in this regard (Ouwkerk, 2019).

Thus, human rights instruments address issues that used to be regulated within national law. Today, there is an ongoing interaction between international, European, and national law, which leads to much discussion about how the three levels of regulation are consolidated. European law and international (human rights) law have shaped the national legal systems in Europe in profound ways; sometimes in ways that were not anticipated (Sosa et al., 2019).

Despite the current norms and principles of the international community that protect the rights of an aggrieved person in criminal proceedings, the Code of Criminal Procedure of Ukraine 2012 still has gaps that need to be addressed. In particular, the unresolved issue is the determination of the amount (volume) of harm caused by a criminal offense, which is subject to

compensation of the aggrieved person. In addition, the legislator did not provide for the possibility of compensation for physical harm caused to the aggrieved person; did not provide him with the right to bring a civil suit during the court session, did not provide the aggrieved person's representative with the right to bring a civil suit. As well, the right of the aggrieved person to refuse to file a civil suit is not established. We believe that such legislative gaps violate the rights of an aggrieved person and therefore must be addressed.

Moreover, in the Code of Criminal Procedure of Ukraine 2012, the right of an aggrieved person to defend is significantly narrower, compared to the suspected, the accused. Evidence of this is the fact that the aggrieved person is not provided with the right to qualified legal assistance on the part of its chosen or appointed counsel, and there are no cases of providing him with free legal assistance. The scientific community and lawyers have repeatedly focused their attention on these problematic issues but they have not been resolved by the legislator.

RECOMMENDATIONS

Given the importance of the above international documents in the field of protection of the rights of the aggrieved person, it is advisable for the Ukrainian government:

1. To review national legislation in relation to its compliance with international principles of protection of the rights of aggrieved persons;
2. To agree on the provisions of the Code of Criminal Procedure of Ukraine to the Recommendations of the Committee of Ministers of the Council of Europe on the situation of aggrieved person in the framework of criminal law and proceedings;
3. To adopt a law, in which to normalize issues on redress (compensation) of harm caused by a crime for aggrieved persons;
4. To create a special fund for redress (compensation) of harm to aggrieved persons and establish the amount of funds to solve these problems;
5. To introduce the procedural mechanism of compensation for moral damage to a legal entity in the Code of Criminal Procedure of Ukraine;
6. In Article 129 of the Code of Criminal Procedure of Ukraine to identify:
 1. How it is necessary to determine the amount of moral, physical, and property damage;
 2. Cases when it is impossible to settle the claim;
 3. Measures to be taken by the court on confiscation of property if this was not provided at the stage of pre-trial investigation.

CONCLUSION

The formation of international legal standards in the field of protection of the rights of aggrieved persons in criminal proceedings has gone through three main stages. At the first stage, only certain rights of aggrieved persons (victims of crimes) were consolidated in international documents, including in the aspect of the fundamental rights and freedoms of each person. The second stage was marked by the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985, in which for the first time at the international level the concept of "*victim of crime*" was formulated and the principles of its procedural status were defined. The third stage includes the activities of the international community to implement the provisions of this Declaration by creating specific measures to ensure the rights of victims of

crimes and introducing mechanisms for their implementation in the practical activities of law enforcement and judicial authorities.

The Ukrainian experience of adapting national legislation to international legislation indicates that the process of developing the legal framework for adaptation has become quite lengthy. The effectiveness of the process of adaptation of national legislation depends on how the regulatory framework is formed on the basis of which adaptation will be carried out.

The international legal standards for the protection of the rights of an aggrieved person consist of a combination of such components as:

1. Recognition and implementation of fundamental human rights and freedoms in all spheres of life;
2. Observance of human rights and freedoms without any discriminatory restrictions;
3. State responsibility for violation of human rights and freedoms;
4. Continuous improvement of the legal mechanism for protecting rights;
5. The introduction of effective state control to restore violated rights.

REFERENCES

- Council of Europe Charter. (1949). *Statute of the Council of Europe*. Retrieved from https://zakon.rada.gov.ua/laws/show/994_001
- Grinorov, S.A. (2012). On ensuring certain rights of victims of crime. *Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia*, 5(1), 124-132.
- Kaplina, O.V. (2004). International legal standards for the protection of rights of aggrieved persons in criminal proceedings: Interpretation and problems of implementation in the national legislation of Ukraine. *Bulletin of Khmelnytsky Institute of Regional Administration and Law*, 1(2), 224–225.
- Lapkin, A., Maryniv, V., Yevtieieva, D., Stolitnii, A., & Borovyk, A. (2019). Compensation for damage caused by offences as the way of protection of victims' rights (on the example of Ukraine): The economic and legal aspects. *Journal of Legal, Ethical and Regulatory Issues*, 22(3), 1-10.
- Law. (1998). *Rome Statute of the International Criminal Court*. Retrieved from <http://zakon4.rada.gov.ua/laws/show/995588/>
- Law. (2010). *Conference on the review of the rome statute of the international criminal court (Kampala)*. The Hague: The International Criminal Court.
- Legislation. (1985). *Recommendation R (85) 11 of the committee of ministers to member states on the position of the aggrieved person in criminal law and criminal proceedings*. Retrieved from http://zakon3.rada.gov.ua/laws/show/994_127
- Legislation. (1990). *Recommendations for international cooperation in the prevention of crime and criminal justice in the context of development: UN general assembly resolution 45/107*. Retrieved from http://zakon4.rada.gov.ua/laws/show/995_832
- Legislation. (1992). *Recommendation R (92) 16 of the committee of ministers to member states on the European rules on general sanctions and measures*. Retrieved from http://zakon2.rada.gov.ua/laws/show/994_047
- Mazur, M.V. (2006). *Interpretation and application of the convention for the protection of rights and fundamental freedoms by the European court of human rights and the courts of Ukraine*. Lugansk: EPD.
- Nikonenko, M.Y. (2001). The concept, types, and content of criminal procedural guarantees. *Scientific Bulletin of NAIAU*, 1(1), 59–69.
- Orlov, M.V. (2004). Criminal procedural guarantees for compensation for pecuniary damage caused by crime: Substantiation of guarantees of control and compulsion to perform compensation for damages of the aggrieved person, review of legislation. *Law of Ukraine*, 5(1), 68–71.
- Ouwerkerk, J. (2019). EU competence in the area of procedural criminal law: Functional vs. self-standing approximation of procedural rights and their progressive effect on the charter's scope of application. *European Journal of Crime, Criminal Law and Criminal Justice*, 27(2), 89–96.
- Plachkov, D.V. (2011). The place of the relations of indemnification by the state caused to the individual by the crime in the civil law of Ukraine. *South Ukrainian Law Journal*, 4(1), 120-129.

- Pronto, A. (2008). Some thoughts on the making of international law. *The European Journal of International Law*, 19(3), 601–616.
- Reznik, O.M., Klochko, A.M., Pakhomov, V.V., & Kosytsia, O.O. (2017). International aspect of legal regulation of corruption offences commission on the example of law enforcement agencies and banking system of Ukraine. *Journal of Advanced Research in Law and Economics*, 8(1), 169-177.
- Sosa, L., Niemi, J., & Suzan, V.A. (2019). Protection against violence: The challenges of incorporating human rights' standards to procedural law. *Human Rights Quarterly*, 41(4), 939-961.
- Terence, C.H., & Osinsky, P. (2006). Globalization of law. *Annual Review of Sociology*, 32(1), 447–70.
- The Law of Ukraine. (1995). *On the adoption of Ukraine to the statute for Europe*. Retrieved from <https://zakon.rada.gov.ua/laws/show/398/95-%D0%B2%D1%80>