

**REGARDING THE ISSUE OF IMPROVING THE LEGAL STATUS OF THE VICTIM  
AS A PARTICIPANT IN CRIMINAL PROCEEDINGS<sup>1</sup>****ЩОДО ПИТАННЯ УДОСКОНАЛЕННЯ ПРАВОВОГО СТАТУСУ ПОТЕРПІЛОГО  
ЯК УЧАСНИКА КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ**

**Davydenko S.V., Candidate of Legal Sciences, Assistant Professor,  
Associate Professor at the Department of Criminal Procedure  
Yaroslav Mudryi National Law University**

The article analyzes certain aspects of the problem of protecting the rights, freedoms and legitimate interests of the victim. The publication examines the situation in Ukraine in the context of observance of victims' rights in criminal proceedings. At the same time, the basic documents aimed at multi-vector improvement of the legal status of the victim are analyzed in detail (in particular, the Strategic Plan for the Implementation of the Powers of the Prosecutor's Office in the Field of Criminal Prosecution for International Crimes for 2023–2025 and the Concept for the Implementation of the Mechanism for Supporting Victims and Witnesses of War and Other International Crimes), as well as the current relevant law enforcement practice. It is proposed to consistently formulate regulatory algorithms for leveling the problematic aspects of ensuring the rights of the victim in criminal proceedings under martial law.

In this context, it is stated that in the case of the ongoing armed conflict and the lack of actual access to the temporarily occupied territories of Ukraine, the key task is to continuously promote the active participation of victims in criminal proceedings of certain categories.

It is emphasized that the current criminal policy of our country and the latest legislative initiatives are focused on the implementation and high-quality realization of international standards for ensuring and protecting the rights of victims of various types of criminal offenses. The basis for this long-term process should be the rules of international law and recommendations to Ukraine regarding its membership in the European Union, in particular, in the area of accurate implementation of the EU standards.

It is advisable to emphasize that the generalized result of the regulatory framework for the special regime of pre-trial investigation and trial under martial law and the consequences of Ukraine's derogation from certain international obligations directly affect the possibility of timely and effective exercise by victims of their rights declared by the national criminal procedure legislation.

In this regard, the article states the urgent need to make regulatory adjustments to the current version of certain articles of the Criminal Procedure Law, given the actualization of the issue of the correctness of the moment of acquisition of the procedural status of a victim by an injured person.

**Key words:** victim, procedural status, international standards, European Union standards, refusal to recognize the victim, appeal.

У презентованій статті досліджено окремі аспекти проблематики захисту прав, свобод і законних інтересів потерпілого. В роботі вивчається ситуація в Україні в контексті дотримання прав потерпілих під час здійснення кримінального провадження. При цьому детально проаналізовані базові документи, скеровані на полівекторне удосконалення правового статусу потерпілого (зокрема, Стратегічний план щодо реалізації повноважень органів прокуратури у сфері кримінального переслідування за вчинення міжнародних злочинів на 2023–2025 роки та Концепція реалізації Механізму підтримки потерпілих і свідків воєнних та інших міжнародних злочинів), а також сучасна релевантна правозастосовна практика. Запропоновано послідовне формування нормативних алгоритмів нівелізації проблемних аспектів забезпечення прав потерпілого у кримінальному провадженні в умовах воєнного стану.

У даному контексті проголошується, що в умовах триваючого збройного конфлікту та відсутності фактичного доступу до тимчасово окупованих територій України ключовим завданням постає невідкладне сприяння активній участі потерпілих в кримінальних провадженнях певних категорій.

Підкреслюється, що сучасна кримінальна політика нашої держави та останні законодавчі ініціативи зорієнтовані на імплементацію та якісну реалізацію міжнародних стандартів забезпечення та захисту прав потерпілих від різних видів кримінальних правопорушень. Підґрунтям для цього довготривалого процесу мають стати норми міжнародного права та рекомендації Україні щодо набуття членства в Європейському Союзі, зокрема, в частині акуратного впровадження стандартів Європейського Союзу.

Доцільно акцентувати, що узагальнений результат нормативної регламентації особливого режиму досудового розслідування, судового розгляду в умовах воєнного стану та наслідки відступу України від окремих міжнародних зобов'язань безпосередньо впливають на можливість своєчасної та ефективної реалізації потерпілим власних правомочностей, декларованих вітчизняним кримінальним процесуальним законодавством.

У зв'язку з цим, в роботі констатована нагальна необхідність внесення нормативних коректив до чинної редакції деяких статей кримінального процесуального закону, з огляду на актуалізацію питання щодо правильності моменту набуття постраждалою особою процесуального статусу потерпілого.

**Ключові слова:** потерпілий, процесуальний статус, міжнародні стандарти, стандарти Європейського Союзу, відмова у визнанні потерпілим, оскарження.

**Problem statement.** One of the negative consequences of the full-scale armed aggression of the Russian Federation against Ukraine was the appearance of an unprecedented number of new challenges in the field of protection of victims' rights in criminal proceedings and the need for urgent changes in approaches to both the investigation of criminal offenses and the implementation of priorities in the activities of the law enforcement system. Despite the facts of temporary restrictions of constitutional human rights and freedoms, rights and legitimate interests of legal entities caused by the existing threat, victims of unlawful acts have the right to receive adequate and comprehensive support.

In the context of the ongoing armed conflict and the lack of access to the temporarily occupied territories of Ukraine, the key task is to promote the active participation of victims in criminal proceedings, as they are an extremely valuable, reliable source of evidence for establishing the circumstances of crimes, bringing perpetrators to responsibility and ensuring the resumption of justice [1].

The conduct of criminal proceedings under martial law significantly enhances the relevance of the chosen topic, determines the focus on the formation of an effective system of guarantees of victims' rights and requires the creation of mechanisms that would ensure real protection of the rights of the victim, in particular, to compensation for damage caused to him as a result of criminal offenses caused by the ongoing hostilities in Ukraine [2, p. 28].

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**Analysis of recent research and publications.** In the national doctrine of criminal procedure, considerable attention has been paid to the issues of protection and safeguarding of the rights, freedoms and legitimate interests of the victim, regulatory regulation and improvement of the legal status at various stages of criminal proceedings in the following scientific works of S. E. Ablamsky, Y. P. Alenin, L. I. Arkusha, N. M. Akhtyrskaya, N. R. Bobechko, L. P. Vashchuk, V. V. Vvedenska, V. K. Voloshyna, O. P. Gerasymchuk, I. V. Hloviuk, M. I. Goshovsky, O. V. Gryshchuk, Y. M. Groshevyi, Y. O. Gurdjie, L. M. Gurtieva, V. A. Zhuravel, D. Y. Kavun, O. V. Kaplina, O. Y. Kostyuchenko, O. V. Krikunov, R. O. Kuibida, O. P. Kuchynska, L. M. Loboiko, T. O. Loskutov, T. V. Matiek, A. V. Murzanovskaya, V. T. Nor, T. V. Omelchenko, M. A. Ostrovskaya, S. I. Perepelytsia, D. P. Pysmennyi, V. G. Pozhar, P. M. Rabinovych, O. O. Solonyova, G. K. Teteriatnyk, I. A. Titko, M. I. Tlepova, A. S. Tokarska, V. V. Topchii, O. O. Torbas, O. Y. Khablo, Y. Y. Tsybal, O. G. Shylo, D. V. Yahunov, O. G. Yanovska and others.

At the same time, the pleiad of scholars who devoted theoretical and applied research to the unique status of the victim did not fully cover some aspects of the outlined topic, because in the context of dynamic European integration processes, including the reform of the criminal procedural legislation of Ukraine, the issue of creating and functioning of real effective mechanisms for ensuring and protecting the rights of vulnerable participants in criminal proceedings deserves special attention, and therefore need to be further developed in order to secure the necessary guarantees for victims that correlate with the standards of the European Union.

In view of this main guideline, it is advisable to eliminate the imbalance in the regulation of the rights of the victim in criminal proceedings, taking into account procedural gaps and defects in national legislation (which undoubtedly affects the level of effectiveness of the available legal instruments).

**The purpose of the article** is to study the situation in Ukraine in the context of ensuring the rights of victims in criminal proceedings, to analyze the strategic documents aimed at improving the legal status of the victim, and modern law enforcement practice, and also to consistently formulate the normative algorithms for leveling the problematic aspects of ensuring the rights of the victim in criminal proceedings under martial law.

**Presenting main material.** In a global study of the issues of conducting criminal proceedings in conditions of emergency legal regimes, it should be noted once again that the special regime of pre-trial investigation and trial in conditions of martial law, provided for in Section IX-1 of the Criminal Procedure Code of Ukraine (hereinafter – CPC), is certainly an exception to of the general procedure for carrying out criminal proceedings and should refer to the form of judicial proceedings with enhanced procedural guarantees for participants in criminal proceedings.

Under the provisions of part 2 of Art. 64 of the Constitution, certain restrictions on rights and freedoms may be imposed under martial law, specifying the duration of such restrictions. However, the rights and freedoms provided for in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63 of the Constitution cannot be restricted. The Law of Ukraine “On the Legal Regime of Martial Law” of May 12, 2015 contains similar provisions [3].

In context, recall that the priority tasks of criminal proceedings are, in particular, the protection of an individual, society and the state from criminal offenses, protection of the rights, freedoms and legitimate interests of participants in criminal proceedings (Article 2 of the CPC). It is fair to emphasize that traditionally, criminal proceedings are initiated to ensure the protection and restoration of violated or unlawfully restricted rights of victims of crimes and criminal offenses. Therefore, the outlined tasks can be accomplished through the development and implementation of effective legal mechanisms to compensate for the imbalance of powers of participants/parties.

The victim in criminal proceedings is endowed with a wide catalog of rights provided for by the criminal procedural law, however, as practice shows, there are a number of problems that need to be urgently addressed to ensure the observance and realization of victims' rights at various stages of criminal proceedings (in particular, the victim's condition (psychological, mental) in connection with the events dictated by the introduction of martial law, stay in the temporarily occupied territory, the presence/absence of the Internet during procedural actions, availability of audio and video telecommunication equipment and other procedural features that may significantly complicate or even make it impossible for the victim to exercise his/her rights).

Ukraine's current policy is focused on the implementation and high-quality realization of international standards for ensuring and protecting the rights of victims of various types of criminal offenses.

Undoubtedly, it should be borne in mind that in cases of martial law, the state has the right to derogate from certain international human rights obligations. Thus, p. 1 of Art. 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms states: “In time of war or other public danger threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under the present Convention only to the extent required by the exigencies of the situation and provided that such measures are not inconsistent with its other obligations under international law” [4].

In addition, the content of p. 1 of Art. 4 of the International Covenant on Civil and Political Rights states that “in time of public emergency in which the life of the nation is threatened and the existence of which is officially proclaimed, the States Parties to the present Covenant may derogate from their obligations under the present Covenant only to the extent required by the exigencies of the situation, provided that such derogations are not incompatible with their other obligations under international law, to the extent required by the exigencies of the situation, provided that such measures are not incompatible with their other obligations under international law and do not entail discrimination solely on the grounds of race, color, sex, language, religion or social origin” [5].

In turn, according to the provisions of Article 24 of the Law “On the Legal Regime of Martial Law”, in accordance with the International Covenant on Civil and Political Rights, in the event of martial law, Ukraine immediately notifies the States Parties to the Covenant through the UN Secretary-General of the restrictions on human and civil rights and freedoms that constitute a deviation from the obligations under the International Covenant, the extent of these deviations and the reasons for such a decision. In addition, the notification shall specify the date of termination of the deviations from the obligations under the Covenant. Ukraine shall notify the UN Secretary-General of changes in the limit of deviations from the obligations under the International Covenant or the duration of restrictions on rights and freedoms and the reasons for this decision in the manner prescribed by p. 1 and 2 of this Article [3].

The generalized result of the statutory regulation of the special regime of pre-trial investigation and court proceedings under martial law and the consequences of Ukraine's derogation from certain international obligations directly affect the possibility of timely and effective exercise by the victim of his/her rights declared by the national criminal procedure legislation. Despite the objectively determined inevitability of these processes, the existing problem of ensuring and protecting the rights, freedoms and legitimate interests of the victim in criminal proceedings appears in a new view and becomes extremely relevant during the martial law in Ukraine.

Taking into account the current realities, a Strategic Plan for the implementation of the powers of the prosecutor's office in the field of prosecution of international crimes for 2023–2025 was developed and approved by the General Prosecutor on September 15, 2023.

According to the provisions of this document, the Office of the General Prosecutor has strengthened coordination and consistent transparent cooperation with national and international partners to ensure institutional capacity, operational and technical efficiency to facilitate fast and impartial justice and prosecution of perpetrators. Accordingly, the Office of the General Prosecutor is taking the necessary measures to establish the Coordination Center for Victims and Witnesses Support, which is the beginning of the formation of a nationwide Mechanism for Supporting Victims and Witnesses of War and Other International Crimes in accordance with the Concept of its Development.

Taking care of the proper implementation of the basic principles of activity in the exercise of their competencies, the authorized representatives of the Prosecutor General's Office will: (a) provide support and assistance to victims at all stages of criminal proceedings, in particular to avoid re-traumatization; (b) ensure the guaranteed right of victims to participate in criminal proceedings.

Among the strategic goals, the tasks of facilitating the necessary support and protection of victims are proclaimed:

3.1. Implementation of a proactive approach to the identification of victims for the purposes of criminal proceedings for the prosecution of international crimes, using international cooperation tools for this purpose.

3.2. Implementation of gender-sensitive and victim-centered approaches in the activities of pre-trial investigation and prosecution bodies in accordance with international standards.

3.3. Improvement and effective use of mechanisms to ensure the safety of victims during pre-trial investigation and court proceedings.

3.4. Effective coordination with other state agencies and non-governmental organizations, as well as with authorized bodies of foreign countries and international justice institutions to strengthen support and protection of victims.

3.5. Establish and develop a Support Mechanism for Victims and Witnesses of War and Other International Crimes, including a referral mechanism based on the establishment of institutional arrangements between the Coordination Center for Victims and Witnesses, law enforcement agencies, ministries and departments, and other support services to take protection measures and comply with security mechanisms, provide consultations and other relevant assistance to these participants.

3.6. Implement specialized IT solutions to manage and effectively coordinate efforts to identify, protect and provide quality support to victims, which will also ensure effective communication between all parties involved in the identification, protection and support processes.

In addition, building a sustainable multi-vector partnership in this area requires ensuring constant interaction and exchange of information with national and international non-governmental organizations involved in the process of documenting international crimes and/or supporting victims.

Through effective cooperation between the prosecutor's office, pre-trial investigation agencies, national and international partners, the Office of the General Prosecutor guarantees: (a) expanding access to justice for victims at both national and international levels; (b) ensuring their protection and support [6]. It is believed that the declared procedures should be based on transparent criteria, which in the long term will ensure fair justice and effective protection of the rights, freedoms and legitimate interests of particularly vulnerable groups.

In correlation with the above policy document, the Concept for the Implementation of the Mechanism for Supporting Victims and Witnesses of War and Other International Crimes was adopted, and approved by the Order of the Office of the Prosecutor General "On the Organization of the Work of the Prosecutor's Office on Supporting Victims and Witnesses of War and Other International Crimes" of April 11, 2023, No. 103 [7], which will guarantee the successful implementation of European Union standards.

Thus, the task of the Support Mechanism for Victims and Witnesses of War and Other International Crimes is to take measures to ensure that victims can fully and effectively participate in criminal proceedings, are protected from secondary and repeated victimization, intimidation and retaliation, and receive the necessary support to facilitate their recovery, even in the situation of ongoing armed conflict and lack of access to certain territories by the Ukrainian authorities. It is in order to strengthen multidimensional protection of victims from psychological or physical harm, increase the level of activity and effectiveness of their participation in criminal proceedings, improve awareness of their rights, expand their access to justice, protection measures and support services, as well as to improve cooperation and communication between state authorities and non-governmental organizations that it is advisable to create a proper Support Mechanism.

The existing demand should be focused primarily on vulnerable victims of war crimes and other international crimes. At the same time, the vulnerability of each victim should be assessed individually based on personal characteristics, type and circumstances of a particular crime (this means developing standardized procedures for individual assessment of the risks of secondary and repeated victimization, intimidation, revenge and protection (prevention of physical and psychological risks)). Therefore, special attention should be paid to older persons and persons with special needs, victims of conflict-related sexual violence and torture, victims who have suffered serious bodily injuries, and family members of persons whose death was directly caused by the crime. In addition, children who are victims are always considered vulnerable.

To meet these urgent needs, the structure of the Support Mechanism is proposed: Coordination Center for Victims and Witnesses as a separate independent structural unit within the Prosecutor General's Office; coordinators for ongoing support of victims and witnesses who will act as part of the Coordination Center; Interagency Working Group to improve coordination and interaction between government agencies and non-governmental organizations [7].

More effective protection of victims in criminal proceedings in the context of the armed conflict will undoubtedly be facilitated by the timely provision of services to victims of criminal offenses on a voluntary and conference basis by victim support coordinators, such as those provided for by the Support Mechanism, such as: (a) informing victims about the assistance the coordinator can provide; (b) explaining to victims their rights in criminal proceedings; (c) assisting in obtaining legal advice and representation, including referrals to free legal aid centers; (d) familiarizing them with information on the status of pre-trial investigation and court proceedings to the extent determined by the criminal procedural legislation; (e) providing up-to-date information on the time, date, place and results of court hearings within the limits established by law; (f) informing victims of what to expect from the criminal justice system; (g) consulting on the risk and prevention of secondary and repetitive victimization, intimidation and retaliation; (h) referring victims to appropriate psychological, medical and social assistance services; (i) physical accompaniment in court; (j) providing special services for child victims, older persons and persons with disabilities; (k) assistance with temporary accommodation for those who need a safe place due to the imminent risk of secondary and/or repeated victimization, intimidation and retaliation; (l) enhanced services for victims of serious or especially serious crime; victims who are subjected to a criminal offense on a regular basis, are vulnerable or have been threatened or intimidated; (m) targeted and integrated support for victims of a number of specific categories, such as victims of sexual, gender-based or domestic violence, including counseling; (n) assistance in applying for payments to victims in need of emergency financial assistance, if a mechanism is developed by the competent state authorities [7]. We emphasize that the explanation of procedural and other rights to the victim should in no way be formal.

In order to work effectively with victims, premises with a sufficient level of security, confidentiality and functionality, as well as a comfortable atmosphere for psychological recovery of victims, should be equipped, in particular, by using pleasant lighting and colors, comfortable furniture and other decorative elements that have a calming effect on communication. Play areas should be arranged for interaction with child victims. In addition, victims should have access to printed materials that outline their rights, basic information about criminal proceedings, the roles of participants in the relevant process, the types of assistance that can be obtained, etc.

It is extremely important that the Support Mechanism will focus on the stages of reporting a criminal offense, pre-trial investigation, trial and post-trial, as the failure to recognize, ensure or violate the procedural rights and freedoms of the victim/survivor *de facto* are among the most traumatic factors that lead to the formation of derivative harm and secondary victimization, which are the source of the criminal justice system.

In this perspective, the issue of the moment when a victim acquires the procedural status of a victim is actualized. Compliance with this procedure is crucial for preventing secondary victimization, as the status not only gives a person the right to refuse to give explanations or testify against themselves (p. 1, Art. 63 of the Constitution of Ukraine, par. 6, p. 1 Art. 56 of the CPC) (allowing the victim to independently eliminate the possibility of causing repeated and/or additional psychological and emotional suffering arising from the recollection or reproduction of the circumstances of the criminal offense), but also provides them with a full catalog of procedural rights for active participation in criminal proceedings. Their timely implementation by the victim is an effective means of preventing secondary victimization, as it allows, through their actions and will, to restore the state and receive compensation and satisfaction when the perpetrator is brought to justice [8, p. 97].

According to p. 2 of Art. 55 of the CPC, the rights and obligations of a victim arise from the moment a person files a complaint about a criminal offense committed against him or her or an application for involvement in the proceedings as a victim. That is, the mechanism of acquiring the procedural status of a victim does not a priori require a separate procedural decision by the inquirer, investigator, detective, or prosecutor to recognize a person as a victim, but occurs by virtue of the victim's right to inform about the damage caused to him or her as a result of a criminal offense.

This aspect becomes more important during the period of the victim's greatest vulnerability – at the very beginning of criminal proceedings, since the automatic acquisition of the procedural status of a victim is a kind of guarantee to a person on behalf of the state that the violation of his or her rights, freedoms and legitimate interests will be recognized, and the legal status that existed before the commission of the criminal offense will be restored [8, pp. 97–98]. Thus, the introduced autodynamic procedure for acquiring the procedural status of a victim excludes the discretionary power of the investigator or prosecutor to grant this status in the case when a person, exercising his or her procedural right, independently files a statement, report of a criminal offense or application for involvement in the proceedings as a victim. In this case, there is no discretion, and the affected person receives the procedural status of a victim on the basis of a regulatory provision of the law – parag. 1, p. 2, Art. 55 of the CPC [8, p. 99].

At the same time, it is justified to state that only a person who has suffered moral, physical or property damage as a result of a socially dangerous act should acquire the procedural status of a victim in criminal proceedings (p. 1 of Art. 55 of the CPC). Therefore, if there are obvious and sufficient grounds to believe that a statement, report of a criminal offense or application for involvement in the proceedings as a victim was filed by a person who has not suffered moral, physical or property damage, the investigator or prosecutor shall issue a reasoned decision to refuse to recognize

the victim, which may be appealed to the investigating judge (p. 5 of Art. 55 of the CPC). Thus, the absence of the fact that a certain person has been harmed is reflected in the procedural decision, which must specify the content of the circumstances that are the basis for the decision, the motives for this action and their justification (par. 2, part 5, Art. 110 of the CPC). The intrinsic motivation of this document implies not only an analysis of the content of the statement/report received from the victim, but also an examination of the entirety of the evidence submitted in support of it and its thorough verification during the pre-trial investigation.

An illustrative example of the misinterpretation of these rules by some law enforcement officers (in this case, the investigator) is the decision of the investigating judge of the Sviatoshynskyi District Court of Kyiv: "On 07.12.2022, the investigator of the Sviatoshynskyi Police Department of the Main Directorate of the National Police in Kyiv, Senior Police Lieutenant PERSON\_5, issued a decision denying the motion of PERSON\_8 in criminal proceedings registered in the Unified Register of Pre-trial Investigations under No. 1202210008000035 dated 07.01.2022, referring to the fact that all the necessary investigative (search) actions are being carried out in the above criminal proceedings and the investigators see no grounds for recognizing PERSON\_4 as a victim. ... Thus, the decision of 07.12.2022 does not contain information about the content of the circumstances that are the basis for its adoption, only formally states that the investigator is conducting all necessary investigative (search) actions in the above criminal proceedings and the investigator sees no grounds for recognizing PERSON\_4 as a victim. Thus, the legislative requirements for the motivation of the decision were not met by the investigator when making it" [9].

The results of the theoretical and applied developments demonstrate that the obviousness and sufficiency of these grounds is an evaluative concept which is determined in each specific case based on the circumstances of the criminal offense, the characteristics of criminal proceedings and the internal conviction of the person who decides to refuse to recognize a person as a victim, and may consist in stating various facts that are relevant for this purpose. Therefore, the investigator or prosecutor must have a sufficient amount of factual data/information obtained in accordance with the requirements of the criminal procedure law, which undoubtedly establishes that the person initiating the criminal proceedings did not suffer moral, physical, or property damage as a result of the criminal offense. The foregoing makes it possible to summarize: the issue of recognizing a person as a victim/refusal to recognize a victim should not be within the discretionary powers of the investigator, investigator, prosecutor, since the relevant legislative provision establishes an unalterable obligation of competent entities to make an appropriate decision if there is sufficient evidentiary information that clearly confirms the actual absence of any type of harm caused to a person by a socially dangerous act [8, p. 99–100].

As an argument, we will use the ruling of the investigating judge of the Uzhhorod City District Court of Zakarpattia Oblast, which dismissed the appeal against the investigator's decision to refuse to recognize the victim and to oblige him to take certain actions: "According to the motivational part of the appealed decision, the investigator states that in the course of the pre-trial investigation of the said criminal proceedings, no factual data was obtained and there is no information that would prove that the applicant suffered moral, physical or property damage. ... Having examined the investigator's decision of 17.11.2023 to dismiss PERSON\_3's application for recognition as a victim, the investigating judge states that it contains the reasons on the basis of which the application was denied. Also, the investigating judge agrees with the investigator's arguments that during the pre-trial investigation, at the time the applicant filed his motion to recognize him as a victim in criminal proceedings, the last one did not pro-

vide adequate evidence that he had suffered property or moral damage as a result of a criminal offense, while the victim in the criminal proceedings was his wife" [10].

To some extent, the content of the decision of the investigating judge of the Leninsky District Court of Kharkiv to cancel the analyzed decision looks exemplary: "On 03/31/2023, PERSON\_3 applied to the investigator with a statement of recognition as a victim in criminal proceedings No. 12022221220000307 of 03/18/2022. However, on 24.04.2023, PERSON\_5, a senior investigator of the Special Investigation Department No. 2 of the Kharkiv Regional Police, issued a decision to refuse to recognize her as a victim, given that the pre-trial investigation body has no grounds to involve PERSON\_3 as a victim at this time. ...

According to Article 19 of the Constitution of Ukraine, public authorities and local self-government bodies and their officials are obliged to act only on the basis, within the limits of their authority and in the manner provided for by the Constitution and laws of Ukraine. Article 24 of the CPC of Ukraine guarantees the victim the right to appeal against procedural decisions, actions or omissions of the investigating judge, prosecutor, and investigator in the manner prescribed by this Code. This right is one of the most important guarantees of protection of citizens' rights and freedoms from violation by both the bodies conducting pre-trial investigation and judicial control in criminal proceedings and other persons involved in them.

... In order to ensure this right, the investigator is obliged to ensure the possibility of its realization, that is, to explain to the victim the procedure for appeal: how, in what cases and to whom the applicant can apply to eliminate the violations committed against him. ...

According to par. 33 of the judgment of the European Court of Human Rights "Shmalko v. Ukraine" and par. 44 of the judgment of the European Court of Human Rights "Dalban v. Romania", the term "victim" within the meaning of Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms means a person directly affected by an act or omission that is the subject of judicial proceedings. At the same time, a violation of the Convention may occur even in the absence of damage. ...

The acquisition of victim status by an individual or legal entity in criminal proceedings is based on a simultaneous set of the following conditions: actual (the criminal offense caused the relevant damage) and formal (filing a statement of a criminal offense against them or a statement of involvement in the proceedings as a victim). The law does not provide for the verification, consideration and resolution of such an application, so a person acquires the status of a victim automatically if the above conditions are met.

A person acquires the procedural status of a victim only on the basis of a free expression of the person's will, which takes place in an active form. The procedural form of such an expression of will may be: (a) submission by a person of a statement about the commission of a criminal offense against him/her, which is subject to registration in the URPTI and serves as a prerequisite for the commencement of a pre-trial investigation; (b) submitting an application for involvement in the proceedings as a victim, which is subject to mandatory acceptance and registration. Such an application must contain data on the victim (individual or legal entity), the criminal proceedings to which he or she is to be involved, indication and justification of the grounds for acquiring the status of a victim, and a clearly expressed request to be involved in the criminal proceedings as a victim. The application is submitted to the body or official who is currently conducting the criminal proceedings: during the pre-trial investigation – to the investigator, prosecutor, during the trial – to the court. In the absence of an expression of will to recognize a person as a victim in criminal proceedings, such person cannot be recognized as a victim. ...

At the same time, having examined the investigator's decision of 24.04.2023, the investigating judge concludes that it

does not meet the requirements of p. 5 of Art. 110 of the CPC. The mentioned resolution contains only references to the provisions of procedural legislation and the fact that there are currently no grounds for involving PERSON\_3 as a victim, while there are no motives on the basis of which the investigator came to such a conclusion, and, accordingly, no proper justification for this. Thus, the investigating judge concludes that the investigator's decision of 24.04.2023 does not correlate with the general requirements of p. 5 of Art. 110 of the CPC, is not properly motivated, which deprives the investigating judge of the opportunity to verify the compliance of the mentioned decision with the rules of criminal procedure legislation" [11].

In addition, when examining the possibility of appealing to the investigating judge against the decision of the prosecutor, investigator, or coroner to refuse to recognize a victim (par. 5, part 1, Art. 303 of the CPC), it is necessary to support the position that emphasizes that: (1) the abolition of this resolution, *ipso facto*, gives the applicant the procedural status of a victim, since it restores the effect of the normative provision of parag. 1, part 2, Art. 55 of the CPC; (2) the name of the decision "on refusal to recognize a victim" (part 5 of Art. 55 of the CPC) can be considered incorrect and it would be more accurate to call this decision "on deprivation of the procedural status of the victim", since the decision must be based on sufficient evidence that will obviously establish the absence of harm in the future, and verification of information about the harm caused to a person cannot be carried out at once, and during this period of time the person will *ipso jure* be in the procedural status of the victim [8, pp. 100–101]. The latter clearly indicates the need to amend the current version of p. 5 of Art. 55 of the CPC, in which the phrase "the investigator or prosecutor shall issue a reasoned decision to refuse to recognize the victim" should be replaced with a substantially more correct construction – "the inquirer, investigator or prosecutor shall issue a reasoned decision to deprive a person of the procedural status of a victim".

Thus, the imperfection of the wording used by the legislator and the point gaps in the regulatory framework encourage the development of scientifically sound proposals to the current criminal procedure legislation, which, in their entirety, will ensure the implementation and effective functioning of the mechanisms for resolving these situations in criminal proceedings.

**Conclusions.** To summarize, it should be emphasized that a comprehensive improvement of the legal instruments for ensuring the rights of participants to criminal proceedings in accordance with the unified system of international standards requires urgent amendments to the thematically oriented national legislation, which will allow to effectively resolve the issue of compensation for damage to a victim of a criminal offense caused by the hostilities in Ukraine and will help to increase the victims' trust in law enforcement and judicial authorities of the State. In the present difficult realities, this problem is of such a magnitude that assistance to numerous victims should be organized at the highest state level.

The scientific research of some key aspects of the presented issues and forecasting of the prospects for approximation of Ukrainian legislation to the standards of the European Union leads to the conclusion that the development of the existing range of procedural guarantees of the rights, freedoms and legitimate interests of such a participant in criminal proceedings as a victim should include the following components: (a) systematic extension of the scope and content of certain rights and freedoms of victims to ensure the practical implementation of the selected protection measures; (b) creation of an accessible, understandable and reliable legal mechanism for protection and real reinstatement of the legal status of the named participant in criminal procedural relations (or transformation of the existing mechanism for its flexibility and efficiency).

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