

CONCEPTS, FORMS, TYPES AND MAIN CATEGORIES OF HUMAN RIGHTS COMMUNICATION OF THE VICTIM IN CRIMINAL PROCEEDINGS

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Abstract. The paper examines the problem of human rights communication of the victim in criminal proceedings. The paper defines the doctrinal concept of human rights communication of the victim, its forms, types, and the main categories, which include the communicative position of the victim, communicative equality, communicative guarantees, and communicative barriers.

The authors of this paper highlight the current criminal procedure legislation should guarantee the victim's activity during the pre-trial investigation and court proceedings. In this regard, it becomes relevant to consider the problems of timely provision, protection, and effective restoration of the rights, freedoms, and legitimate interests of the victim in criminal proceedings and the creation and improvement of the system of communicative guarantees.

The paper emphasizes that the criminal procedure activity of victims in criminal proceedings is a process when they, their representatives, or legal representatives implement the victim's communicative position as an act of conscious will. This process is defined by communicative guarantees, is limited by communicative barriers, and determines the implementation of human rights communication of the victim in criminal proceedings on the basis of communicative equality.

Keywords: criminal proceedings, victim, communication, criminal procedure communication, human rights communication, protection of the victim's rights.

INTRODUCTION

The assertion and enforcement of human rights and freedoms are the primary duties of the state, enshrined in Article 3 of the Constitution of Ukraine. Consequently, the authors argue that the protection of the victim's right to communication in criminal proceedings is one of the special legal guarantees for the victim to exercise legal rights and legitimate interests or restore them in case of violation.

Criminal procedure legislation contains information (about the criminal procedure activities of the victim in criminal proceedings in particular), the material means of preservation of which are the sources of criminal procedural law, including the Criminal Procedure Code of Ukraine (hereinafter - CPC), the case law of the European Court of Human Rights (hereinafter - ECtHR), the case law of the Supreme Court, and the decisions of the Constitutional Court of Ukraine. Thus, when it comes to communication in criminal proceedings which makes criminal procedure activity of the victim possible, it becomes clear that these are processes related to lawmaking, law enforcement, and law enforcement interpretation before, during, and after the application of the criminal procedure rule. Communication, therefore, ensures information transmission, processing, and transformation. Human rights communication of the victim of a criminal offense should ensure information transformation into such forms of their criminal procedure activity, the purpose of which should be the protection of the rights and legitimate interests of the victim in criminal proceedings. Since the protection of rights and legitimate interests of the victim has priority importance in criminal proceedings, human rights communication of the victim is an indispensable and important component of effective criminal procedure activities in this area. Human rights communication between the victim and their representative includes transfer, processing, discussion, and other transformations of the information received into criminal procedure activity of the victim in order to protect their rights in criminal proceedings.

Enforcement of the victim's right to procedure communication in criminal proceedings is an urgent research issue dictated by the need to ensure the following: the victim's right to equal participation in criminal procedure communication, determined by their procedural status in criminal proceedings; the protection of the victim from secondary victimization; the effective mechanism for the legal protection of the rights and legitimate interests of the victim in criminal proceedings as one of the main tasks of criminal justice; the protection of the victim's rights by providing them with free legal assistance in cases determined by law; compensation for damage caused to the victim by a criminal offense; the security of the victim during criminal proceedings; the effective appeal by the victim of decisions, actions, or inaction of the investigator, prosecutor, investigating judge, or court; rights and legitimate interests during the recognition of a person as a victim in criminal proceedings; effective support of the state prosecution in court in case of refusal of the prosecutor to support the state prosecution; the rights and legitimate interests of the victim in criminal proceedings in the form of a private prosecution; the rights and legitimate interests of the victim during the conclusion of agreements in criminal proceedings; the rights and legitimate interests of the juvenile victim in criminal proceedings; the rights and legitimate interests

of the victim's successor in criminal proceedings; the rights and legitimate interests of the victim in pre-trial, court, and review proceedings; the rights and legitimate interests of the victim in criminal proceedings under martial law (Rakipova, 2021).

MATERIALS AND METHODS

The methodological framework of the research involves a set of philosophical and general scientific and special scientific methods of cognition, such as dialectics, analysis and synthesis, structural and functional analysis, and axiological approach. Dialectics allowed the authors to study such concepts as communication in criminal procedure legislation and the victim's right to it. The author also used this method to clarify the essence of human rights communication of the victim in criminal proceedings in the plane of interrelations and interdependencies between state and legal phenomena and public life in the context of a communicative criminal procedure paradigm. Analysis and synthesis helped to examine features, forms, and types of human rights communication of the victim. The authors resorted to structural and functional analysis to determine the main categories related to the human rights communication of the victim. The axiological approach provided for the definition of the concept of communicative equality.

RESULTS AND DISCUSSION

A victim implements human rights communication through the manifestation of the criminal procedure activity in criminal proceedings, and criminal procedure activity, in turn, acts as a catalyst for the beginning, change, or termination of criminal proceedings. The examples are as follows:

1. The victim's statement on a committed criminal offense, which initiates criminal proceedings, leads to the entry of the relevant information into the Unified Register of Pre-trial Investigations and the beginning of the pre-trial investigation (Part 1 of Art. 214 of the CPC of Ukraine);
2. Failure to enter information into the Unified Register of Pre-trial Investigations upon the victim's statement on a committed criminal offense allows the victim to exercise their right to appeal against the inaction of the investigator or prosecutor during pre-trial proceedings (Part 1 of Art. 303 of the CPC of Ukraine);
3. The renunciation of the suit by the victim or their representative (except for criminal proceedings for a criminal offense related to domestic violence) allows the prosecutor (court) to cease the criminal proceedings (Part 1 of Art. 284 and Part 7 of Art. 284 of the CPC of Ukraine).
4. If the prosecutor refuses to support the prosecution in court, and the victim fails to attend court proceedings repeatedly without valid reasons or without notification of such reasons, the criminal proceedings on the relevant charge can be ceased (Part 2 of Art. 284 and Part 6 of Art. 340 of the CPC of Ukraine);
5. In case of a victim's appeal of non-compliance with a reasonable time of pre-trial investigation, a superior public prosecutor is obliged to consider this appeal within three days after its submission and, if there are grounds for its satisfaction, provide the relevant prosecutor with mandatory instructions

on the terms of certain procedural actions or procedural decisions (Part 2 of Art. 308 of the CPC of Ukraine);

6. If the victim supports the prosecution, but the prosecutor refuses to prosecute in court, the presiding judge should provide the victim with sufficient time to prepare for trial (Part 3 of Art. 340 of the CPC of Ukraine);

7. In case of the victim's statement of a civil suit in criminal proceedings, the court shall entertain a civil suit according to the rules established by the CPC (Part 5 of Art. 128 of the CPC of Ukraine);

8. In some cases, the criminal procedure activity of the victim in criminal proceedings can act as a catalyst for the initiation, amendment, or termination of criminal or civil procedure because, for example, the failure of the victim to file a civil suit in criminal proceedings leads to the possibility of exercising the victim's right to bring such a claim in civil proceedings (Part 7 of Art. 128 of the CPC of Ukraine);

9. The conclusion of a reconciliation agreement leads to a restriction of the victim's right to appeal against a sentence in accordance with the provisions of Articles 394 and 424 of the CPC of Ukraine. The conclusion of a reconciliation agreement shall also be the ground for deprivation of the victim's right to demand further prosecution of the person for the relevant criminal offense and change the claims for compensation for the inflicted damage (Part 1 of Art. 473 of the CPC of Ukraine);

10. In case of the victim's motion to explain the court decision, the court shall clarify the decision adopted by it by the separate ruling (Art. 380 of the CPC of Ukraine).

When it comes to the problem of human rights communication of the victim of a criminal offense, it is necessary to study the main categories of such communication that are implemented through the prism of the victim's criminal procedure activity. The authors of this article believe these categories are the communicative position of the victim, communicative equality, communicative guarantees, and communicative barriers. It becomes relevant to consider the problems of timely provision, protection, and effective restoration of the rights, freedoms, and legitimate interests of the victim in criminal proceedings and the creation and improvement of the system of communicative guarantees. In view of the above, the current criminal procedure legislation should guarantee the victim's activity during the pre-trial investigation and court proceedings. The legality of the implementation of criminal procedure activity of victims provides that their actions in criminal proceedings to protect their rights and legitimate interests are consistent with the requirements of sectoral (criminal procedure) legislation.

The regime of the legal protection of a person in criminal proceedings is one of the most important purposes of sectoral procedural regulation. Its creation and strengthening provide for a system of means that would ensure the human rights activities of the law enforcer in criminal proceedings and the formation and implementation of an active legal position of a participant in a criminal case. These means should also ensure the legal protection of the criminal procedure environment or its social purpose, which is considered within the framework of the conflict purpose of law (Hurdzhi, 2008).

Reflecting on the preconditions for the emergence of criminal procedure activity of the victim, communicative barriers to the origin and implementation of such activity arise as a separate discussion issue. Communicative

barriers are the personal problems of the victim and the problems caused by the lack of an effective procedural mechanism for the victim to exercise their legal rights and interests that prevent their criminal procedure activity at a particular stage of criminal proceedings or before its commencement. It is a relevant sectoral issue to identify and examine numerous typical communicative barriers in the implementation of the legitimate interests of a person and generalize their causes and ways to overcome them.

In order to analyze the concept of the communicative position of the victim, it is necessary to note that the term “position” usually refers to standpoint or attitude toward something and the role of something (Kovalova, Kovryha, 2005). The legislator enshrined the term “legal position” directly in the criminal procedure legislation. Thus, Part 1 of Art. 22 of the CPC of Ukraine determines that criminal proceedings should be conducted based on an adversarial approach, which envisages independent assertion by the prosecution and defense parties of their legal positions, rights, freedoms, and legitimate interests by means provided for by the CPC. The term “position” can be found in the following articles of the CPC of Ukraine: Part 2 of Art. 292 (“...position regarding the possibility to ensure a person’s participation in a trial based on their state of health”); Part 3 of Art. 349 (“...whether there is any doubt about the voluntary nature of their positions”); Part 2 of Art. 364 (“...each of them justifies their position in a particular part of the charges”); Part 1 of Art. 419 and Part 1 of Art. 442 (“...generalized statement of the position of other participants in the court proceedings”).

N. I. Tlepova explains the legal position of the victim in criminal proceedings as their conscious attitude to a criminal offense committed against them. It manifests in a statement of a criminal offense, which, in turn, is the basis for opening the pre-trial investigation by the relevant persons (Tlepova, 2016).

V.V. Vapniarchuk characterizes the essence of the legal position of the subject of criminal procedure evidence. The researcher interprets the legal position as a conscious conviction of the truth of one’s understanding of the problem of evidence and its specific manifestations (elements) in criminal proceedings. This conviction is due to a particular motive and goal, is formed on a specific evidence base, and is publicly expressed (demonstrated) both in the form of its own legal assessment and assessment by other subjects of evidence (Vapniarchuk, 2015).

A victim can hold both an active and passive legal position. An active legal position means a victim files an application for a criminal offense with the investigator or prosecutor, which will be the basis for the initiation of criminal proceedings. A passive legal position occurs when a victim fails to file such an application, which makes it impossible for the investigator or prosecutor to initiate proceedings in the form of a private prosecution.

The authors of this article hold that the victim’s communicative position is a consciously formed conviction and will regarding the possibilities and desire to exercise their rights and protect legitimate interests in criminal proceedings.

The Big Ukrainian Dictionary defines a guarantee as an assurance in something or a promise of something (Busel, 2005). The legal dictionary defines guarantees as socio-economic conditions and political and legal means that ensure the exercise of the rights of a person (Babii, Burchak, Koretskyi, & Tsvietkov, 1974).

In the general theory of state and law, guarantees are defined as conditions and specific means that ensure the actual exercise of human rights and freedoms (Tsvik, Tkachenko, & Petryshyn, 2002). P. M. Rabinovich argues that legal (special) guarantees cover all legal remedies and methods by which the rights and freedoms of citizens are exercised and protected, cases of their violation are eliminated, and violated rights are restored (Rabinovych, 2004).

The authors of this article share the opinion of V.V. Vvedenska, who studied the etymology of the word “guarantee” and emphasized that its meaning as “protection” was unreasonably ignored by many legal scientists. Moreover, the researcher aptly notes that this value reflects the modern process of exercising the rights and freedoms granted to a person most fully. Vvedenska also defines legal guarantees as a state duty to create a system of prerequisites, conditions, means, and methods enshrined in the legislation that provide everyone with equal legal opportunities to identify, acquire, and exercise their rights and freedoms, their actual implementation, and reliable protection (Vvedenska, 2009).

M. M. Mykheienko, V. T. Nora, and V. P. Shybiko believe procedural guarantees are legal means for ensuring the tasks of criminal proceedings and protecting the rights and legitimate interests of their participants. According to the researchers, procedural guarantees include the procedural form, the principles of the criminal procedure, the procedural obligations of its subjects, and the measures of criminal procedure compulsion (Mykheienko, Nora, & Shybiko, 2003).

O.P. Kuchynska defines criminal procedure guarantees for the protection of human rights and freedoms as the legal mechanism for implementing a system of legal means in the field of criminal justice by competent authorities, officials, and citizens. These means are aimed at protecting, ensuring, and safeguarding the constitutional rights, freedoms, and interests of a person and a citizen who are victims of a crime, protecting a person and a citizen from illegal and unfounded accusations or convictions, and restoring such rights and freedoms in case of their violation (Kuchynska, 2012).

Guarantees of the implementation of the rights and legitimate interests of the victim in criminal proceedings should be understood as a set of procedural methods and means provided for in law that allow the participants in criminal proceedings to strictly observe, implement, and apply the provisions of legal norms to protect the rights, freedoms, and legitimate interests of the victim and restore them in case of violation. Furthermore, the authors of this article believe it is necessary to distinguish the communicative guarantees of the victim's rights in criminal proceedings, which are based on the ways and means ensuring their implementation. After all, the legal status of the victim “remains only a declarative provision if the state does not have a legal mechanism for guaranteeing the implementation of rights enshrined in law” (Ab-lamskyi, 2015).

The authors of this article believe that the system of mutually conditioned and complementary communicative guarantees of the rights and legitimate interests of the victim in criminal proceedings should include the following:

- ensuring the victim's right to be represented at the level of the fundamental principles of criminal proceedings;
- ensuring the victim's right to protection from secondary victimization

at the level of the fundamental principles of criminal proceedings;

- the obligation of the investigator, prosecutor, investigating judge, and court to inform the victim about the rights provided for by the CPC and explain these rights;

- the obligation of the investigator, prosecutor, investigating judge, and court to recognize a person who has suffered from a criminal offense as a victim in criminal proceedings and to give a ruling;

- the obligation of the investigator, prosecutor, investigating judge, and court to decide on refusal to recognize as the victim or refusal to involve in the proceedings as a victim no later than 24 hours from the moment of acceptance of the victim's application of a criminal offense committed against them or the application for involvement in the proceedings as a victim;

- the obligation of the investigator and prosecutor to ensure the right of the victim to carry out representation as intended;

- ensuring compensation for damage caused to the victim by a criminal offense or other socially dangerous act, including at the expense of the State Budget of Ukraine;

- creation of the State Compensation Fund to compensate victims for damage caused by a criminal offense;

- ensuring the victim's right to mediation during pre-trial and judicial proceedings and in the execution of a court decision;

- ensuring the competitiveness and inadmissibility of narrowing the victim's right to procedure communication at all stages of criminal proceedings (Rakipova, 2021).

Based on the above, the communicative guarantees of the victim's rights in criminal proceedings can be defined as a system of legally defined and fixed means designed to ensure the protection and exercise of the rights and legitimate interests of the victim in criminal proceedings on the basis of communicative equality. Communicative barriers and guarantees are inextricably connected, which means they are interdependent on each other.

Axiologization of communication processes in criminal proceedings, in particular, human rights communication of the victim, is designed to create a communicative vision of values within a specific legal reality and the relationship of the victim (as a carrier of values) with this legal reality. In other words, such axiologization should create an "image of the victim" in criminal procedure law, where value attitudes constitute an integral part of such an image.

Exploring values as the semantic basis of human existence, which guides and motivates their life, activity, and actions, it should be noted that "legal values have, first of all, anthropological meaning and are filled with those meanings that a person puts in them" (Hryshchuk, 2007).

According to anthropological understanding (Greek *ανθρωπος* – man, *λογος* – science), law is a system of formally binding general rules of conduct of people. They are established or sanctioned and provided by the state, express the will of the dominant part of a socially heterogeneous society, and regulate social relations in accordance with this will and common social needs.

The subject area of legal anthropology involves, first of all, legal rules, relations, and ideas, ways of regulating conduct and resolving conflicts, analysis of the individual's autonomy in society and the state, and the balance between public and private aspects in law.

When it comes to the normative dimension of the existence of legal

values (including the “human dimension”), it is necessary to emphasize that normativity can exist in the form of a norm, and it is then perceived as an interpersonal communicative act. Such a communicative act contains a prescription, assumes active or passive conduct of its addressee, and has a clearly expressed imperative or dispositive character (Horobets, 2012).

Communicativeness is naturally inherent in the criminal procedural rules itself, and the criminal procedure law as a regulator of relations in society has a value-based nature.

The comprehension of normativity within a situational context essentially removes the antinomy between norm and value since they begin to act in one plane or perspective. The norm acts as a means of strategic communication, and the value represents a tool for communicative action (Rabinovich, 2007).

The comprehension of criminal procedure law as a means of communication is a step toward modern rational standardization of legal relations, where the criminal procedural rule acts as the final stage in the formation of value in the public consciousness. The basis of each criminal procedural rule is a particular value laid down by the lawmaker that must be guaranteed and protected. The basis of criminal procedural rules determining the victim’s right to procedure communication also includes fundamental values that fill their procedural status with deep meaning. Moreover, the authors of this article believe that communicative equality may be the main of these values.

The effectiveness of communication in law, including criminal procedure law, is determined by “the level of implementation of the normative communicative principles.” These principles are justice, equal rights, and an adequate duty to create symmetrical relationships and formal tolerance that provide guarantees for ensuring fundamental human and civil rights (Tokarska, 2008).

The authors of this article believe communicative equality as a normative sectoral (criminal procedure) value is manifested and can be examined through the prism of the evolution of the “image of the victim” in criminal procedural law since it represents one of its value-based components. The creation of such an image is a complex issue, and its examination within the legal human understanding indicates the need to do the following: to synthesize the valuable experience in the aspect of human rights communication of the victim in criminal proceedings; to ensure a communicative balance of “legal declaration and legal support”; to ensure a communicative balance of “public-private”; to study the fundamentals of communicative criminal procedure activity of the victim in criminal proceedings; to examine the victim’s right to procedure communication in criminal proceedings as a fundamental right, the enforcement of which means the protection of their rights and legitimate interests; to provide a dynamic interpretation of sectoral (criminal procedure) rules that enshrine the procedural status of the victim in criminal proceedings (Rakipova, 2021).

The authors studied the modern “image of the victim” in criminal procedural law and emphasized the need to enshrine communicative equality as a constitutive value that should be provided by the lawmaker. In order to protect the rights, freedoms, and legitimate interests of the victim in criminal proceedings, communicative equality should mean the possibility provided by the criminal procedure law for the victim and their representative to communicate in the proceedings on an equal footing with the defense. The image

of the victim in criminal proceedings should not be perceived as an image of a “double” victim (a victim not only of a criminal offense but also of various gaps/collisions, legal and technical errors of the criminal procedure law). The victim should not undergo secondary victimization during criminal proceedings, and the “image of the victim” in criminal proceedings is associated exclusively with the values of justice, equality, due process of law, and the rule of law.

In the context of the problem of defining the concept of the victim’s right to procedure communication as an axiological paradigm, communicative equality is a normative sectoral (criminal procedure) value characteristic of positive law. It fills up the concept of “the victim’s right to procedure communication” and “human rights communication of the victim” with value in criminal proceedings. Communicative equality should mean the possibility provided by the criminal procedure law for the victim to communicate in an adversarial criminal process on an equal footing with the defense.

The form of human rights communication of the victim in criminal proceedings is an external expression of the exercise of the victim’s rights, procedurally provided for by the criminal procedure law, which is an organizational condition for the existence of these rights. The authors hold that such forms of human rights communication of the victim that reproduce the external manifestation of the exercise of the victim’s rights in a way provided by law are written (including electronic), direct (oral), mixed (verbal and non-verbal, including remote), and implied forms. An example of a written form of communication of the victim may be a statement of criminal offense or a civil claim in criminal proceedings. As for electronic form, the example can be a submission of procedural documents using the Unified Judiciary Information Telecommunication System and (or) its separate subsystems (modules)². An oral form of communication involves, for example, giving a speech in court debates or expressing a replica; an example of a mixed one can be testimony during pre-trial and court proceedings. A remote form of communication can be court proceedings held in videoconference mode. An example of an applied form can be a repeated non-attendance of court proceedings by a victim summoned in compliance with the procedure established by the CPC, which is deemed a victim’s refusal to support a prosecution and entails the closure of criminal proceedings on the accusation concerned (Part 6 of Art. 340 of the CPC of Ukraine). Another example of the applied form is a case when a person who has suffered damage caused by a criminal offense is in a state that makes it impossible to file an application for a criminal offense against them or an application for involvement in proceedings as a victim.

Types of human rights communication of the victim in criminal proceedings as its structural components are logically ordered ways of implementing forms of human rights communication. They are consistent with the legally regulated rights of the victim in criminal proceedings. The authors of this article determine the following types of human rights communication of

² According to the draft law of Ukraine, “On Amendments to the Criminal Procedure Code of Ukraine on Ensuring the Phased Implementation of the Unified Judiciary Information Telecommunication System,” as of January 10, 2023, procedural documents in electronic form can be submitted to the court by the parties to the case using the Unified Judiciary Information Telecommunication System and (or) its separate subsystems (modules) in the manner prescribed by this system and (or) the provisions defining the procedure for the functioning of individual subsystems (modules) of this system. In case of submission of documents to the court in electronic form, the participant is obliged to provide evidence of sending copies of the documents sent using the Unified Judiciary Information Telecommunication System and (or) its separate subsystems (modules) to other participants of the case, who do not have an official e-mail address, by registered mail with notification of delivery. If other participants in the case have official electronic addresses, copies of such documents are sent to the specified persons using the Unified Judiciary Information Telecommunication System and (or) its separate subsystems (modules) in electronic form.

the victim: mandatory participation of the victim's representative in criminal proceedings in cases determined by the CPC of Ukraine; motion of the victim to involve their representative by the investigator, prosecutor, investigating judge, or court for public representation; involvement of the victim's representative to carry out public representation by the investigator, prosecutor, investigating judge, or court at their discretion if the circumstances of the criminal proceedings require the participation of the representative, but a victim did not involve the representative; deposition of the testimony of underage victims of a crime against sexual freedom and sexual inviolability in order to protect them from secondary victimization; mediation in criminal proceedings; the creation of special confidential victim support services in order to provide them with access to free psychological counseling and social and legal assistance after a criminal offense.

CONCLUSIONS

Human rights communication of the victim, their representative, and legal representative, which must be provided on the basis of a victim-centered approach³, means the possibility to exercise the right to procedure communication and effectively exercise and protect their rights and legitimate interests or represent them by the relevant participants in criminal proceedings. Human rights communication is the exchange of information significant for the procedure through which the victim, their representative, legal representative, or legal successor protects their right in criminal proceedings and demonstrates criminal procedure activities.

The characteristic features of human rights communication of the victim in criminal proceedings are as follows:

1. It is carried out at all stages of the criminal process and in special procedures of criminal proceedings;
2. It helps to ensure the rights and legitimate interests of the victim and their successor;
3. The subjects who carry out it are the victim, their representative, legal representative, and successor;
4. It is characterized by specific forms and types of implementation.

The criminal procedure activity of victims in criminal proceedings is a process when they, their representatives, or legal representatives implement the victim's communicative position as an act of conscious will. This process is defined by communicative guarantees, is limited by communicative barriers, and determines the implementation of human rights communication of the victim in criminal proceedings on the basis of communicative equality.

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³ Such an approach implies that victims, their protection (including from secondary victimization), and their interests should take a higher priority in the criminal process (see EUAM proposals for amendments to the Criminal Procedure Code: <https://www.euam-ukraine.eu/ua/news/latest-news/euam-launches-project-to-strengthen-crime-victims-rights/>).

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