



Rights of Victims of Violent Crimes in Ukraine:

International Standards and National
Practices Research Summary

**Rights of Victims of Violent Crimes in Ukraine:
International Standards and National Practices
(Research Summary)**



The research has been conducted by the Expert Center for Human Rights.

Rights of Victims of Violent Crimes in Ukraine: International Standards and National Practices / A. Orlean and others; V. Chovgan (Ed.), Kyiv: Publishing House “ArtEk”, 2020.

Authors:

Andriy Orlean, Dr. Habil., Associate Professor

Tetiana Pavliukovets, Head of Criminal and Criminal Procedure Law Practice at the Law Firm “Everlegal”

Ievgen Krapyvin, Expert of the Centre of Policy and Legal Reform

Dmytro Lotiuk, Consultant of the Prosecutors Training Center of Ukraine

Vadym Chovgan, Doctor of Public Law, Expert in the Sphere of Penitentiary Law

Edited by:

Vadym Chovgan

With the support:

Judicial Legal Newspaper (information partner)

Kyiv Regional Center for Free Legal Aid

Regional Center for Free Legal Aid in Kyiv City

Rivne Regional Center for Free Legal Aid

Expert-Phychologist Serhiy Volochai



The research has been conducted with the financial support of the European Union in frames of the EU Project “Pravo-Justice”. Its content is the responsibility of the authors of the research and does not reflect the views of the European Union.

© Expert Center for Human Rights, 2020

© A. Orlean, T. Pavliukovets, Ie. Krapyvin

D. Lotiuk, V. Chovgan, 2020

Content

Introduction	4
Methodology.....	7
Section 1. Victims participation in the process of investigation and trial	8
1.1 Initiation of an investigation.....	8
1.2 Acquiring the status of a victim in criminal proceedings.....	9
1.3 Victims’ awareness about the rights, procedures, and progress of investigation	10
1.4 Legal assistance to victims.....	11
1.5 Collection of evidence and participation of the victim	12
1.6 Appeals against decisions of the pre-trial investigation body and the prosecutor.....	13
1.7. Conclusion of agreements with the defendant	14
1.8 Participation of victims in court proceedings	14
Section 2. Protection of victims	15
2.1. International standards on the protection of victims	
2.2. National legislation and practices of the protection of victims	
Section 3. Victim Support	16
3.1. Psychological support	
3.2. Material support	
3.3. Medical support	
Section 4. Compensation	18
4.1. International standards and national legislation	
4.2. National practices of compensation	
Conclusions and recommendations	

INTRODUCTION

Progressive criminal justice systems are increasingly paying attention to the need to protect victims psychologically, physically, financially and legally. The so-called “victim-oriented approach” is becoming a popular tendency. This approach assumes that the victim, his/her protection and interests should be more prioritized in the criminal process. Such an approach requires balancing of this process taking into account victims’ interests, especially where the focus has been on the offender.

In the post-Soviet countries, the retributive system still prevails: the key is the retribution to the offender and bringing him to justice. However, under such a system, victims of crime and their violated rights remain in the shadow.

Ukrainian law contains a wide range of victims’ rights allowing them to actively participate in the investigation of crime and subsequent trial. However, in practice many of them remain a declaration. Moreover, the national criminal justice system sometimes not only does not restore violated rights, but also causes to victims repeated psychological trauma – secondary victimization. The very concept of protecting the victim from secondary victimization is unknown to the Ukrainian law and practice.

Of all the offences, violent crimes have the most devastating consequences. The right to life and physical integrity is fundamental, and its violation has particularly serious consequences for victims, their relatives and society as a whole. Moreover, the process of investigating these crimes carries the high risk of secondary victimisation¹. It can cause moral suffering of victims who are forced to experience the negative psychological consequences of the crime over and over again².

The legal concept of violence has been constantly changing. At present, it covers not only physical but also psychological, economic, sexual and other violence. However, the Criminal Code of Ukraine does not contain a separate list of violent crimes. Therefore, for the purposes of this study, we analysed the state of protection of vic-

¹ Secondary victimisation means the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim (Paragraph 1.3. of the Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims). In other words, secondary victimisation is suffering and psychological discomfort caused in the process and in connection of criminal proceedings. Examples of secondary victimisation are excessive number of questionings that make the victim revive in the memory the circumstances of the crime, non-delicate questioning on intimate details, imposed conversation and meetings with the perpetrator etc.

² Chovgan V., Kristkova V. Why victims of crime in Ukraine suffer twice // <https://life.pravda.com.ua/columns/2019/03/27/236234/>

tims from the most typical violent crimes: premeditated murder (Article 115 of the Criminal Code); bodily injuries of all degrees (Articles 121, 122, 125 of the Criminal Code); domestic violence (Article 126-1 of the Criminal Code); rape (Article 152 of the Criminal Code), sexual violence (Article 153 of the Criminal Code); theft committed publicly and combined with violence (Part 2 of Article 186 of the Criminal Code); robbery (Article 187 of the Criminal Code).

The number of victims of crime remains consistently high: 374 thousand in 2017, 345 thousand in 2018, 302 thousand in 2019. Of them have died as a consequence of crime **6.5 thousand (2017), 6.2 thousand (2018), 5.8 thousand (2019)**³.

The Ministry of Justice of Ukraine estimates that in 2018, **the most serious intentional violent crimes in Ukraine caused death or bodily injuries to 24.4 thousand victims**⁴.

In this context, the authors of the present study set themselves the goal to analyse in detail the existing legal framework on the rights of victims as well as the practice of its application. Further, our analysis will be carried out from the point of view of modern standards of victims' rights, which are little known in Ukraine.

First of all, we drew attention to the state of implementation of the European Union Directive establishing minimum standards on the rights, support and protection of victims of crime⁵. This document is not binding for Ukraine, but it needs to be implemented in our country in terms of the European Union integration process. The Directive has become a powerful tool for protecting the rights of victims in the EU countries and it requires regular reporting by the EU member states on the status of its implementation. However, the standards provided by the Directive, in particular as regards protection against secondary victimization, are not yet reflected

³ Statistical data is drawn from a letter of Office of the Prosecutor General no. 27/3-290вих-20 of 14.01.2020 upon request for public information. Cited in Criminal Procedure Regulation in Ukraine: Realities and Prospective (analytical materials)/ M.V. Viunyk, M.V. Karchevskiy, O.D. Arlanov; ed. By Yu. V. Baulin, Kharkiv, Pravo, 2020, p. 185.

⁴ A detailed list of calculated crimes is contained in the explanatory note to the Draft Law on Compensation to Victims of Violent Crimes no. 892 of 17.07.2020. Note that this figure does not cover all types of violent crimes, but only the most serious of them, for which the bill proposed to pay state compensation. That is, the total number of victims of violent crimes is much higher. See the detailed list compiled by the Ministry of Justice of Ukraine at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69541

⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime // <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>

in the national legislation, despite the EU's efforts to implement them in Ukraine⁶. Moreover, these standards for the protection of victims' rights have not been implemented, despite the fact that they are also contained in the Council of Europe on assistance to crime victims, and Ukraine is a member of this organisation⁷.

The standards of protection of victims are comprehensive as they relate not only to the procedural aspects of the investigation and trial, but also to providing support to victims, such as psychological support. Therefore, our study focuses not only on the legal aspects of victims' protection, but also on the mechanisms of support and protection of victims by the state.

Another aspect that we will pay attention to is the compensation of victims for the damage caused by crimes. Ukraine has not yet established a mechanism to compensate victims of violent crimes, despite the signing and efforts to ratify the relevant Council of Europe convention⁸. Thus, we will analyse the existing compensation practices in the context of lack of such a mechanism.

The above-mentioned Council of Europe recommendation encourages States to promote and support research on the protection of victims. Among other things, such studies should focus on:

- criminal victimisation and its impact on victims;
- the effectiveness of legislative and other measures for the support and protection of victims of crime – both in criminal justice and in the community;
- the effectiveness of intervention by criminal justice agencies and victim services (paragraph 17 of the Recommendation).

We hope that our study adheres to these guidelines, and will be a fertile ground for further development of research in the sphere of protection of victims' rights in Ukraine.

⁶ Amendments to the Code of Criminal Procedure of Ukraine proposed by the European Union Advisory Mission Ukraine // <http://komzakonpr.rada.gov.ua/uploads/documents/31985.pdf>

⁷ Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims // <https://rm.coe.int/16805afa5c>

⁸ European Convention on the Compensation of Victims of Violent Crimes // <https://rm.coe.int/1680079751>

METHODOLOGY

The aim of the present study is to analyse the national practices regarding protection of the rights of victims of violent crimes in Ukraine as well as their compliance with international standards.

The study focused on the following key areas:

- involvement of victims in the process of investigation and trial;
- concluding agreements on reconciliation with victims;
- physical and psychological protection of victims;
- psychological, material and medical support for victims;
- compensation of victims.

The study included two main components:

- 1) desk research;
- 2) field research.

The desk research included an analysis of the following international standards on the rights of victims in criminal proceedings:

- directives of the European Parliament and the Council of the European Union;
- recommendations of the Committee of Ministers of the Council of Europe;
- international conventions and case law of the European Court of Human Rights⁹.

⁹ For example, among others were analysed the following documents and/or explanatory documents to them: Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA // <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>; Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims (Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies) // <https://rm.coe.int/16805afa5c> ; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Adopted by General Assembly resolution 40/34 of 29 November 1985) // https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf ; Rec(85)11 28/06/1985 on the position of the victim in the framework of criminal law and procedure // <https://bit.ly/2J37P8v> ; Recommendation Rec(99)19 concerning mediation in penal matters, paragraph // https://www.euromed-justice.eu/en/system/files/20100715121918_RecommendationNo.R%2899%2919_EN.pdf ; Recommendation No. R (83) 7 On participation of the public in crime policy (Adopted by the Committee of Min-

The authors of the study also reviewed the national criminal procedure legislation and other laws as regards their compliance with the above-mentioned international standards.

The field research analysed the practices in the field of victims' rights in the following areas:

- pre-trial investigation;
- trial;
- protection and support of victims;
- compensation for damage caused to victims and compensation of expenses.

The field research was conducted using the following methods:

- 1) surveys consisting of closed-ended and open-ended questions (456 lawyers and 187 judges);
- 2) three focus groups with prosecutors (7 participants), lawyers (8 participants) and investigators (8 participants);
- 3) interviews (with 30 victims, 5 judges, 5 investigators, 7 prosecutors, 3 employees of the State Penitentiary Service of Ukraine, 1 employee of the State Enforcement Service, 1 forensic expert psychologist; 1 Head of Center for Free Legal Aid);
- 4) content analysis (30 court verdicts).

SECTION 1. VICTIMS PARTICIPATION IN THE PROCESS OF INVESTIGATION AND TRIAL

1.1 Initiation of Investigation

Conclusions

1. **Lack of using assistance of a lawyer.** Victims, for the most part, complain to law enforcement agencies on their own, without involving a lawyer. This may lead to negative consequences in the form of preventing from exercising of victims' rights.

2. **Non-registration of crime.** Not all complaints reported by victims are subsequent-

isters on 23 June 1983 at the 361st meeting of the Ministers' Deputies) // [https://www.barobirlik.org.tr/dosyalar/duyurular/hsykkanteklifi/recr\(83\)7e.pdf](https://www.barobirlik.org.tr/dosyalar/duyurular/hsykkanteklifi/recr(83)7e.pdf) ; ECOSOC Resolution 2005/20 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime // <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>; European Convention on the Compensation of Victims of Violent Crimes // <https://rm.coe.int/1680079751>

ly registered as crime in the URPTI¹⁰ and result in criminal proceedings. Sometimes, victims have to appeal to the investigating judge against the investigator's or prosecutor's failure to proceed with registering the reported crime. The mounting obstacles at this stage make it impossible to exercise the rights by victims. The problem of non-registration of complaints about violent crimes ("filtering") is caused by the existing system of performance evaluation in law enforcement agencies, primarily the police. This system focuses on the number of completed criminal proceedings referred to the court. Thus, it generates the practices leading to: "underestimation of the gravity of crime" (investigation under the articles of the Criminal Code that are easier to investigate); disguising one crime by another; screening of cases that may be "unpromising" at the court, etc.

Recommendations

1. Introduce unified standards of registration of crime reports including clear criteria needed to take decisions by the officials in charge of registering crime and taking into account Standards of Pre-Trial Investigation, implementation of which is foreseen by the Strategy of Development of Prosecutor's Office for the period of 2021-2023¹¹.
2. Change the practice of registering complaints about crime through abandoning the practice of endorsing the registration of crime by the head of the pre-trial investigation body or the prosecutor. In the presence of elements of crime, register the crime without delay.
3. Introduce a new system for performance evaluation of the police investigative/intelligence units and prosecutor's offices, which would not limit the investigations by the "statistical considerations" and would not undermine exercising of victims' rights.

1.2 Acquiring the Victim Status in Criminal Proceedings

Conclusions

1. **Imprecise moment of acquiring the status.** The CPC of Ukraine declares that the victim acquires his / her rights from the moment of filing a complaint about a criminal offense. However, investigators and prosecutors mostly consider that the victim acquires his / her rights from the moment of handing over a leaflet on victims' rights.
2. **Unclear practices of recognition of the victim status.** Following the practices prescribed by the previous CPC of Ukraine of 1960, some investigators and prosecutors

¹⁰ Unified Register of Pre-Trial Investigations.

¹¹ See the cell phone app "Standards of Pre-Trial Investigation" that can be downloaded on iOS (<https://apple.co/2YQWoFK>) and Android (<https://bit.ly/3juBxjn>).

still issue formal decisions on the recognition of victims, which is not explicitly provided for in the current Code. Nevertheless, although the investigator and prosecutor are allowed to make formal procedural decisions that are not provided for in the Code, if he or she considers it necessary, such decisions entail no legal consequences for the victim.

3. The meaning of recognition of the victim status. Non-recognition of the victim status impedes exercising of all victim's rights such as the right to appeal against the decision, action or omission of the investigator, prosecutor and, in particular, to appeal the decision on closing the criminal proceedings.

4. Delays in recognition of the victim status. Delays in recognizing the status of the victim has a negative impact on his / her psychological state as the victim realises that the state refuses to recognize the criminal offense committed against him / her. As a result, the victim loses faith in further investigation.

Recommendations

1. Adhere to the concept of automatic recognition of the victim status from the moment when the victim submits a complaint about a criminal offense under the current CPC of Ukraine. Do not delay handing over the leaflet on victims' rights to the victim and procedural recognition of his/her rights.

2. Initiate and develop the practice of bringing investigators and prosecutors to disciplinary liability for unjustified closing of criminal proceedings if this has been proved through an in-service inquiry. Particular attention should be paid to the cases of groundless closing of cases if they were re-opened following an injunction of an investigating judge.

3. Cease the practice of quashing decisions on closing criminal proceedings by investigating judges who act so having in mind the risk of overruling by the appellate court instead of taking an objective decision.

1.3 Victims' Awareness about the Rights, Procedures, and Progress of Investigation

Conclusions

1. Formal approach to informing victims about their rights. The victims are informed about their rights and the progress of their investigation mostly formally, through handing over a leaflet on victims' rights without properly explaining them. In fact, the leaflet on victims' rights have become equivalent to the formal decision on recognition of a victim, which existed under the previous CPC of Ukraine of 1960. Therefore, investigators and prosecutors are more focused on the victim's signature acknowledging receipt of the leaflet than on the proper explanation of the rights to

the victim.

2. Lack of clear standards on informing victims about the progress of investigation.

Informing of victims often does not take, especially if the victim did not ask the investigator/prosecutor on his/her own initiative. In addition, sometimes there is a pause of around 1 to 2 months between the victim's complaint to law enforcement agencies and the first questioning as a victim and subsequent communication. As a consequence, victims experience psychological discomfort because they feel that the investigation is not taking place and their problem is not being solved.

3. Neglect of informing caused by the workload of law enforcement.

Investigators recognize that they do not have time to inform victims because they are busy with other "more important" work. In other words, the high workload of investigators does not leave them time to inform victims about the progress of the pre-trial investigation. Moreover, such information is usually provided to victims through informal channels, such as cell phone messengers.

4. Better communication in case of "obvious" crimes.

The quality of communication largely depends on the gravity of crime: the more serious the crime is, the higher the chances of the victim to receive proper communication are. In fact, for law enforcement officers, the priority is serious crime committed in the obvious circumstances, which allows them to relatively easy and fast detect and investigate the crime.

5. Lack of procedures on informing.

There are no protocols / policies regarding informing victims about the progress of the investigation, the scope of such information and the relevant responsible persons in the pre-trial investigation bodies and the prosecutor's office.

Recommendations

1. Improve the system of receiving complaints about a criminal offense

by providing victims with an electronic identifier during the reception of their complaints. Using a unique login and password, victims would be enabled to obtain an excerpt from the UPTRI which would contain the number of the investigation, article under which it is taking place, name, family name, position and rank of the investigator and his/her contact phone number.

2. Introduce policies / protocols for informing victims about the progress of the pre-trial investigation.

Develop clear standards on informing victims on the progress of investigation such as a short description of key investigative steps taken in frames of the investigation, clear amount of information on such steps etc.

1.4 Legal Assistance to Victims

Conclusions

1. **Involvement of a lawyer significantly affects exercising of victims' rights.** Victims' lack of a lawyer often undermines or makes impossible exercising victims' rights.

2. **Victims rarely have a paid lawyer.** For the most part, victims do not solicit free legal aid. First of all, the victims of crime are not included in the list of the categories that are entitled to such aid. The few victims who are entitled to free legal aid because their low-income are usually unaware of such a possibility. Other victims have to seek assistance from private lawyers whom they cannot always afford for the whole period of lengthy criminal proceedings.

3. **Issues in investigations caused by misunderstandings between lawyers and law enforcement officers.** Although the victim's lawyer is considered to be on the side of prosecution, in practice, lawyers, investigators and prosecutors often do not realize that they are part of the same procedural side. This undermines the efficiency of the investigation and the restoration of justice for victims.

Recommendations

1. Entitle vulnerable victims of violent crimes to free legal aid in the scope equal to that of the suspect, thus ensuring the equality of the parties to the criminal proceedings.

2. Develop and introduce standards on the communication between victims and investigators/prosecutors.

1.5 Collection of Evidence and Participation of Victims

Conclusions

1. **The prosecution side does not fully use the existing possibilities to cooperate with the victim.** Involvement of the victim in the investigative actions is often limited to interrogation and investigative experiment. It may be of use to involve the victim also to other investigative actions, and not limit such an involvement only to the actions that require mandatory participation.

2. **Excessive involvement of victims in certain investigative actions.** There are practices of involving the victim in investigative actions without necessity, which causes secondary victimization. For example, the victim may be forced to participate in a face-to-face confrontation with the suspect or to recall painful memories many times in a row.

3. **Victims do not use all the rights on gathering evidence under the CPC of Ukraine.** Victims who do not have a lawyer do not take an active part in the investigation and do not collect evidence regardless of such rights contained in the CPC of Ukraine. If

the victim is represented by a lawyer, he / she usually gathers at least some evidence on own initiative.

4. Victims are not entitled to initiate an expertise in the same way as offenders. The victim does not have to initiate an expertise in criminal proceedings on a par with the defendant.

Recommendations

1. Involve the victim in the investigation only to the extent necessary to gather evidence in criminal proceedings. Minimize the psychological traumatization of the victim during investigative and procedural actions. Reduce to the minimum the actions that may negatively affect the psychological state of the victim and lead to his / her secondary victimization.

2. Establish a practice of informing victims about the conduct of key investigative steps in which they may wish to be involved so that they can exercise the right to participate.

3. Entitle the victim to independently involve an expert in criminal proceedings on contractual terms in the same scope as the defendant (amendments to Article 243 of the CPC of Ukraine). Entitle the victim, on a par with the defendant, to apply to the investigating judge with a request to conduct an expertise in case of lack of funds or other justified reasons, in particular due to poor expertise made upon the initiative of the prosecutor (changes to Article 244 of the CPC of Ukraine).

1.6 Appeals against Decisions of the Pre-trial Investigation Body and the Prosecutor

Conclusions

1. **Victims on their own do not appeal decisions, actions or omissions of the investigator, prosecutor and, in general, appealing is rare.** Victims who do not have a lawyer hardly turn to the investigating judge or a higher prosecutor to appeal against the decisions, actions or omissions of the investigator or prosecutor.

2. **Appeals are infrequent.** The number of victims' appeals against the actions of investigators and prosecutors is low, which seems to be caused by the victims' despair that they may change something in the position of the prosecution. Victims do not see the prospect of such an appeal. Any complaints are perceived by them rather as a risk of "quarrel" with investigators and prosecutors which might cause obstacles to the investigation in the future.

3. **Most common are appeals against non-registration of crime and closing of the proceedings.** Most often, victims and their lawyers appeal against: a) failing to reg-

ister the crime; b) closing criminal proceedings by the decision of the investigator or prosecutor.

4. **Lawyers do not challenge the delay in the investigation.** Most of the victims' lawyers do not appeal against the non-compliance with the reasonable time limits in criminal proceedings to the higher-level prosecutor in accordance with Art. 308 of the CPC of Ukraine. They consider such appealing ineffective.

1.7. Conclusion of Agreements with the Defendant

Conclusions

1. **Agreements between victims and defendants in Ukraine are not concluded as often as in other countries.** The practice of concluding agreements in criminal proceedings is not common in Ukraine as compared to the European countries and the United States. However, over the past three years, the number of sentences applied under the agreement has been increasing.

2. **Lack of a legal framework on mediation.** When concluding a conciliation agreement in accordance with the CPC of Ukraine, the parties have the right to involve mediators. However, the main obstacle to the introduction of mediation in Ukraine is the lack of legislation on mediation and the lack of rules on involvement of mediators.

3. **Lack of guarantees of victims' rights in plea agreements.** Unlike in case of the conciliation agreements, the mandatory victims consent to plea agreements between the prosecutor and the suspect / accused does not contain efficient safeguards for protecting victims. Such agreements do not contain the guarantees on restoring the victim's rights, in particular as regards the amount of compensation, the time-limits for compensation, other actions that the suspect / accused is obliged to take in favour of the victim.

Recommendations

1. To expand the practice of using agreements in criminal proceedings as an efficient tool to protect the rights of victims through increasing capacity of prosecutors and investigators on the use of this instrument as an alternative to a full investigation.

2. Determine the status of mediators and adopt a legal framework for their activities.

3. Amend the legislation so that the plea agreements concluded with victims' participation include the amount of compensation, the time-limits for compensation, other actions that the suspect / accused is obliged to take in favour of the victim.

1.8 Participation of Victims in Court Proceedings

Conclusions

1. **Problems with the interpretation of the procedural status of the victim.** Judges have different views on interpreting the law regarding the role and procedural status of the victims. This causes unjustified restrictions of victims' procedural rights and refusal to grant procedural requests submitted by them.
2. **Difficulties in exercising victims' rights.** Despite the fact that national law contains a wide range of victims' rights, the problem arises when it comes to their ability to exercise such rights. Difficulties in exercising these rights are caused by more limited possibilities to engage lawyers, including free legal aid, as compared to the rights of defendants.
3. **Excessive length of court proceedings.** A significant problem is the excessive length of the trial and frequent adjournments of court hearings, which leads to the victims' reluctance to participate in further proceedings. Moreover, while at the pre-trial investigation stage victims have a possibility to appeal against violation of reasonable time limits, at the trial stage they are deprived of such an opportunity.
4. **Lack of mechanisms to prevent secondary victimization.** The national law does not contain clear procedures on minimization of contacts between the victim and the perpetrator outside criminal procedures.

Recommendations

1. Uniform the diverse judicial practices as regards interpreting the victim's procedural status and the list of his / her rights or adopt amendments to the relevant procedural legislation.
2. Legally entitle the victim to free legal aid at all stages of criminal proceedings and trial on a par with the perpetrator.
3. Expand the practice of using videoconferences as a way to protect victims from secondary victimization.
4. Introduce separate entrances / exits for victims and vulnerable witnesses to minimize negative impact on them.

SECTION 2. PROTECTION OF VICTIMS

Conclusions

1. **Protection is rarely applied in practice.** The legal framework on the protection of victims provides a fairly wide range of remedies to protect victims: physical pro-

tection, changing identity, appearance. However, practitioners point out at the low level of application of these remedies. The reasons for this are the lack of clarity in legal mechanisms, inadequate logistics of law enforcement agencies and courts, low level of training and lack of a comprehensive approach to the protection of victims.

2. Lack of protection programs. There is currently no full-fledged victim protection program. This is being so despite the fact that there are units whose tasks include the application of certain protection measures inside the national law enforcement agencies.

3. Victims are disappointed with the protection they receive from the state. Victims do not feel protected and cannot count on proper protection of their rights. As a consequence, they become distrustful of law enforcement agencies and functioning of the justice system.

Recommendations

1. Establish a full-fledged program for the protection of victims and witnesses, the implementation of which will be entrusted to a special service.

2. Introduce training of investigators, prosecutors and judges on the peculiarities of communication with victims and vulnerable categories of persons. Introduce courses to prevent repeat and secondary victimization.

3. Develop guidelines for investigators, prosecutors and judges on the specifics of protecting victims from repeat and secondary victimization.

4. Provide police stations, prosecutors' offices and courts with the equipment necessary to help victims avoid contact with the perpetrator.

5. Develop and amend criminal procedural legislation to introduce the principle of protection against secondary victimization and mechanisms for its implementation taking into account the proposals of the EU Advisory Mission to Ukraine¹².

SECTION 3. VICTIM SUPPORT

Conclusions

1. The state does not provide adequate support to vulnerable victims. The current attempts to implement international standards of psychological and material support for victims are insufficient and cannot fully meet the real needs of victims.

2. Lack of training of criminal justice professionals. Law enforcement and court staff who communicate with vulnerable victims do not have the appropriate train-

¹² Amendments of to the Code of Criminal Procedure of Ukraine proposed by the European Union Advisory Mission Ukraine // <http://komzakonpr.rada.gov.ua/uploads/documents/31985.pdf>

ing to communicate with the categories of persons who need special attention and support.

3. **Low level of public awareness.** Neither victims nor law enforcement agencies or lawyers have information on the special services that provide assistance to victims. The informing of the population on how to act and where to go in case of violent crimes is insufficient.

4. **There is no system of support services for victims** at the national level that would provide support for victims of violent crimes. In fact, the respective responsibility of the state is rather placed on NGOs or volunteers who support victims.

5. **The state does not provide training for psychologists** to support vulnerable victims. In practice, the role of psychologists at the initial stage of communication with the victim is performed by law enforcement officers.

6. **Material support from the state is not readily available.** General procedures for obtaining material assistance are too bureaucratic, while vulnerable victims are not singled out as a separate category of persons in need of particular care by the state.

7. **The state provides medical support to victims only at the initial stage of emergency medical care.** The rest of the costs of treatment and coping with the consequences of the crime (both physical and psychological) is borne entirely by the victim.

Recommendations

1. Introduce specific training programs for law enforcement officers and persons in contact with victims on treatment of victims of violent crimes and communication with them.

2. Ensure the involvement of a psychologist at least at the initial stage of communication with victims of violent crimes and, if necessary, at any stage of criminal proceedings.

3. Develop and implement SOPs for state representatives (police, doctors, etc.) in case of crime against vulnerable victims.

4. Create a national network of crisis centers for victims of violent crimes, which will provide comprehensive information and initial support (psychological, medical, material) to victims, provide and coordinate their further support in criminal proceedings, assist with obtaining necessary documents and other support.

SECTION 4. COMPENSATION

Conclusions

1. **Alarming situation with compensation.** The present study found that among all the rights of victims in Ukraine the right to compensation is guaranteed perhaps the worst. This state of affairs is of particular concern as many legal practitioners have indicated that most victims are primarily interested in compensation for the harm/damage caused by crime. This interest dominates even the interest in punishing the offender.

2. **Legal aid.** Victims are not entitled to free legal aid, and therefore are not always able to fully protect their right to compensation on their own. Lack of legal aid for victims leads to poor civil lawsuits, low amounts of compensation or denial of compensation, as well as problems with the future enforcement of the court decision on compensation.

3. **Determining the amount of non-pecuniary damage.** The current practice of determining the amount of non-pecuniary damage is flawed. The amount of compensation awarded for this damage is low and does not correspond to the importance of the values that are affected by violent crimes, especially in the case of murder. While the potential of psychological examinations remains untapped, in practice the judges' assessment is not sufficient.

4. **Problems with enforcement.** This problem is partly related to the national problem of enforcement of court decisions, but has its own specifics. Unsuccessful enforcement mechanisms lead to the abundance of informal compensation practices, i.e. informal agreements between the victim and the offender. As a consequence, informal practices are considered to be the most effective (as opposed to compensation through the courts).

5. **Deficiencies of enforcement.** It is common for offenders to evade compulsory enforcement of compensation. The mechanism of encumbrance (seizure) of property does not properly work in case of civil lawsuits in criminal cases. In addition, offenders often do not have property that could be recovered for the benefit of victims. Contrary to popular belief, obtaining of compensation from convicts by involving them in obligatory labour is ineffective. Such compensation payments from penitentiaries are extremely limited.

6. **Lack of state compensation.** Ukraine has not yet established a state mechanism that would guarantee compensation to victims. Despite the signing of the Convention, according to the provisions of which our state is obliged to establish such a fund, Ukraine has not yet ratified this international document. Similarly, no imple-

menting legislation has been adopted to implement the Convention, although the Ministry of Justice of Ukraine has already developed it.

Recommendations

1. Introduce the right to free legal aid for victims of violent crimes in the Law of Ukraine “On Free Legal Aid”. Such a right must extend from the moment when the crime is committed until full compensation.
2. Expand the practice of conducting expertise to determine the extent of non-pecuniary damage, in particular by making it mandatory to appoint such an expertise by an investigator in the case of violent crimes as required by Paragraph 2.6 of Art. 242 of the CPC of Ukraine. Develop case law so that the scope of non-pecuniary damage reflects the importance of the values affected by violent crimes, in particular through: training, developing legal positions of the higher judicial instances, advocacy of international standards of victims’ rights, in particular case law of the ECtHR.
3. Automate the procedure for enforcement of court decisions on civil claims of victims. Make the debt to the victims “lifelong”. The writ of execution should be non-returnable to victims in case of non-enforcement.
4. Develop an effective mechanism for seizing the property of the offender in order to further compensate the victim.
5. Change the existing sequence of deductions from the prisoners’ income so that deductions for civil lawsuits of victims take place first, and not on a residual basis.
6. Provide for the restriction of certain rights of prisoners in order to encourage them to pay for the damage caused to the victim (restriction of the right to drive a vehicle and travel abroad, make it a condition for early release and probation etc.).
7. Establish a state fund for compensation to victims. Ratify the European Convention on the Compensation of Victims of Violent Crimes and adopt appropriate implementing legislation.

The research has been conducted with the financial support of the European Union in frames of the EU Project "Pravo-Justice". Its content is the responsibility of the authors of the research and does not reflect the views of the European Union.