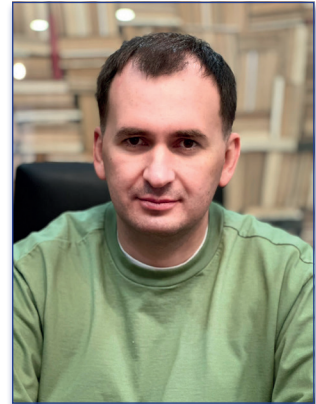


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Representation Of The Victim As Implementation Of The Principle Of Competitiveness In Criminal Proceedings

National and international legal acts guarantee everyone the right to hear their case by a competent court. The same principle can be applied to the stage of pretrial investigation, although only a competent investigator or prosecutor can ensure the implementation of an effective investigation. The very process of criminal proceedings is carried out by the general principles of criminal proceedings, among which one of the universal principles is the principle of adversarial. Taking into account the components of the principle of competitiveness, this article is defined as clarifying the place and role of the institution of victim representation in implementing the principle of competitiveness. It is substantiated that to implement the principle of competition in criminal proceedings fully, certain provisions of the current Criminal Procedure Code of Ukraine require revision and certain changes.

Keywords: criminal proceedings, legal basis, victim, institute of representation, victim's representative, legal representative, procedural rights and obligations.

Research Problem Formulation. Among the main principles of criminal proceedings, a legislator has singled out the “competitiveness of the parties”. This approach is fully consistent with international law, as it is the basis for ensuring justice in the consideration and resolution of criminal proceedings. In particular, this is guaranteed by Art. 6 of the European Convention for the Protection of Human Rights and Freedoms of 1950¹. A similar conclusion was also reached by the European Court of Human Rights in its judgment “Lawless v. Ireland” (1960), stating that competitiveness in proceedings is a mean of achieving justice².

Numerous provisions of the current criminal procedure legislation are aimed at implementing competitive principles. At the same time, violations of the latter, according to generalizations of investigative and judicial practice, may be recognized as sufficient grounds for declaring evidence inadmissible. Therefore, there is a need to continuously study the practice formed as a result of law enforcement activities to identify typical issues that make it impossible to implement the competitive principle and, taking this into account, to develop appropriate recommendations for improving current legislation and problems arising in the practice of pre-trial investigation and trial of criminal proceedings.

In addition to the competitive principle, national and international legal acts guarantee everyone the right to have their case heard by a competent

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Declaration of Competing Interest

The author declare that they have no conflict of interest.

¹ Європейська Конвенція про захист прав і свобод людини 1950 р. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text

² Рішення Європейського суду з прав людини Справа «Лоулесс проти Ірландії» (Lawless v. Ireland) 1 липня 1961 року. URL: https://hudoc.echr.coe.int/eng#%7B%22item_id%22:%5B%22001-57518%22%5D%7D

Іван Ємець

ПРЕДСТАВНИЦТВО ПОТЕРПІЛОГО ЯК РЕАЛІЗАЦІЯ ЗАСАДИ ЗМАГАЛЬНОСТІ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ

Національними та міжнародними нормативно-правовими актами кожному гарантовано право на розгляд його справи компетентним судом. Цю ж засаду можна застосовувати і до стадії досудового розслідування, адже лише компетентний слідчий, прокурор здатні забезпечити здійснення ефективного розслідування. Сам же процес кримінального судочинства здійснюється відповідно до загальних засад кримінального провадження, серед яких однією з універсальних є засада змагальності сторін. Ураховуючи складові засади змагальності, мету статті визначено як з'ясування місця та ролі інституту представництва потерпілого в реалізації засади змагальності. Обґрунтовано, що задля повноцінної реалізації засади змагальності у кримінальному судочинстві, окремі положення чинного Кримінального процесуального кодексу України потребують перегляду та внесення певних змін.

Ключові слова: кримінальне провадження, правова засада, потерпілий, інститут представництва, представник потерпілого, законний представник, процесуальні права й обов'язки.

court. This fully applies to the pre-trial investigation stage, as only a competent investigator, inquirer, or prosecutor can ensure an effective investigation. Simultaneously, the current legislation also provides for the victim's right to engage a representative, which, in certain cases, is a reasonable step towards ensuring the fulfillment of the tasks of criminal proceedings. The fact that the United State Register of Court Decisions is filled with numerous court decisions on the satisfaction of victims' complaints against decisions of investigators and prosecutors raises questions about whether the investigator can fully ensure that the interests of the victim are met. It also raises questions about whether the investigator can be identified with the victim's "representative" since both are representatives of the prosecution. Moreover, it prompts consideration of whether the investigator can be considered an interested party in protecting and restoring the victim's violated rights or whether they are a person authorized to establish the objective truth in the case.

Analysis of Essential Researches and Publications. Peculiarities of implementing the competitive principle in criminal proceedings were revealed by S. Kovalchuk³, D. Kryklyvets⁴, M. Markush⁵, O. Mokhonko⁶, M. Nozdrina⁷, I. Podolinska⁸, Yu. Khomatov⁹, B. Yavorskyi¹⁰, O. Yanovska¹¹, etc.

S. Ablamskyi¹², R. Pozhar¹³, V. Samoliuk¹⁴, Ye. Shcherban¹⁵, O. Yakymchuk¹⁶ and many others have been engaged in determining the legal basis for victim representation in criminal proceedings and the specifics of their implementation. Certain aspects of victim representation in criminal proceedings were analyzed by A. Marynych and P. Stepanov. The latter, in

³ Ковальчук С. О. Здійснення захисту у кримінальних справах на засадах змагальності та диспозитивності : дис. ... канд. юрид. наук: спец. 12.00.09. Івано-Франківськ, 2007. 221 с.

⁴ Крикливець Д. Є. Реалізація засади змагальності під час розгляду скарг слідчим суддею : автореф. дис. ... канд. юрид. наук: 12.00.09. Львів, 2016. 21 с.

⁵ Маркуш М. А. Принцип змагальності в кримінальному процесі України : дис. ... канд. юрид. наук: 12.00.09. Харків, 2005. 210 с.

⁶ Мохоцька О. О. Реалізація принципу змагальності сторін при застосуванні заходів процесуального примусу на стадії досудового розслідування : дис. ... канд. юрид. наук: 12.00.09. Київ, 2009. 197 с.

⁷ Ноздріна М. О. Диспозитивність як елемент принципу змагальності у кримінальному процесі України : автореф. дис. ... канд. юрид. наук : 12.00.09 Харків., 2004. 20 с.

⁸ Подолінська І. С. Засада змагальності та її реалізація у діяльності сторони захисту у кримінальному провадженні. *Європейські перспективи*. 2013. № 9. С. 104-109.

⁹ Хоматов Ю. В. Розвиток змагальних засад і діяльності адвоката-захисника у кримінальному судочинстві України : автореф. дис. ... канд. юрид. наук: 12.00.09. Харків, 1994. 20 с.

¹⁰ Яворський Б. І. Сприяння захисту як необхідна умова забезпечення функціонування засади змагальності у кримінальному судочинстві : дис. ... канд. юрид. наук: 12.00.09. Львів, 2010. 253 с.

¹¹ Яновська О. Г. Теоретичні та організаційні засади функціонування і розвитку змагального кримінального судочинства : автореф. дис. ... д-ра юрид. наук : 12.00.10. Київ, 2011. 36 с.

¹² Абламський С. Є. Захист прав і законних інтересів потерпілого у кримінальному провадженні : монографія / за заг. ред. О. О. Юхна. Харків : Панов, 2015. 240 с.

¹³ Пожар Р. Г. Інститут представництва в кримінальному судочинстві : автореф. дис. ... канд. юрид. наук: 12.00.09. Одеса, 2006. 20 с.

¹⁴ Самолук В. В. Законне представництво у кримінальному процесі України : автореф. дис. ... канд. юрид. наук: 12.00.09. Київ, 2005. 20 с.

¹⁵ Щербань Є. В. Представництво юридичних осіб у кримінальному провадженні : автореф. дис. ... канд. юрид. наук: 12.00.09. Київ, 2021. 22 с.

¹⁶ Якимчук О. В. Представництво юридичних осіб у кримінальному провадженні : дис. ... д-ра філософії : 081 Право. Київ, 2021. 253 с.





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REPRESENTATION OF THE
VICTIM AS IMPLEMENTATION
OF THE PRINCIPLE OF
COMPETITIVENESS IN
CRIMINAL PROCEEDINGS

particular, proposed to engage a lawyer to represent the interests of the victim if the prosecutor refuses to support the state prosecution¹⁷. V. Kaniuk and R. Oliinychuk¹⁸ formulated the definition of the concept of “representative” and developed a classification of representation types. N. Rohatynska and K. Skliaruk have identified and characterized the peculiarities of the procedural status of a victim in criminal proceedings. However, despite numerous studies and a significant level of theoretical elaboration on certain issues of victim representation in criminal proceedings, some issues of this issue, including the role of the institute of victim representation in competitive criminal proceedings, continue to remain unaddressed by researchers. This indicates that these issues have not been sufficiently researched and highlights the need to intensify scientific research in this area of scientific knowledge.

Article Purpose is to determine the place and role of the institute of representation in the implementation of the competitive principle, based on the generalization of theoretical developments of researchers and the current legal framework for victim representation in criminal proceedings.

Main Content Presentation. Criminal procedural relations arise in connection with the violation of rights, freedoms, and interests protected by criminal law of the participants in social relations. As indicated in legal literature, such relations are always conflictual, as their basis is the facts of one subject encroaching upon the interests of another. This leads to a collision of interests between opposing parties, and their non-conformity, which gives rise to a dispute that forms the foundation for a competitive process¹⁹.

The principle of competitive proceedings is stipulated by the Fundamental Law of Ukraine²⁰. The Criminal Procedure Code of Ukraine of 2012 defined it as one of those principles that must correspond to the content and form of criminal proceedings (Part 1, Article 1 of the Criminal Procedure Code of Ukraine²¹). Based on the generalization of theoretical developments, we can state that the competitive principle is a fundamental basis for many other principles of criminal proceedings currently defined and enshrined by the legislator. Such a position is supported by other authorial approaches as well. For instance, H. Mamka indicates that the competitive principle, along with others, belongs to the general procedural (universal) principles²². Other Ukrainian researchers engaged in the study of specific principles of criminal proceedings come to a similar conclusion. For instance, O. Dehtiar, in her research, concluded that the principle of immediacy (“the court’s duty to personally examine the evidence, provide the opportunity for direct participation of other participants in the criminal process in conducting procedural actions, familiarize them with the materials of the criminal case”) derives from the principle of competitive proceedings²³.

National and international legal acts guarantee everyone the right to hear their case by a competent court. The same principle can be applied to the stage of pretrial investigation, although only a competent investigator or prosecutor can ensure the implementation of an effective investigation. The very process of criminal proceedings is carried out by the general principles of criminal proceedings, among which one of the universal principles is the principle of adversarial. Taking into account the components of the principle of competitiveness, this article is defined as clarifying the place and role of the institution of victim representation in implementing the principle of competitiveness. It is substantiated that to implement the principle of competition in criminal proceedings fully, certain provisions of the current Criminal Procedure Code of Ukraine require revision and certain changes.

Keywords: criminal proceedings, legal basis, victim, an institution of representation, victim’s representative, legal representative, procedural rights, and duties.

¹⁷ Маринич А. П., Степанов П. Л. Обов’язкове представництво як гарантія забезпечення змагальності кримінального судочинства. *Науковий вісник Ужгородського Національного університету*. Серія: Право. 2018. Т. 2. Вип. 48. С. 127.

¹⁸ Каниюк В. Є., Олійничук Р. П. Загальна характеристика представництва у кримінальному провадженні: поняття та види. *Наукові записки*. Серія: Право. 2023. №. 14. С. 178-182. URL: <https://doi.org/10.36550/2522-9230-2023-14-178-182>

¹⁹ Рогатинська Н. З., Склярчук К. І. Особливості процесуального статусу потерпілого в кримінальному провадженні. *Київський часопис права*. 2022. №(1). С. 181-185. URL: <https://doi.org/10.32782/kjp/2022.1.28>

²⁰ Тітко І. А. Нормативне забезпечення та практика реалізації приватного інтересу в кримінальному процесі України : дис. ... д-ра. юрид. наук: 12.00.09. Харків, 2016. С. 12-13.

²¹ Конституція України: Закон України від 28.06.1996 No 254к/96-ВР: URL : <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

²² Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651-VI // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL: <http://zakon.rada.gov.ua/laws/show/-4651-17>

²³ Мамка Г. М. Засади кримінального провадження: наукові та правові основи : автореф. дис. ... д-ра юрид. наук : 12.00.09. Ірпінь., 2019. С. 26.

Ivan Iemets

REPRESENTATION DE LA VICTIME COMME MISE EN ŒUVRE DU PRINCIPE DE CONCURRENCE DANS LA PROCEDURE PENALE

Les textes juridiques nationaux et internationaux garantissent à chacun le droit de faire entendre sa cause par un tribunal compétent. Le même principe peut être appliqué au stade de l'enquête préliminaire, car seuls un enquêteur et un procureur compétents peuvent garantir la mise en œuvre d'une enquête efficace. Le processus de justice pénale lui-même se déroule conformément aux principes généraux de la procédure pénale, parmi lesquels l'un des principes universels est le principe du contradictoire des parties. Compte tenu des composantes des principes de compétitivité, l'objectif de l'article est défini comme précisant la place et le rôle de l'institution de représentation des victimes dans la mise en œuvre du principe de compétitivité. Il est établi que pour mettre pleinement en œuvre le principe de concurrence dans les procédures pénales, certaines dispositions de l'actuel Code de procédure pénale de l'Ukraine doivent être révisées et certaines modifications doivent être apportées.

Mots-clés : procédure pénale, base juridique, victime, institution de représentation, représentant de la victime, représentant légal, droits et devoirs procéduraux.

Following the normatively defined understanding of the principle of competitive proceedings, its essence lies in the independent advocacy by "the prosecution and the defense of their legal positions, rights, freedoms, and legitimate interests by means provided for by the Criminal Procedure Code of Ukraine"²⁴. In addition, Article 22 of the Criminal Procedure Code of Ukraine also stipulates that the defense and the prosecution have equal rights to gather and submit evidence to the court, petitions, and complaints, as well as exercise other procedural rights guaranteed to them by law. The functions of defense and state prosecution are entrusted to different subjects of criminal procedural relations, and "the court, preserving objectivity and impartiality, creates the necessary conditions for the parties to exercise their procedural rights and fulfill procedural duties"²⁵.

Regarding the determination of the court's role in the competitive proceedings, we consider the position of D. A. Pieshyi, who noted that during the pre-trial investigation stage, the court, exercising its supervisory powers, should ensure the rights of the participants in the proceedings in accordance with the law and legal practice, taking into account the decisions of the European Court of Human Rights, while remaining objective and impartial. Under such conditions, recognizing the decisions, actions, or inaction of pre-trial investigation bodies, the prosecutor as illegal and unfounded, the court cannot give any instructions to the pre-trial investigation body, prosecutor, and remains indifferent to the final result of the investigation²⁶.

Considering the outlined legal provisions, scientists engaged in the doctrinal (scientific) interpretation of the current Criminal Procedure Code of Ukraine have concluded on the separation of three main elements of the competitive principle. Among these, they included, in particular, the following: "1) division of functions between the prosecution, defense, and case resolution; 2) endowing parties with equal procedural rights to fulfill their functions; 3) the leading role of the court in criminal proceedings and granting the court alone the right to make decisions on the case. Competitive nature encourages the court to properly examine the case materials and deliver a lawful and justified judicial decision"²⁷.

Regarding the theoretical understanding and definition of the principle of "competitiveness", various proposals can be found in the theory of criminal procedure. For instance, M. Markush has taken a rather broad approach to its interpretation. She proposed understanding the principle of competitiveness as a legal institution and made suggestions for expanding the structure of this principle. In addition to traditional components such as the division of procedural functions of the prosecution, defense, and adjudication, the

presence of active and equal parties, and a court deciding the case and ensuring the parties' rights in the performance of their functions, the researcher emphasized the need to include elements such as access to justice, the freedom to challenge all decisions in court, and procedural equality

²⁴ Дехтяр О. Г. Засада безпосередності дослідження показань, речей і документів та її реалізація у кримінальному провадженні : автореф. дис. ... канд. юрид. наук: 12.00.09. Одеса, 2014. С. 9.

²⁵ Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651-VI // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL: <http://zakon.rada.gov.ua/laws/show/-4651-17>

²⁶ Там само.

²⁷ Пеший Д. А. Засада законності та її забезпечення у досудовому кримінальному провадженні : автореф. ... канд. юрид. наук: 12.00.09. Київ, 2016. С. 16-17.



of participants in criminal procedural activities who carry out prosecution and defense²⁸.

O.O. Mokhonko, in her research on the concept and determination of the essence of the competitive principle in criminal proceedings, proposed to distinguish the following components of the content of competitiveness: 1) division of functions: the function of prosecution, the function of defense, the function of case resolution; 2) the presence of a defense side and a prosecution side; 3) the existence of an independent, autonomous court; 4) the presence of a certain scope of rights and duties for the parties that must be balanced; 5) procedural procedures regulated by current legislation through which the competitive principle is implemented²⁹.

D. Kryklyvets emphasized the need for a broader understanding of the category "competitiveness". By the latter, it is proposed to understand a certain procedural regime that covers organizational and functional aspects. Except for traditional provisions, scientists have generalized that competitiveness also includes some legal provisions, including: 1) the parties' right to use procedural tools (one of which is the institute of judicial control over pre-trial investigation) to prove their own and refute other legal positions; 2) pre-trial proceedings are conducted as openly as possible for the defense and the victim³⁰.

Based on the above, we can generalize that the main components of the principle of competitiveness are usually associated with those defined in Article 22 of the Criminal Procedure Code of Ukraine. We favor the approach by D. E. Kryklyvets, who suggests that competitiveness can be equated with a certain procedural regime. However, a logical question arises as to whether the modern criminal process (provisions of modern criminal procedural legislation) corresponds to such criteria as a competitive procedural regime. Although legal literature mentions such inherent features of the latter as procedural equality of the prosecution and defense, provision, and equality in the use of certain procedural instruments, they have not been fully implemented so far. For example, this involves the limitation of the defense side in challenging individual decisions of the investigator and prosecutor, the lack of information for the defense side regarding procedural decisions made in criminal proceedings, etc. Unequal opportunities for representatives of the prosecution and defense to involve experts with special knowledge in criminal proceedings. For example, to ensure the conduct of forensic examination in criminal proceedings, decisions on resolving the expert's "own" issues at the pre-trial investigation stage, the defense side usually has to apply to the investigative judge with the relevant motion. Given this, the thesis that the defense side and the prosecution side have equal procedural rights and instruments for implementing their procedural will in the context of conducting criminal procedural activities seems somewhat doubtful.

Another question that remains unresolved is what is the role and place of pre-trial investigation bodies in criminal proceedings: proving the circumstances to be established in criminal proceedings or establishing the objective truth? Undoubtedly, the common goal of both the prosecution and the defense is to fulfill the tasks of criminal proceedings, which involve ensuring "swift, complete, and impartial investigation and judicial consideration so that everyone who has committed a criminal offense is held accountable to the extent of their guilt, no innocent person is accused or convicted, no person is subjected to undue procedural coercion, and that each participant in the criminal proceedings is subject to due legal

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DIE VERTRETUNG DES OPFERS ALS UMSETZUNG DES GRUNDSATZES DER KONTRADIKTION IM STRAFVERFAHREN

Nationale und internationale Rechtsakte garantieren jedem das Recht auf eine Verhandlung seiner Angelegenheit durch ein zuständiges Gericht. Dieser Grundsatz kann auch auf das Stadium der Voruntersuchung angewendet werden, da nur ein kompetenter Ermittler oder Staatsanwalt eine wirksame Untersuchung sicherstellen kann. Der Prozess der Strafgerichtsbarkeit selbst wird gemäß den allgemeinen Grundsätzen des Strafverfahrens durchgeführt, zu denen einer der universellen Grundsätze der Kontradiktion der Parteien gehört.

Unter Berücksichtigung der Bestandteile des Grundsatzes der Kontradiktion ist das Ziel des Artikels definiert als die Klärung der Stellung und Rolle der Institution der Opfervertretung bei der Umsetzung des Grundsatzes der Kontradiktion. Es wird begründet, dass für eine vollwertige Umsetzung des Grundsatzes der Kontradiktion im Strafverfahren einige Bestimmungen der geltenden Strafprozessordnung der Ukraine überprüft und bestimmte Änderungen vorgenommen werden müssen.

Schlüsselwörter: Strafverfahren, rechtlicher Grundsatz, Opfer, Institution der Vertretung, Vertreter des Opfers, gesetzlicher Vertreter, prozessuale Rechte und Pflichten.

²⁸ Кримінальний процесуальний кодекс України: Науково-практичний коментар / Відп. ред.: С. В. Ківалов, С. М. Міщенко, В. Ю. Захарченко. Харків : Одиссей, 2013. 1104 с.

²⁹ Маркуш М. А. Принцип змагальності в кримінальному процесі України : дис. ... канд. юрид. наук: 12.00.09. Харків, 2005. С. 16-17.

³⁰ Мохонько О. О. Поняття і сутність засади змагальності сторін у кримінальному процесі України. *Юридичний науковий електронний журнал*. 2015. №. 4. С. 252.

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**РЕПРЕЗЕНТАЦІЯ ОФИРА
ЯКО РЕАЛІЗАЦІЯ ЗАСАД
КОНКУРЕНЦІЙНОСТІ В
ПОСТІПОВАНІУ КАРНЫМ**

Krajowe i międzynarodowe akty prawne gwarantują każdemu prawo do rozpoznania jego sprawy przez właściwy sąd. Tę samą zasadę można zastosować na etapie postępowania przygotowawczego, gdyż jedynie kompetentny śledczy i prokurator może zapewnić przeprowadzenie skutecznego śledztwa. Sam proces karny toczy się zgodnie z ogólnymi zasadami postępowania karnego, wśród których jedną z uniwersalnych zasad jest zasada kontradiktoryjności stron. Biorąc pod uwagę elementy składowe zasad konkurencyjności, cel artykułu określono jako wyjaśnienie miejsca i roli instytucji reprezentacji ofiar w realizacji zasady konkurencyjności. Uzasadnia się, że w celu pełnego wdrożenia zasady kontradiktoryjności w postępowaniu karnym konieczne jest dokonanie przeglądu niektórych przepisów obowiązującego Kodeksu postępowania karnego Ukrainy i wprowadzenia pewnych zmian.

Słowa kluczowe: postępowanie karne, podstawa prawna, pokrzywdzony, instytucja zastępstwa, przedstawiciel pokrzywdzonego, przedstawiciel prawny, prawa i obowiązki procesowe.

procedure³¹. At the same time, it remains unclear why the victim is obliged to provide only truthful testimony, while the suspect or accused does not abuse their rights when providing information to the investigation, inquiry, or other authorized persons, that does not correspond to reality. Whether the equality of the parties can be asserted in this case is an open question.

The question also arises as to whether the victim needs a competent legal representative at the pre-trial investigation stage or whether there is no need for this, considering that the investigator, inquiry, and prosecutor represent the prosecution and focus their activities on ensuring its rights and legitimate interests. To support this thesis, it is worth noting that quite often in investigative practice, cases occur where due to mistakes made by representatives of pre-trial investigation bodies, sources of information or material objects that could acquire the status of evidence in criminal proceedings may be lost. Sometimes, the victim is not properly informed of their rights, and as a result, they do not fully exercise the procedural rights guaranteed to them by law. For example, victims often turn to lawyers for assistance in drafting civil claims to ensure further compensation from suspects, defendants, or accused individuals for the harm caused to them through the commission of a criminal offense. The results of the analysis of judicial practice support this position. According to recent trends, it is considered typical for investigators to refuse to inform victims about procedural actions taken in criminal proceedings, to satisfy requests for investigative (search) actions, and sometimes even to initiate criminal proceedings, etc. Moreover, quite often investigative judges, after considering the substance of the complaint, uphold them, indicating that there are widespread cases where investigators (inquirers) resort to inaction.

Moreover, in favor of introducing the idea of victim representation in criminal proceedings, the procedural duty of the investigator to involve a minor victim or a person recognized by law as incapacitated or limited in legal capacity, a legal representative, and to conduct the questioning of a minor witness in the presence of a legal representative, educator, or psychologist serves. Due to the inability to understand certain procedural features of conducting proceedings, the latter, mentioned above, require a legal representative. However, whether the legal representative is capable of fully understanding and exercising their procedural rights is also an open question.

Thus, the legislator's approach to guaranteeing the right of the victim to be represented in criminal proceedings by a person who may act as a defender in criminal proceedings (Part 1 of Article 58 of the Criminal Procedure Code of Ukraine)³², is entirely justified and thoughtful. However, the legislator

has not yet decided in favor of involving such a representative in every criminal proceeding.

Conclusions. The competitive principle is guaranteed by the provisions of the Constitution of Ukraine and the Criminal Procedure Code of Ukraine. It is universal and inherent in any proceedings, as the presence of the victim and the subject who has encroached on the protected legal interests of another person



³¹ Крикливець Д. Є. Реалізація засади змагальності під час розгляду скарг слідчим суддею : автореф. дис. ... канд. юрид. наук:12.00.09. Львів, 2016. С. 7.

³² Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651-VI // База даних (БД) «Законодавство України» / Верховна Рада (ВР) України. URL: <http://zakon.rada.gov.ua/laws/show/-4651-17>.

already gives rise to the existence of a dispute, which is the foundation for the competitive process.

In legal literature, scientists have different approaches to the interpretation of the substantive elements of the principle of competitive proceedings in different ways. We support scientists who, in addition to components such as the division of procedural functions of the prosecution, defense, and case resolution, the presence of active equal parties and a court that decides the case and ensures the parties' rights while performing their functions, also include access to justice, freedom to appeal procedural decisions, and procedural equality of subjects in criminal procedural activities conducting prosecution and defense.

The analysis of investigative and judicial practices indicates that the prosecution, represented by the investigator and prosecutor, often makes decisions that do not always align with the legal position of the victims and sometimes inadequately explain their rights, leading to inaction. These facts explain the actions of victims related to involving representatives authorized to act as defenders in criminal proceedings. Moreover, investigators, inquiry officers, and prosecutors are obliged to act objectively, applying procedural tools to fully and impartially understand the circumstances of the criminal offense, both preceding and following it. Given this, considering the unevenness of procedural statuses, we believe that sometimes involving a representative of the victim is a thoughtful and justified step that contributes to the full implementation of the competitive principle in criminal proceedings. In view of the above, the prospects for further research should involve scientific exploration aimed at improving criminal procedural mechanisms for protecting the rights and legitimate interests of victims in criminal proceedings, as well as ensuring the proper legal procedures for the latter.

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