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DOI <https://doi.org/10.32353/acfs.9.2024.04>
UDC 343.1 (477)

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Protecting the Rights of War Crimes Victims: Determining Ways to Prevent Their Secondary Victimization

The modern conditions of our state's development, including the geopolitical situation and the state of the security environment, highlight the need to enhance the efficiency of law enforcement agencies, ensure effective resistance to war crimes and criminal offenses associated with war. At the same time, it is necessary to ensure the protection and restoration of the rights of affected individuals. In view of the above, the Article Purpose is formulated as defining and characterizing the specifics of protecting the rights of victims of war crimes and war-related criminal offenses, as well as developing guidelines to enhance the efficiency of this activity.

It is argued that, at present, legal theory has neither formulated definitions of the concepts of "war crimes" and "war-related criminal offenses" nor identified the specific types of crimes directly related to this group. Ways of reforming the provisions of the current criminal procedural legislation are outlined, taking into account the need to protect victims of war crimes and prevent instances of their secondary victimization.

Keywords: criminal proceeding, pre-trial investigation, defense, attorney at law, victim, prosecution, war crime, war-related criminal offense, investigative (detective) action, victimization.

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funder had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

Declaration of Competing Interest

The author declare that they have no conflict of interest.

Research Problem Formulation. The full-scale invasion of Ukraine has reshaped the primary tasks of many state structures. The security sector is no exception, as it is now tasked with effectively investigating war crimes, crimes against national security, and also with countering general criminality, the indicators of which remain consistently high.

Considering that the entire criminal justice system is primarily tasked with protecting a person, society, and the state from criminal offenses, safeguarding the rights, freedoms, and lawful interests of participants in a criminal proceeding¹, in the context of war crimes, an important aspect alongside bringing of perpetrators to justice should also be ensuring the protection of victims and implementing efficient measures to restore their violated rights. This tendency should prevail in the activities of relevant law enforcement agencies empowered to conduct pre-trial investigations of crimes in this category. At the same time, this responsibility should not solely fall on the prosecution; it is also essential to develop effective protection mechanisms that can be

¹ Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651-VI. Верховна Рада (ВР) України: офіційний сайт. URL: <http://zakon.rada.gov.ua/laws/show/-4651-17>



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**ЗАХИСТ ПРАВ ЖЕРТВ
ВОЄННИХ ЗЛОЧИНІВ:
ВИЗНАЧЕННЯ СПОСОБІВ
ЗАПОБІГАННЯ ЇХ ВТОРИННОЇ
ВІКТИМІЗАЦІЇ**

Сучасні умови розвитку нашої держави, зокрема геополітична ситуація та стан безпекового середовища, актуалізують необхідність підвищення ефективності діяльності правоохоронних органів, забезпечення дієвої протидії військовим злочинам та кримінальним правопорушенням, пов'язаним з війною. Водночас необхідно забезпечити захист та відновлення прав постраждалих осіб. З огляду на вищезазначене мета статті сформульована як визначення та характеристика особливостей захисту прав жертв воєнних злочинів і кримінальних правопорушень, пов'язаних з війною, а також розроблення методичних рекомендацій щодо підвищення ефективності цієї діяльності.

Стверджується, що на даний момент у правовій теорії не сформульовано визначення понять «воєнні злочини» та «кримінальні злочини, пов'язані з війною», а також не визначено конкретні види злочинів, які безпосередньо відносяться до цієї групи. Окреслено шляхи реформування положень чинного кримінально-процесуального законодавства з урахуванням необхідності захисту жертв військових злочинів та попередження випадків їх вторинної віктимізації.

Ключові слова: кримінальне провадження, досудове розслідування, захист, адвокат, потерпілий, обвинувачення, військовий злочин, кримінальне правопорушення, пов'язане з війною, слідча (розшукова) дія, віктимізація.

implemented by victims' representatives in a criminal proceeding. However, despite its significant relevance, this issue has not yet received substantial attention in the scientific research of our compatriots and therefore requires immediate resolution and research.

Analysis of Essential Research and Publications. Given the realities of Ukraine's state development, the problematics of war crimes has become perhaps the most pressing in the specialized literature, driven by the need to restore the violated rights of the victims, whose number, unfortunately, continues to grow. Various scientific schools are now actively preparing guidelines and training manuals for investigating crimes of this group².

Also, throughout 2023, the Office of the Prosecutor General of Ukraine issued several methodological guidelines for conducting pre-trial investigations into various categories of war crimes, including illegal imprisonment, torture, etc. They were titled Investigation Standards and were intended to outline the procedures for investigators and prosecutors to document war crimes against the population of Ukraine committed by the military of the aggressor country in the de-occupied territories. It is crucial to note that these procedures were developed based on exemplary cases that are nearly typical for all de-occupied settlements³.

At the same time, the issue of protecting the rights and lawful interests of those affected by war crimes is addressed in research papers of only a few representatives of the Ukrainian academic community. In this context, we deem it necessary to acknowledge the contributions of such scholars as N. M. Akhtyrskaya⁴, I. V. Basysta (with co-authors)⁵, T. S. Vaida⁶, N. V. Hlynska⁷, M. V. Kryvonos⁸, A. V. Piddubna⁹, etc. Recognizing their valuable con-

² Див. докладніше: Розслідування воєнних злочинів і пов'язаних з війною кримінальних правопорушень: кримінально-правові, кримінальні процесуальні та криміналістичні аспекти: наук.-практ. посіб. / [Глюк І. В., Литвинов О. М., Орлов Ю. В. та ін.], за заг. ред. В. В. Сокуренка, МВС України, Харків. нац. ун-т внутр. справ, Харків, 2023. 400 с.; Конопельський В. Я., Чекмарьова І. М., Резніченко Г. С. Воєнні злочини за законодавством України: навчальний посібник. Одеса, ОДУВС, 2023. 60 с.; Розслідування колабораційної діяльності: практ. посібник / Є. О. Письменський, С. В. Головін, А. В. Коваленко, В. В. Коваленко. Київ: ВД Дакор, 2023. 260 с.

³ Стандарти розслідування воєнних злочинів. Загальна частина: методичні рекомендації / Пашковський М.І., Крапивін Є.О., Яворська В.В., Постоловська М.М., Коваль Д.О. та ін. Київ, 2023. 112 с.; Стандарти розслідування воєнних злочинів. Незаконне позбавлення волі та катування: методичні рекомендації / Пашковський М.І., Лисенко Д.Л., Лещенко А.Л. та ін. Київ, 2023. 102 с.

⁴ Ахтирська Н. М. Права потерпілих у кримінальному провадженні: виклики та державна стратегія удосконалення правового статусу. Науковий вісник Ужгородського Національного Університету. Серія ПРАВО. 2023. №80 (2). С. 116-123. DOI: <https://doi.org/10.24144/2307-3322.2023.80.2.17>.

⁵ Басиста І. В., Назар Ю. С., Хатнюк Ю. А. Захист прав дітей та забезпечення їх безпеки за умов воєнних злочинів, геноциду, агресії та злочинів проти людяності. Protecting the rights of children and ensuring their safety in the context of war crimes, genocide, aggression and crimes against humanity: розділ у колективній монографії «Juvenile policy as a component of supporting Ukraine's national security and defense» (dedicated to the 53rd anniversary of the UN General Assembly adoption of the Declaration of the Rights of the Child and the 56th). Riga, Latvia: «Baltija Publishing. 2023. С. 42-78.

⁶ Вайда Т. С. Правова допомога потерпілим особам внаслідок згвалтування в умовах війни. ScienceRise: Juridical Science. 2023. №2 (24). С. 38-47.

⁷ Глинська Н. В. Потерпілоорієнтований підхід при здійсненні кримінального провадження у справах про воєнні злочини: окремі аспекти якості закону та потреб практики. Україна – ЄС: питання гармонізації кримінального та кримінального процесуального законодавства: матеріали круглого столу (м. Львів, 22 червня 2023 року) / упор. І. В. Глюк, Н. Р. Лапчук. Львів: Львівський державний університет внутрішніх справ, 2023. С. 70-76.

⁸ Кривонос М. В. Індивідуальна робота з потерпілим від кримінального правопорушення в умовах воєнного стану. SWorldJournal. 2023. № 21 (3). С. 118-124. DOI: <https://doi.org/10.30888/2663-5712.2023-21-03-018>.

⁹ Піддубна А. В. Процесуальні гарантії прав потерпілих від воєнних злочинів. Теоретико-прикладні проблеми кримінального процесу та криміналістики в умовах воєнного стану: тези доповіді міжнародної наук.-практ. конф. (м. Кам'янець-Подільський, 24 листоп. 2023 р.). Кам'янець-Подільський: ХНУВС, 2023. С. 343-346.

PROTECTING THE RIGHTS OF WAR CRIMES VICTIMS: DETERMINING WAYS TO PREVENT THEIR SECONDARY VICTIMISATION

The modern conditions of our state's development, including the geopolitical situation and the state of the security environment, highlight the need to enhance the efficiency of law enforcement agencies, ensure effective resistance to war crimes and criminal offenses associated with war. At the same time, it is necessary to ensure the protection and restoration of the rights of affected individuals. In view of the above, the Article Purpose is formulated as defining and characterizing the specifics of protecting the rights of victims of war crimes and war-related criminal offenses, as well as developing guidelines to enhance the efficiency of this activity.

It is argued that, at present, legal theory has neither formulated definitions of the concepts of "war crimes" and "war-related criminal offenses" nor identified the specific types of crimes directly related to this group. Ways of reforming the provisions of the current criminal procedural legislation are outlined, taking into account the need to protect victims of war crimes and prevent instances of their secondary victimization.

Keywords: criminal proceeding, pre-trial investigation, defense, attorney at law, victim, prosecution, war crime, war-related criminal offense, investigative (detective) action, victimization.

Protecting the Rights of War Crimes Victims: Determining Ways to Prevent Their Secondary Victimization

tribution to advancing the researched issue, it should be pointed out that the mentioned and other authors focused in their research papers predominately on the legal principles of the victim's protection, defining the specifics of his/her legal status in these categories of criminal offenses, and some other issues. However, challenging aspects of the attorney at law's activity as the victim's representative remained out of focus. We believe that currently, this issue, at least in our opinion, is as relevant as the investigation of these criminal offenses, as the attorney at law representing the victim is also a participant in the prosecution, thus contributing to the fulfillment of the tasks of a criminal proceeding.

The Article Purpose is to define and characterize the specifics of protecting the rights of victims who have suffered from war crimes and war-related criminal offenses, and to develop guidelines for enhancing the efficiency of this activity.

Main Content Presentation. Pre-trial investigation of any criminal offense should be conducted in compliance with the so-called victim-oriented approach. According to this approach, the protection of the rights, freedoms, and lawful interests of a person affected by the commission of a criminal offense should be recognized as the priority task of a criminal proceeding. However, as noted in legal literature, although national legislation defines and guarantees a broad range of rights to the victim and establishes mechanisms for his/her implementation, the majority of them remain merely declarative in practice. In some cases, the justice system may not only fail to restore violated rights but also cause further psychological trauma to the victim, thus allowing what is known as "secondary victimization" ¹⁰.

The task of preventing re-victimization becomes particularly relevant in the context of European integration, as criminal procedural legislation under such circumstances must be functionally capable of guaranteeing genuine procedural mechanisms to prevent negative consequences for victims ¹¹. Taking these principles into account, we endorse the suggestion to develop and implement a standard aimed at preventing secondary victimization of the affected. As rightly pointed out by N. V. Hlynska, its essential content should encompass components such as:

- state compensation for damage caused to the victim of a criminal offense;
- ensuring the victim's right of access to justice and the application of a non-burdensome criminal procedure against him/her;
- guaranteeing the victim the opportunity to be an active participant in the pre-trial investigation and trial of a criminal offense committed against him/her;
- providing legal, medical, psychological, and social assistance to victims;
- guaranteeing the right to security for the victim, his/her close relatives, and other participants in a criminal proceeding;

- providing additional guarantees for the protection of the rights, freedoms and legitimate interests of vulnerable groups ¹². Given the above, we are of the opinion that the current legislation of Ukraine,



¹⁰ Глинська Н. В. Указана праця. С. 70.

¹¹ Директива Європейського парламенту та Ради Європейського Союзу № 2012/29/EU від 25 жовтня 2012 року, яка встановлює мінімальні стандарти прав, підтримки і захисту потерпілих від злочину і заміною Рамкове рішення Ради Європейського Союзу 2001/220/JHA [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] // OJ L 315, 14.11.2012, p. 57-73. EUR-Lex. URL: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>

¹² Глинська Н. В. Указана праця. С. 71.

**SCHUTZ DER RECHTE
VON OPFERN VON
KRIEGSVERBRECHEN:
FESTLEGUNG VON
MÖGLICHKEITEN ZUR
VERHINDERUNG IHRER
SEKUNDÄREN OPFER**

Die modernen Bedingungen der Entwicklung unseres Staates, einschließlich der geopolitischen Lage und des Zustands des Sicherheitsumfelds, unterstreichen die Notwendigkeit, die Effizienz der Strafverfolgungsbehörden zu steigern und einen wirksamen Widerstand gegen Kriegsverbrechen und kriegsbezogene Straftaten sicherzustellen. Gleichzeitig ist es notwendig, den Schutz und die Wiederherstellung der Rechte der betroffenen Personen sicherzustellen. In Anbetracht des Vorstehenden wird der Zweck des Artikels so formuliert, dass er die Besonderheiten des Schutzes der Rechte von Opfern von Kriegsverbrechen und kriegsbezogenen Straftaten definiert und charakterisiert sowie Richtlinien zur Steigerung der Effizienz dieser Tätigkeit entwickelt.

Es wird argumentiert, dass die Rechtstheorie derzeit weder Definitionen der Konzepte „Kriegsverbrechen“ und „kriegsbezogene Straftaten“ formuliert noch die spezifischen Arten von Straftaten identifiziert hat, die direkt mit dieser Gruppe in Zusammenhang stehen. Es werden Möglichkeiten zur Reform der Bestimmungen des aktuellen Strafprozessrechts aufgezeigt, wobei der Notwendigkeit Rechnung getragen wird, Opfer von Kriegsverbrechen zu schützen und Fälle ihrer sekundären Viktimisierung zu verhindern.

Schlüsselwörter: Strafverfahren, Ermittlungsverfahren, Verteidigung, Rechtsanwalt, Opfer, Strafverfolgung, Kriegsverbrechen, kriegsbezogene Straftat, Ermittlungstätigkeit, Viktimisierung.

especially in the context of investigating and prosecuting war crimes and war-related criminal offenses, should provide and guarantee effective mechanisms for implementing these priority tasks.

The current criminal law doctrine has not yet defined the concepts of war crimes and war-related criminal offenses, nor has it established the types of criminal offenses that can be classified under this group. This leads to the assumption that they differ not only in the nature of the crime object and other components of a crime but also in the peculiarities of the criminal activity mechanism and some other characteristics. Accordingly, scholars also adhere to different approaches to defining crimes that can fall into the category we are studying.

Thus, the team of authors of the training manual published by the Odesa State University of Internal Affairs, based on the textual analysis of the provisions of the Criminal Code of Ukraine (hereinafter referred to as the CC), in particular Section XIX of the Special Part of the CC of Ukraine, proposed to classify the following offenses as war crimes: “1) marauding (Art. 432 of the CC of Ukraine); 2) violence against population in an operational zone (Art. 433 of the CC of Ukraine); 3) ill-treatment of prisoners of war (Art. 434 of the CC of Ukraine); 4) unlawful use or misuse of the Red Cross, Red Crescent, Red Crystal symbols (Art. 435 of the CC of Ukraine)”¹³. The same authors, having analyzed the regulatory provisions of Part XX of the Special Part of the CC of Ukraine, also classified the following criminal acts as war crimes: “1) planning, preparation and waging of an aggressive war (Art. 437 of the Criminal Code of Ukraine); 2) violation of rules of the warfare (Art. 438 of the Criminal Code of Ukraine); 3) use of weapons of mass destruction (Art. 439 of the Criminal Code of Ukraine); 4) genocide (Art. 442 of the Criminal Code of Ukraine); 5) mercenaries (Art. 447 of the Criminal Code of Ukraine)”¹⁴.

O. V. Pchelina noted that, in addition to the aforementioned war crimes and war-related criminal offenses, those outlined in Articles 110, 111, 111-1, 111-2, 114, 114-1, 114-2, as well as Part 4 of Articles 185-187, 189, 191, and Articles 201-2, 435-1, and 436-2 of the CC of Ukraine may also fall under such classification¹⁵. In view of the above, we believe that each of the outlined crimes can be classified as war crimes and crimes related to war. In addition, we consider it necessary to point out that there have been isolated cases of sexual violence committed by the military forces of the aggressor country on the territory of Ukraine. Therefore, in light of this, in compliance with the Strategic Plan for Implementing the Powers of the Prosecutor's Office in Criminal Prosecution for Committing International Crimes for 2023-2025 adopted on September¹⁵, 2023, the priority directions of activity of Ukrainian prosecution authorities include:

strengthening the national capacity for investigating and holding accountable individuals responsible for committing sexual violence (associated with a conflict), ensuring victims' access to a comprehensive support system;

reforming the current legislative system to ensure effective criminal prosecution for the commission of international crimes

¹³ Конопельський В. Я., Чекмарьова І. М., Резніченко Г. С. Воєнні злочини за законодавством України : навчальний посібник. Одеса, ОДУВС, 2023. С. 26.

¹⁴ Там само.

¹⁵ Пчеліна О. В. Підслідність у кримінальних провадженнях про воєнні злочини та пов'язані з війною кримінальні правопорушення. Кримінальне процесуальне право на сучасному етапі розвитку України: матеріали круглого столу (м. Київ, 27 жовтня 2023 р.). Київ : Національна академія внутрішніх справ, 2023. С. 49-52.



**PROTÉGER LES DROITS DES
VICTIMES DE CRIMES DE
GUERRE : DÉTERMINER LES
MOYENS D'ÉVITER LEUR
VICTIMISATION SECONDAIRE**

Les conditions modernes de développement de notre État, y compris la situation géopolitique et l'état de l'environnement de sécurité, mettent en évidence la nécessité d'améliorer l'efficacité des forces de l'ordre et d'assurer une résistance efficace aux crimes de guerre et aux infractions pénales liées à la guerre. Dans le même temps, il est nécessaire d'assurer la protection et le rétablissement des droits des personnes concernées. Compte tenu de ce qui précède, l'objectif de l'article est formulé comme définissant et caractérisant les spécificités de la protection des droits des victimes de crimes de guerre et d'infractions pénales liées à la guerre, ainsi que l'élaboration de lignes directrices pour améliorer l'efficacité de cette activité.

On fait valoir qu'à l'heure actuelle, la théorie juridique n'a pas formulé de définitions des concepts de « crimes de guerre » et d'« infractions pénales liées à la guerre », ni identifié les types spécifiques de crimes directement liés à ce groupe. Des moyens de réformer les dispositions de la législation actuelle en matière de procédure pénale sont présentés, en tenant compte de la nécessité de protéger les victimes de crimes de guerre et de prévenir les cas de victimisation secondaire.

Mots-clés : procédure pénale, enquête préliminaire, défense, avocat, victime, poursuites, crime de guerre, infraction pénale liée à la guerre, action d'enquête (détective), victimisation.



*Protecting the Rights of War Crimes Victims:
Determining Ways to Prevent Their Secondary Victimization*

at national and international levels, and developing effective mechanisms for compensation and reparations for victims;

protecting the interests of vulnerable groups;
improving mechanisms for ensuring the security of witnesses and victims in a criminal proceeding;

coordinating with foreign state agencies, their non-governmental organizations, authorities of foreign states empowered to exercise justice, and international justice institutions to enhance support and protection for victims, witnesses, and other participants in a criminal proceeding;

establishing and developing a support mechanism for victims and witnesses of war crimes and other international crimes to ensure their protection and compliance with security mechanisms, and to provide them with advice and other necessary assistance;

introducing specialized IT solutions for management and efficient coordination of efforts of all participants involved in this activity;

initiating ongoing interaction and information exchange with national and international partners and non-governmental organizations involved in the documentation of international crimes, war crimes, and/or assisting victims¹⁶. We are of the opinion that the outlined avenues of activity are fully aligned with current standards for preventing secondary victimization of victims and should serve as a solid foundation for upholding the rights of victims of war crimes and related offenses. However, they are currently not fully implemented in practice, which means that some problems persist and continue to adversely affect the potential for conducting an effective criminal proceeding.

One of the issues that pose challenges during pre-trial investigation of war crimes and related criminal offenses is determining their jurisdiction. According to contemporary criminal procedure doctrine, the location for pre-trial investigation of criminal offenses, including for the group (classification) under our study, is determined by Part 1, Article 218 of the Criminal Procedure Code of Ukraine. This article stipulates that pre-trial investigation is conducted by an investigator of the pre-trial investigation agency "in whose territorial jurisdiction criminal offence has been committed"¹⁷. However, if the location of a crime is outside of Ukraine or unknown, the prosecutor determines the location, i.e. assigns the authority that will conduct a pre-trial investigation. The same applies to criminal offenses committed in temporarily occupied territories. The defining criteria that the prosecutor should consider when determining the pre-trial investigation agency that will fulfill the functions of the prosecution in this proceeding, are: the location where signs of the committed criminal offense have been discovered; the location of the suspect and the majority of witnesses; the place where the criminal offense has been completed or where consequences of a criminal offense have occurred¹⁸. The prosecutor

will make the corresponding procedural decision in the form of a ruling in the following cases:

1) based on reviewing a notice from the investigator regarding circumstances

¹⁶ Стратегічний план щодо реалізації повноважень органів прокуратури у сфері кримінального переслідування міжнародних злочинів на 2023-2025 роки: затв. Генеральним прокурором України від 15 вересня 2023 року. Офіс Генерального прокурора: офіц. сайт. URL : <https://www.gp.gov.ua/ua/posts/strategicnij-plan-shhodo-realizaciyi-povnovazhen-organiv-prokuraturi-u-sferi-kriminalnogo-peresliduvannya-za-vcinennya-miznarodnix-zlociniv-na-2023-2025-roki>

¹⁷ Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 № 4651-VI. Верховна Рада (ВР) України: офіційний сайт. URL: <http://zakon.rada.gov.ua/laws/show/-4651-17>

¹⁸ Там само.

**OCHRONA PRAW OFIAR
ZBRODNI WOJENNYCH:
OKREŚLENIE SPOSOBÓW
ZAPOBIEGANIA ICH
POWTÓRNEJ WIKTYMIZACJI**

Współczesne uwarunkowania rozwoju naszego państwa, w tym sytuacja geopolityczna i stan środowiska bezpieczeństwa, wypuklają potrzebę wzmocnienia efektywności organów ścigania, zapewnienia skutecznego oporu wobec zbrodni wojennych i przestępstw związanych z wojną. Jednocześnie konieczne jest zapewnienie ochrony i przywrócenia praw dotkniętych osób. Mając na uwadze powyższe, Cel artykułu sformułowany jako określenie i scharakteryzowanie specyfiki ochrony praw ofiar zbrodni wojennych i przestępstw wojennych oraz opracowanie wytycznych mających na celu zwiększenie efektywności tego działania.

Twierdzi się, że obecnie teoria prawa nie sformułowała definicji pojęć „zbrodnie wojenne” i „przestępstwa wojenne”, ani nie określiła konkretnych rodzajów przestępstw bezpośrednio związanych z tą grupą. Zarysowano sposoby zreformowania przepisów obowiązującego prawodawstwa postępowania karnego, uwzględniając potrzebę ochrony ofiar zbrodni wojennych i zapobiegania przypadkom ich wtórnej wiktymizacji.

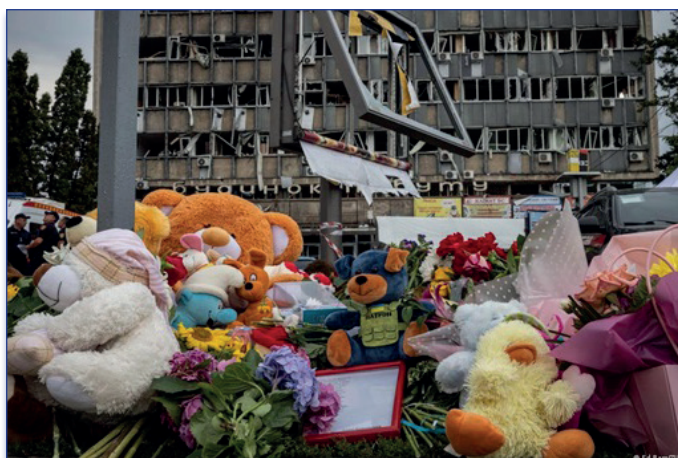
Słowa kluczowe: postępowanie karne, śledztwo przedprocesowe, obrona, radca prawny, ofiara, ściganie, zbrodnie wojenna, przestępstwo wojenne, czynność dochodzeniowo-śledcza, wiktymizacja.

indicating that the investigation of the committed criminal offense falls outside his/her competence (within 10 days from the date of receiving the written notice, provided circumstances outlined therein are confirmed);

2) the prosecutor independently identifies circumstances indicating the need to determine another jurisdiction (within 10 days of their establishment)¹⁹. In the context of the issue under study, it is worth noting that within the structure of recorded crime, especially concerning war crimes and those related to war, there is a prevalence of offenses outlined in Article 438 of the CC of Ukraine Violation of Rules of the Warfare. Socially dangerous consequences of its commission, which typically harm civilians, include: causing physical harm to life and health, inflicting property damage through destruction or damage to property, etc. Information about the commission of crimes that fall under the scope of Article 438 of the CC of Ukraine is most often recorded by the National Police of Ukraine. Thus, it is the police who conduct scene inspections and other urgent investigative (search) actions. Once these actions are completed, the gathered materials of a criminal proceeding are then forwarded to security agencies. According to the provisions of Part 2 of Article 216 of the Criminal Procedure Code of Ukraine, it is investigators of security agencies that are authorized to conduct such pre-trial investigations. In practice, this often leads to victims spending time determining which investigator, appointed by the head of the respective pre-trial investigation agency, is responsible for conducting pre-trial proceedings. Consequently, this impacts the deadlines for attaching relevant documents to the case file that may serve as procedural evidence sources. Furthermore, it results in destruction of physical evidence identified by the victim and changes in the crime scene due to various reasons, including the victim's efforts to restore normal living conditions at the scene, such as repairing damaged property or finding alternative accommodation. Taken together, these factors may either influence the outcomes of conducted forensic examinations or completely hinder their completion. Additionally, victims often reside abroad and may experience delays in receiving a response to their application, which follows the standard procedure outlined in the Law of Ukraine On Citizens' Appeals. Typically, responses are provided within a 15-day period, though occasionally this may be extended to one month. Such facts negatively affect the victims' ability to assert their boundaries of legal standing in a criminal proceeding. Therefore, we believe it is important to emphasize once again that when changing the body conducting a pre-trial investigation or the place of its conduct, the investigator entrusted with further pre-trial investigation is duly obliged to notify the victim in the manner prescribed by the criminal procedural legislation.

Another issue related to ensuring the rights of victims in a criminal proceeding and consideration of war crimes and war-related criminal offenses is, first, the procedure of special pre-trial investigation (in absentia) and, second, the procedure of transfer of persons who have committed such crimes for exchange as prisoners of war, including the actual exchange and the subsequent execution of sentences based on relevant court decisions. The outlined factors significantly affect the ability to ensure the enforcement of a satisfied civil claim, compensation for the damage caused to the victim, etc.

For instance, in a case adjudicated by the Borodianskyi District Court of Kyiv Region against a citizen of the Russian Federation charged with criminal offenses under Part 2 of Article 28 and Part 1 of Article 438, as well as Part 2 of Article 28



¹⁹ Там само.

and Part 2 of Article 438 of the CC of Ukraine, it was determined that, together with other individuals, they formed a premeditated group and carried out the shooting of a civilian vehicle. Specifically, the vehicle was a red VAZ-2101 passenger car, driven by a civilian who was a Ukrainian citizen. It was traveling on the road between Zdvyzhivka village and Babyntsi village in Bucha district of the Kyiv region. As a result of the committed illegal actions, the driver of the aforementioned car sustained serious bodily injuries, including a fatal gunshot wound to the head. Additionally, the driver suffered moderate injuries, including a gunshot wound to the right lower limb, a fracture of the right olecranon process of the ulna, and closed chest trauma (fracture of the 1st rib on the right). Furthermore, according to the established circumstances of the case, on March 20, 2022, at about 12 o'clock, the accused unlawfully entered the victim's residence. While in the specified location, acting in collusion with the deputy platoon commander, division commander, lance corporal, and other unidentified servicemen of the seventh company of the third battalion of the 331st regiment of the 98th airborne division, the accused knowingly and deliberately, for personal gain and with full awareness of the socially dangerous nature of his actions, unlawfully entered the territory of the estate through a damaged section of the fence. Afterward, the accused illegally gained entry into the victim's residence through damaged metal doors at the rear of the house, foreseeing and desiring the occurrence of socially dangerous consequences. There, with the direct intent to unlawfully acquire someone else's property, acting in conspiracy with a group of individuals and pursuing personal gain, the accused violated the provisions of Article 147 of the Geneva Convention (VI) on the Protection of Civilian Persons in Time of War dated August 12, 1949, as well as Articles 48, 50, and 52 of the Additional Protocol to the Geneva Conventions of August 12, 1949, concerning the protection of victims of international armed conflicts (Protocol I) dated June 8, 1977. He secretly stole a black portable game console PlayStation Portable (PSP) manufactured by Sony, valued at 2077 hryvnia and 80 kopecks, and disposed of it at his own discretion²⁰. It is worth noting that two victims participated in the trial: the sister of the deceased and the owner of the stolen property. Despite the fact that these victims suffered financial and possibly moral damage, they did not file a civil claim in the criminal proceeding. The verdict does not mention the whereabouts of the stolen property; however, it is important to mention that the total procedural expenses, including the costs of conducting forensic examinations in the case, exceed 65,000 (sixty-five thousand) hryvnias, which, according to the adopted verdict, are to be recovered from the accused in favor of the state.

Therefore, in this context, we deem it necessary to underscore the importance of addressing two key issues: compensating the victim for the harm inflicted by the criminal act and addressing the procedural expenses associated with legal proceedings. In this context, this issue becomes especially pertinent when a person is exchanged as a prisoner of war. It is important to note that these matters will not be resolved through any means, so it cannot be said that the goals of a criminal

proceeding have been completely met. Therefore, we firmly believe that it is crucial to develop effective methods for tackling this issue, particularly in cases where harm of any nature is inflicted upon an individual. A possible solution to this problem could be either to review the proposal regarding the exchange of such an accused, or to implement this procedure only on condition that the victim does not object or that the state compensates the victim for the damage caused. Under these specific conditions, it can be said that efficient



²⁰ Вирок Бородянського районного суду Київської області від 09 квітня 2024 року у справі № 939/2083/23. Єдиний державний реєстр судових рішень. URL: <https://reyestr.court.gov.ua/Review/118220618>

measures have been taken by state authorities to prevent secondary victimization of persons affected by war crimes and other crimes related to war.

Conclusions. The present state of our country's development, especially considering the geopolitical situation and the state of our security environment, highlights the importance of improving the efficiency of law enforcement agencies. This includes ensuring efficient measures to combat war crimes and criminal offenses related to warfare. Additionally, it is crucial to guarantee the protection and restoration of the rights of those impacted by these criminal acts, while also preventing any secondary victimization due to the inefficient functioning of Ukraine's law enforcement and judicial systems.

Currently, in the theory of legal science, definitions of the concepts of war crimes and war-related criminal offenses have not yet been formulated, nor have the specific types of criminal offenses that can be classified under this group been directly identified. This gives grounds to state their diversity, different types of objects of encroachment, their differentiation from each other due to the peculiarities of the criminal activity mechanism and some other characteristics.

At present, the activities of Ukrainian law enforcement and judicial authorities should be focused on ensuring and protecting the rights of victims of this category of crimes and preventing their secondary victimization. Therefore, during investigation, it is necessary for Ukrainian law enforcement and judicial authorities to maintain effective communication with the victims, to take measures to objectively clarify the circumstances of the crime committed, and to determine the extent of the damage caused to the victims, as well as to assess it. If such measures are not undertaken by representatives of the pre-trial investigation agency or the prosecutor, then the victim's representative may be involved for this purpose. In cases where damage to the victims is confirmed in connection with the commission of a criminal offense, the mechanisms for exchanging prisoners of war convicted for committing such offenses should be reconsidered or reviewed. We believe that one potential solution to this issue could be either reviewing the proposal concerning the exchange of such an accused or implementing this procedure only under the condition that the victim does not object or that the state compensates the victim for the damage caused. We consider this issue extremely relevant in today's context; therefore, it necessitates further scientific research.

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Received by Editorial Board: 21.10.2023

Suggested Citation:

Spitsyna, H., Iemets, I. (2024). Protecting The Rights Of War Crimes Victims: Determining Ways To Prevent Their Secondary Victimization. *Archives of Criminology and Forensic Sciences*. 1 (9). 70-78. DOI: <https://doi.org/10.32353/acfs.8.2023.05>