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VICTIMOLOGICAL ASPECTS OF CRIMINOLOGICAL ACTIVITIES OF ATTORNEYS AS ACTORS IN PREVENTING CRIMINAL OFFENCES

Abstract. Purpose. The purpose of the article is to prove the need to improve the legal mechanism for ensuring the safety of attorneys-at-law in criminal proceedings. **Results.** The article clarifies the content of victimological crime prevention, implemented by attorneys-at-law, identifies the problems which exist in this regard and develops some ways of their substantive solution. In particular, it is established that attorneys-at-law, along with other participants to criminal proceedings, often become victims of criminal attacks, and therefore this victimological aspect should be considered by all actors involved in preventive activities. In addition, the study of practice has revealed that it is the objects of protection (suspects, accused and defendants) who are subject to socially dangerous acts related to the unlawful release (or prosecution) of them from criminal liability who are most likely to be victimised in this regard. Other victimisation issues include those related to the choice by the court of an appropriate preventive measure against the perpetrator; inadequate conditions of detention of prisoners; their transfer from one pre-trial detention facility to another; replacement of preventive measures, etc., which determine in practice the cases of inhuman or degrading treatment of these persons; provocation of bribery; creation of artificial evidence, etc., and determine the commission of unlawful attacks by participants in criminal proceedings against attorneys. **Conclusions.** It is concluded that the level of victimisation of all participants in criminal proceedings is influenced by the following determinants and conditions: low legal awareness and legal culture of attorneys-at-law and other participants in criminal proceedings; distrust in law enforcement bodies and the court; unsatisfactory organisation of interaction of attorneys-at-law with other participants in criminal proceedings on issues related to the organisation of victimisation prevention measures for criminal offences, etc. Given the findings of the study, it is also concluded that without improving the overall legal mechanism of criminological activities of attorneys-at-law and prevention of criminal offences, it is quite difficult and problematic to qualitatively modify its victimological component, especially in the context of criminal proceedings and their consideration in court within the time limits set by law.

Key words: victimisation; attorney-at-law; participants in criminal proceedings; criminological activity; prevention of criminal offences; victim of crime; criminal proceedings; victim of crime.

1. Introduction

According to the review of the practice of attorneys-at-law, including its criminological component, they frequently become targets of criminal attacks, both by the objects of their defence (in the form of fraud, extortion, bodily harm, etc.) and by other persons, including participants in criminal proceedings (Yedynyi zvit pro kryminalni pravoporushennia za sichen-hruden 2022 roku). Moreover, in many cases, the victims of crime have created a situation that facilitated the commission of unlawful attacks against them. Moreover, along with other elements of the situation, the injured advocates in the process of interaction with the future criminal contributed to the emergence of the latter's motive for committing a criminal offence, as well as to the decision to implement it. It should be noted that the analysis of the legal regulations of Ukraine governing

the practice of law and defining the status of attorneys-at-law in our country shows that the legal nature of these legal professionals as actors in crime prevention is defined in the following legal regulations, namely:

- a) Article 59 of the Constitution of Ukraine;
- б) The Law of Ukraine 'On the Bar and Practice of Law';
- c) Articles 45-54 of the Criminal Procedure Code (CPC) of Ukraine.

That is why, it seems, when analysing each case of a crime against attorneys and establishing its determinants, it is necessary to establish which legal regulations contributed to such socially dangerous activities, as well as through what actions of the victims and in what direction the specific life situation influenced the offender, such as creation of favourable conditions for the implementation of his/

her unlawful conduct. Moreover, the following issues of the mechanism of criminal manifestation related to the conduct of attorneys who are victims of crime seem to be of great criminological importance, namely

1) Personal traits of the victim attorney, which makes him or her more vulnerable to the offender (Surdukova, 2005);

2) The totality and level of dependence on the qualities of the process of creating a deterministic complex of causes and conditions that influenced the formation of the criminological orientation and motivation of the perpetrator (Holovkin, 2016, pp. 126-127);

3) The presence of other signs and features of the victim that contributed to the formation of the motive for committing a particular crime in such a way that the victim attorney became the object and victim of a criminal offence (Holovkin, 2017, pp. 161-162);

4) Actions (deeds) of the victim attorney, or actions that resulted from the idea of a person intending to commit a crime, or testified to the active assistance of the victim in the commission and implementation of such an unlawful decision (Dzhuzha, Tychyna, 2019, p. 111).

Therefore, based on the review of scientific literature and other empirical materials, we can state that a complex theoretical and applied problem exists which should be solved by intensifying comprehensive research at the doctrinal level.

Therefore, the purpose of the article is to prove the need to improve the legal mechanism for ensuring the safety of attorneys-at-law in criminal proceedings, and its main task is to clarify the content and role of victimological aspects of the criminological activities of these participants in the criminal procedure as actors in crime prevention.

The review of scientific sources has revealed that the following scholars consider the issues of victimological prevention of criminal offences quite actively and substantively: A.M. Babenko, V.S. Batoryhareieva, V.V. Vasylevych, A.A. Vozniuk, V.V. Holina, B.M. Holovkin, O.M. Dzhuzha, O.O. Kvascha, O. H. Kolb, I. M. Kopotun, S.A. Mozol, Ye.S. Nazymko, V.F. Obolentsev, T.I. Titochka, V.O. Tuliakov, D.M. Tychyna, V.I. Shakun, M.V. Shepitko, etc.

However, in the context of identifying the victimological aspects of the criminological activities of attorneys, this issue has not yet been actively discussed among scholars, and this has become decisive in choosing the topic of this work, and thus determined its relevance, theoretical and practical significance.

2. The system of victimological prevention of criminal offences

The literature review reveals that, traditionally, scholars understand victimological

crime prevention as a specific activity of social institutions, including lawyers, aimed at identifying, eliminating or neutralising the determinants (circumstances, situations, etc.) that shape victim behaviour and lead to the commission of crimes, as well as identifying risk groups and specific individuals with an increased degree of victimisation, in order to restore and activate protective properties, as well as to develop or improve the means available to ensure victimological protection of citizens (Dzhuzha, 2010, pp. 266-267).

Moreover, with due regard to the functions, goals and objectives of the system of victimological prevention of criminal offences, scholars also distinguish its general social, special and individual levels (Danshyna, 2003, pp. 172-173). As established in the course of this research, other criteria and methodological principles for determining the content of this type of crime prevention can be found in modern scientific sources.

It seems that the conclusion of A.P. Zakaliuk on the role and place of the victim in the mechanism of criminal behaviour is sound in this regard, namely, the creation of a criminological situation that contributed to the commission of a criminal offence against, in particular, attorneys-at-law or the objects of their defence, often depended not only on the person who committed it and on external conditions, but also on the behaviour of the victims of the crime, their careless, immoral or unlawful actions (Zakaliuk, 2007, p. 313).

Practice shows that, depending on the behaviour of the attorneys-at-law who became victims of crimes, the victimological situation that preceded the commission of a criminal offence against them was manifested in three types, namely

a) The actions of the victims provoked the criminal behaviour of the perpetrator and contained a pretext for the latter (in particular, actions of aggressive and offensive nature on the part of advocates towards the objects of protection);

b) The actions of the victims were negligent, which created a situation that facilitated the commission of criminal offences against them (for example, the legal position, tactics and strategy of defence in criminal proceedings chosen by the lawyer was incorrect);

c) The actions of the victims were legitimate and were related to the failure to satisfy the needs (desires) of those persons who had criminal intent, which caused them to commit a crime (in particular, the refusal of the advocate to bribe the investigator on behalf of the client).

However, it should be considered that in most cases, the commission of unlawful acts against attorneys who have been victims

of criminal attacks (both lawful, unlawful and immoral, as well as out of negligence) did not affect the motive and commission of criminal attacks by their clients and other participants in criminal proceedings.

In addition, based on the results of this study, it can be stated that a number of attorneys become victims of criminal attacks only because they are persons with so-called increased criminogenicity (victimisation). Moreover, this feature was largely related to the social or other qualities of these victims of crime (inclination to homosexuality, drug addiction, greed, etc.). (Dzhuzha, 2002, pp. 30-31).

At the scientific level, it has been concluded that any person is a victim because he or she is in a certain life situation and, being involved in a whirlwind of various social situations, may become a victim of a criminal offence. In other words, an individual does not become victimised, on the contrary, he or she simply cannot be non-victimised, as he or she is a member of a society in which crime exists, and therefore this is an objective possibility of becoming a victim of a criminal offence (Dzhuzha, 2002, p. 82).

Therefore, the victimisation of advocates is a set of stable typical social and socio-psychological properties of their personality that increase their ability to become a victim of crime. It also includes victimisation situations, events and actions.

3. The criminological role of victim behaviour of attorneys-at-law

As the study of doctrinal sources has shown, scholars also distinguish between culpable and innocent victimisation (Zakaliuk, 2007, p. 315).

For example, in the first group (culpable victimisation), researchers include people who abuse alcohol, as well as people who are adventurous or who are distinguished by impudent, unrestrained behaviour, which puts them in a position that can provoke a criminal offence, often violent. Similar victim characteristics, as established in the course of this research, are also shared by attorneys-at-law.

In its turn, innocent victimisation is associated with certain circumstances of work or professions (attorney, taxi driver, cashier, cash collector, mentally ill person), as well as with victimising phenomena and processes (Zakaliuk, 2007, p. 315).

It is this innocent victimisation that, according to the results of this study, causes increased victimisation in the activities of attorneys, including its criminological component.

In addition, it was found that among the many forms of victim behaviour of advocates, the criminological role was most often played by a negligent victimisation situation,

and the least common was a provoking victimisation situation.

In addition, based on the review of legal regulations and scientific literature, it can be stated that, while defending certain participants in criminal proceedings (primarily suspects and victims of crime) in accordance with the law, advocates are objectively forced by their legal status to engage in criminological activities both as part of the tasks of the criminal process (Article 1 of the CPC), and with regard to the potential and real threats that arise in this case and are of a socially dangerous nature (encroachment on the objects of justice (section XVIII of the CC); the sphere of official activity (section XVII of the CC); the authority of the state power (section XV of the CC); etc., which is why they often become victims of criminal attacks, including provocative unlawful acts by other participants in criminal proceedings.

4. Conclusions

Therefore, the review of scientific sources and other materials collected in the course of this research enables to state that when studying attorneys-at-law as actors involved in the prevention of criminal offences, special attention should be paid to the victimological aspects of their criminological activities, since this determines the effectiveness of solving not only the tasks of criminal proceedings (Article 1 of the Criminal Procedure Code), but also substantive law (Article 1 of the Criminal Code) in terms of ensuring the safety of all participants in the criminal process and preventing them from committing criminal offences, including through the use of potential legal opportunities for victimisation prevention.

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ВІКТИМОЛОГІЧНІ АСПЕКТИ КРИМІНОЛОГІЧНОЇ ДІЯЛЬНОСТІ АДВОКАТІВ ЯК СУБ'ЄКТІВ ЗАПОБІГАННЯ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ

Анотація. Мета. Метою статті є обґрунтування необхідності удосконалення правового механізму забезпечення безпеки адвокатів у ході кримінального провадження. **Результати.** У науковій статті з'ясовано зміст віктимологічного запобігання злочинам, суб'єктами реалізації якого є адвокати, визначені існуючі у зв'язку з цим проблеми та розроблені деякі шляхи їх вирішення по суті. Зокрема, встановлено, що адвокати, поряд з іншими учасниками кримінального провадження, нерідко стають жертвами злочинних посягань, а тому цей віктимологічний аспект мають враховувати всі суб'єкти запобіжної діяльності. Крім цього, у ході вивчення практики виявлено, що підвищену віктимність з цього приводу мають саме об'єкти захисту (підозрювані, обвинувачені та підсудні), які та щодо яких вчиняються суспільно небезпечні діяння, пов'язані з незаконним звільненням (або притягненням) їх від кримінальної відповідальності. Серед інших проблем віктимологічного характеру звертають на себе увагу й ті із них, що стосуються вибору судом відповідного запобіжного заходу відносно винної особи; неналежних умов тримання ув'язнених під варту; їх переміщення з однієї установи попереднього ув'язнення до іншої; заміни запобіжного заходу, т. ін., які детермінують на практиці випадки нелюдського або такого, що принижує гідність, поводження з цими особами; провокації отримання (дачі) хабаря; створення штучних доказів тощо, та детермінують вчинення протиправних посягань учасників кримінального провадження на адвокатів. **Висновки.** Зроблено висновок, що на рівень віктимності всіх учасників кримінального провадження впливають такі детермінуючі її причини та умови, як: низька правосвідомість і правова культура адвокатів та інших суб'єктів кримінального процесу; недовіра до правоохоронних органів та суду; незадовільна організація взаємодії адвокатів з іншими суб'єктами кримінального процесу з питань, які пов'язані з організацією заходів віктимологічного запобігання кримінальним правопорушенням, тощо. Враховуючи отримані результати дослідження, зроблено також висновок про те, що без удосконалення у цілому правового механізму кримінологічної діяльності адвокатів та запобігання кримінальним правопорушенням, досить складно та проблематично загалом якісно видозмінити й віктимологічну його складову, особливо в умовах реалізації у визначені в законі строки кримінального провадження та розгляду його в суді.

Ключові слова: віктимність; адвокат; учасники кримінального провадження; кримінологічна діяльність; запобігання кримінальним правопорушенням; жертва злочину; кримінальне провадження; потерпілий від злочину.