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**MODERN DEVELOPMENT OF THE MECHANISM FOR THE
PROTECTION OF THE RIGHTS, FREEDOMS AND LEGITIMATE
INTERESTS OF THE PARTICIPANTS IN CRIMINAL PROCEEDINGS**

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In this article the author investigates the development of a legal mechanism, the protection of the rights of participants in criminal proceeding. Analyzes the different views of scientists on how to determine the mechanism for protecting the rights and freedoms of the suspect and the accused. The chosen theme of this article is among the priority in the field of criminal law at the present stage of the formation of a legal European state. At present, the current system of human rights protection in Ukraine, the citizen needs some restoration and bringing to a single level of recognition in all democratic countries of the world.

Key words: the mechanism of protection of rights, legitimate interests, European values, rights, freedoms, criminal offenses, suspects, prosecutors.

Ребезюк В. М. Сучасний розвиток правового механізму захисту прав, свобод та законних інтересів учасників кримінального провадження/ Національна академія внутрішніх справ, Україна, Київ

В даній статті автор досліджує розвиток правового механізму, захисту прав свобод учасників кримінального провадження. Аналізує різне бачення науковців щодо визначення механізму захисту прав і свобод підозрюваного та обвинуваченого. Обрана тема даної статті відноситься до числа пріоритетних у галузі кримінального права на сучасному

етапі становлення правової європейської держави. Нині діюча система захисту прав людини, громадянина в Україні, потребує певної кореляції та приведення до єдиного рівня з визнанням у всіх демократичних країнах світу.

Ключові слова: механізм охорони прав, законні інтереси, європейські цінності, права, свободи, кримінальні правопорушення, підозрюваний, обвинувачений

Ребезюк В. М. Современное развитие правового механизма защиты прав, свобод и законных интересов участников уголовного производства/ Национальная академия внутренних дел, Украина, Киев

В данной статье автор исследует развитие правового механизма, защиты прав свобод участников уголовного производства. Анализирует разное видение ученых по определению механизма защиты прав и свобод подозреваемого и обвиняемого. Выбранная тема данной статьи относится к числу приоритетных в области уголовного права на современном этапе становления правового европейского государства. Ныне действующая система защиты прав человека, гражданина в Украине, требует определенной корреляции и приведения к единому уровню с признанием во всех демократических странах мира.

Ключевые слова: механизм охраны прав, законных интересов, европейские ценности, права, свободы, уголовные преступления, подозреваемый, обвиняемый.

Relevance of article. The legislation of Ukraine is remained in constant dynamic development, very relevant today is the settlement of

some issues of criminal procedural law and, in particular, the resolution of the introduction of an effective legal mechanism for the protection of the rights, freedoms and legitimate interests of participants in criminal proceedings. The chosen theme of this article is among the priority in the field of criminal law at the present stage of the formation of a legal European state. Now, the current system of human rights protection in Ukraine, the citizen needs some restoration and bringing to a single level of recognition in all democratic countries of the world. For our state. this issue becomes especially important, precisely in the context of the transformation of the constitutional law of Ukraine with a view to convergence with the law of the European Union.

The state of scientific research. Ukrainian and foreign scholars have dedicated their work to the mechanism of protection of the rights, freedoms and legitimate interests of the participants in the criminal proceedings, in particular: G. Z. Aliyeva Alekseev, S. S. Alexeyev, K. G. Volinka, O. V. Verkhohoy-Gerasimenko, L. M. Volodina, I. Yu. Golovatsky, T. V. Goshovskaya, Yu. M. Groshevyi, P. M. Davydov, A. Ya. Dubinsky, A. B. Zaharko, M. V. Zhogin, O. N. Karpova, S. G. Keilina, O. P. Kuchinskaya, O. M. Larin, M. I. Leonenko, L. M. Loboyko, V. Z. Lukashevich, V. T. Malyarenko, A. V. Martovitskaya, R. I. Matyushenko, G. M. Minkowski, M. M. Mieheenko, O. R. Mikhailenko, Ya. O. Motovilovker, A. Yu. Oliynyk, O. E. Omelchenko, N. Z. Rogatinska, V. V. Rozhnova, D. O. Savitsky, V. M. Savitsky, O. Samodina, O. F. Skakun, Z. D. Smitienko, P. L. Stepanov, M. G. Stoiko, M. S. Strogovich, V. M. Tertyshnik, O. Yu. Hablo, L. D. Udalova, F. N. Fatcullin, M. E. Shumilo, V. M. Temchenko, V. N. Hropanyuk. and other.

The purpose of this article. To conduct a comprehensive legal study of the mechanism for the protection of the rights, freedoms and legitimate

interests of the participants in a criminal proceeding aimed at improving the criminal procedural legislation of Ukraine.

Presenting main material. Our state made its fateful choice - it is a European road for development. Its essence lies in the European civilization model, which makes it possible to achieve progress in all spheres of life of Ukrainian society and the state. The European choice of Ukraine is simultaneously a move towards the standards of democracy and the rule of law. Our society has chosen European values and an extremely important place among them is the protection of the rights of participants in criminal proceedings.

At the same time, I would like to remark that democracy in any society is based on two basic principles - the rule of law and the safeguarding of human rights and freedoms. However, even the declaration of a person of the highest social value and the consolidation in Article 3 of the Constitution of Ukraine of its substantial rights and freedoms may not be of any importance without real guarantees of the accomplishment of these rights [1, p.5].

Nowadays, more than ever, this is a constitutional claim in criminal-procedural relations, where the most significant restrictions of the constitutional rights and freedoms of the suspect, the accused, where the relations of a person and the state are often accompanied by intensive coercive influence on the part of the latter, constantly arise and manifest.

According to Article 2 of the Code of Criminal Procedure (hereinafter - CPC) of Ukraine, the criminal proceedings are to protect the person, the society and the state from criminal offenses, the protection of the rights, freedoms and legitimate interests of the participants in criminal proceedings, as well as to ensure prompt, complete and impartial investigation and judicial to ensure that anyone who has committed a criminal offense has been prosecuted in the guilt of his own, no one has

been accused or convicted, no one has the dog was not subjected to unreasonable procedural coercion and that every participant in the criminal proceedings had been subjected to the proper legal procedure [2, p.327].

In this regard, the rights that are endowed with the participants in the criminal proceedings can not automatically ensure their own existence. The role of factors ensuring their implementation is fulfilled by a system of legally established norms, principles (principles), owing to the need to ensure the transition from the possibilities provided by the law to the real reality in the criminal process, they play the role of means, which ensures the possibility of excluding or at least minimizing professional mistakes by the investigation and justice authorities in relation to the citizen.

In order for the proclaimed rights not to remain declarative, Ukraine is obliged to create an appropriate legal mechanism for their unconditional execution. The most effective means of protecting the rights and freedoms of the suspect and the accused are the courts. In a civilized state, the court has a central place in the entire legal system. It is the court that represents true law, true justice. Justice - "this is the activity of the court, carried out in accordance with the procedure prescribed by the procedural law, which consists in the consideration and resolution of conflicts related to actual or possible violation of the rules of law" [3, p.305].

In accordance with Article 55 of the Constitution of Ukraine, it is precisely on them that the task of protecting human rights and freedoms is assigned, and, in accordance with Article 124 of the Constitution, "the jurisdiction of the courts extends to all legal relations arising in the state", that is, any dispute over the violation of rights, freedoms and punishments. The law of the interests of citizens may be considered by the court [1, pp. 18-46].

The accentuated specifications is the ideal that must be achieved as quickly as possible for a successful democratic and civilized development of society. I would like to note that one of the main features of this process is the presence of differences in the procedural position of the accused and the suspect, and, accordingly, their interests in the criminal proceedings are affected differently, and to varying degrees need protection and protection. Of course, the work of the mechanism for the provision of human rights and freedoms is impossible without the activity of competent state bodies capable of applying compulsory means to the obligated person in order to restore the violated law. So, these bodies are the core of this mechanism.

It is precisely the mechanism of ensuring human rights that must be considered as a phenomenon of the legal system, which includes certain subsystems, elements, constituent constructions. Necessity to study this issue is that each form of the mechanism for ensuring the rights and freedoms of the individual is aimed at achieving their own aims and objectives. Therefore, only in the aggregate analysis of forms of security, one can understand the internal structure of the mechanism for ensuring rights and freedoms and, accordingly, its functional purpose.

It is undeniable that a particularly important element of the mechanism for the protection of human rights and freedoms is the guarantees. They are in turn, act as a system of norms, principles and requirements that ensure the process of observing the rights and legitimate interests of a person, a citizen. The purpose of guarantees is to provide the most favorable conditions for the implementation of the constitutionally enshrined status of a person. Thus, guarantees are a means of ensuring the transition from the constitutional capacity to reality. The effectiveness of guarantees depends on the level of development of general legal principles, the state of the economy, the level of

development of democratic institutions, the reality of the political system of society, the existence of a system of perfect laws in the state, the effectiveness of mechanisms for implementing the law, the degree of legal consciousness, legal culture of the population, coherence of the interests of the population and society as a whole, availability of a highly effective body of constitutional control. Guarantees represent a system of agreed factors that ensure the actual realization and comprehensive protection of human rights and freedoms.

But, in my opinion, the further study and study of issues related to the functioning of procedural mechanisms for ensuring the rights of participants in criminal proceedings will clarify how the rights and freedoms are realized in practice and, at the same time, understand the ineffectiveness of the criminal procedure procedures, which in the future will enable them to be optimized.

Nowadays, in domestic legal science, there is no established definition of the mechanism for the protection of human rights and freedoms, yet there is no unified understanding of the forms of ensuring the rights of the individual.

One of the first monographic achievements in independent Ukraine, devoted to the issue of guaranteeing the rights, freedoms and legitimate interests of participants in criminal proceedings, was the work of O. R. Mikhailenko, where he determines that the object of the provision of security is the rights, freedom and dignity of a person that in turn, means the need to make them quite real, without allowing their violation and protecting them [4, p.17].

Significant progress in the study of this problem was carried out by the Russian legal scientist, Doctor of Law S.S. Alekseev, where he noted that the mechanism of legal regulation is applied by the state solely for the exercise of legal influence on social relations. The term "mechanism of

legal regulation" comes from the notion of "legal regulation", which SS Alekseev defines as effective, regulatory and organizational influence on the social relations with the purpose of their regulation, implemented through the system of legal means [5, p.24]. As we see, the author in this definition defines the content of legal regulation through legal influence. This position is quite right and deserves attention.

The most common is the point of view of Professor O. F. Skakun, who believes that the functional distinction between the mechanism of social and legal provision of human rights, forms the appropriate subsystems - mechanisms for the implementation, protection, protection of rights. The mechanism for the realization of human rights and freedoms includes measures that are suitable for creating conditions for the realization of rights and freedoms, and the constituent parts of its guarantees represent appropriate conditions and means that promote the realization of each person rights, freedoms and responsibilities enshrined in the Constitution of Ukraine. The second subsystem - the mechanism of protection of rights - includes measures to prevent the violation of rights, freedoms and responsibilities of a person, while exercising the function of prevention of unlawful actions. The third subsystem - the mechanism of protection of rights - includes measures to restore the violated legal status, the involvement of offenders to legal liability [6, p. 229].

Moreover, very similar point of view is expressed by K. G. Volynka. In particular, in her opinion, under the forms of ensuring the rights and freedoms of the individual, she understands the external manifestations of the mutually agreed functioning of the constituent elements of the mechanism of ensuring the rights and freedoms of individuals, aimed at transforming the rights and freedoms enshrined in the law into reality. They support the implementation of the rights and freedoms of the individual, ensuring the protection of the rights and freedoms of

individuals, ensuring the protection of the rights and freedoms of individuals [7, p.3].

It is quite clear that the rights that the participants in the criminal proceedings endure can not automatically ensure their existence. The active role of the factors that must ensure their implementation is fulfilled by a system of legally established provisions - these are norms, principles, requirements and so on. , due to which in the criminal process a gradual transition from the possibilities provided by the law to the real reality is ensured. Moreover, guarantees of the rights of a citizen serve as the means by which the possibility of excluding professional mistakes by the investigating and judge bodies of a suspect or accused person is ensured. Thus, in the opinion of the scientist L. Loboyka, the guarantees of the rights and interests of the individual, together with the guarantees of the effective operation of the bodies conducting the criminal process, in their aggregate form the means for the effective functioning of the criminal process in general [12, p.38-39].

At the same time, V. M. Temchenko, expresses another opinion regarding the mechanism of ensuring rights, namely, the promotion, implementation or implementation, implementation and protection of forms of the protection of human rights and fundamental freedoms [8, p.84]. In our opinion, such a vision is more controversial, since the implementation of rights goes beyond the definition of a mechanism for the provision of human rights.

We can not ignore the point of view of another scientist V. N. Horpanyuk. He, in turn, determines the mechanism of legal regulation as a system of legal means, with the help of which the ordering of social relations is carried out in accordance with the goals and objectives of the rule of law [9, p.54].

Undoubtedly, such an attitude must be taken into account, albeit disputed, and acknowledged that these forms can indeed be considered as constituting the constitution of a mechanism for the enforcement of rights. The authors of this position believe that the study of the structure of the mechanism at the level of its constituent parts is to some extent incomplete, and in order to get the correct ideas about the mechanism of legal regulation, as well as the ability to act in this capacity, it is necessary to fully consider all its components in interconnection and interaction.

We can not overlook the vision of Professor A. Yu. Oliynyk, he believes that ensuring the constitutional freedoms and guaranteeing the inviolability of a citizen by the state determines the creation of favorable conditions for their implementation, protection of subjective freedoms from violations of law by the relevant bodies or officials [10, p.153].

Such a vision is shared by O. V. Verkhozhdy-Gerasimenko, where she considers the protection and defence of citizen's rights at the level with the creation of conditions for the realization of rights as separate components of their provision, which, in their turn, are in close interconnection, complementing each other.

O. Verkhozyod-Gerasimenko, on the basis of this statement, proposes to understand the activities of the competent authorities of the state carrying out criminal proceedings, performing certain procedural actions aimed at creating the conditions for the realization of the rights of the suspect and the accused, in the criminal law process [11, p .14].

Well, this vision is quite right and deserves to be supported, and it can form the basis of the wording of the concept and structure of the mechanism for ensuring human rights, a citizen in criminal proceedings.

Having analyzed the above scientific points of view, I would like to state the following, that in the majority of scholars in the mechanism of providing human rights there are different forms of it, for example:

"guarantee", "protection", "protection", "realization", "implementation" "Compliance", "legal aid", "recovery", "consolidation". So, the mechanism of ensuring human rights and freedoms occupies a special place in the system of legal regulation, being the connecting link through which the rules of law, which legally fix the rights of participants in criminal proceedings, find their implementation.

So, summing up, I would like to state that the effectiveness of the state's activity in the field of criminal justice lies in the fact that it not only proclaims human rights as it is in the Constitution, but also provides the necessary mechanism for the real exercise of these rights. This mechanism covers the process from the moment such conditions are created for the rights of the person to be exercised and then transformed into the protection of the rights of participants in criminal proceedings, and in the case of violation of these rights, to protect these rights.

The mechanism for ensuring the rights of participants in criminal proceedings should be seen as a dynamic system of legal remedies that are realized through the activities of state bodies, officials who conduct criminal proceedings or are involved in it. It is through this activity that realization, protection and protection of the rights of participants in criminal proceedings takes place.

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