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# Foreign practices of representing a victim of a traffic accident in criminal proceedings

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## Abstract

A substantial increase in the quantitative indicators of traffic accident statistics in Ukraine in recent years, as well as a tendency to decrease the effectiveness of solving this type of crime due to a decrease in attention to the problem, leads to impunity for the guilty, as well as the inability of victims to protect their rights and interests. Despite the armed aggression of the Russian Federation, such basic institutions as the representation of the interests of the victims, especially in the field of crimes against traffic safety and operation of transport, must have clear legal regulation at the state level, which is precisely what determines the relevance of this study. The purpose of this study was to analyse the foreign practices of the victim representation institution both in the general context and in terms of crimes against traffic safety and transport operation, as well as standardization and improvement of the current legislation by borrowing foreign legal ideas. The basis of the methodological approach is dialectical and comparativist methods, which helped analyse the legislation of several European countries. The study analysed the legislation of the Netherlands, Germany, the USA, and Great Britain for comparative analysis and to find gaps in national legislation. The need to distinguish between the terms “representative of the victim” and “legal representative”, as well as to separate the category “advocate-representative of the victim” from the general concept of “defender in criminal proceedings” was proved. Some provisions were also presented, according to which the legally mandatory participation of a lawyer representing the victim in road traffic accident cases and the presence of certain conditions should be established. The study focuses on the issue of compensation for damage caused to the victim as a result of the accident and possible aspects of its settlement at the state level, considering the practices of the Netherlands. The results obtained during this study are an important theoretical basis for improving the legal regulation of the activity of a lawyer representing a victim of a traffic accident

## Keywords:

advocate-representative; right to legal protection; settlement agreement; investigative actions; legal activity of a lawyer; crimes against traffic safety and operation of transport

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## Introduction

The issue of crime in the field of vehicle operation and road traffic is one of the most urgent and significant social issues in the territory of Ukraine. Thus, according to statistical data, from 2020 to 2021 alone, over 2.4 million cases of traffic accidents were registered in Ukraine, among which more than 48 thousand resulted in the death of victims and 406 thousand caused injuries of various degrees of severity, as a result of which criminal proceedings were opened respectively (Holovkin, 2022). Considering such statistics, Ukraine is actively pursuing a national policy aimed at ensuring road safety, the purpose of which is to introduce a system of effective punishment and increase responsibility for the commission of these crimes<sup>1</sup>. However, based on the analysis of scientific sources and studies, there is a significant gap regarding the issue of regulating the activities of protecting victims from traffic accidents in criminal proceedings, especially in the aspect of victim representation (World road traffic..., 2023).

The issue is that, in general, there is a significant development in the field of criminal procedural legislation and law enforcement practice with the implementation of international standards, as well as legal institutions of foreign countries. However, it is necessary to specify and improve the issue of representing the interests of the victim in the field of traffic in criminal proceedings, as well as solving problems related to the representation of the victim at various stages of criminal proceedings. The purpose of the national policy in the field of ensuring road traffic safety and combating crime in this field should be not only to strengthen the punishment of those guilty of road accidents and to improve the mechanisms of prosecution but to improve the regulation of the right to protect victims to restore their interests. This determines the urgent need to reform national legislation considering international practices and bringing it up to global standards.

As of 2023, there is a significant decrease in the effectiveness of the investigation of criminal offences based on the facts of road accidents due to a significant increase in war crimes and the need for their documentation and investigation (World road traffic..., 2023). As a result, a significant violation of the rights and interests of the victims is intensified: cases are closed on formal grounds, and compensation for damage caused as a result of the accident is denied. Since the main method and means of protecting the victim, his rights, and legitimate interests in criminal proceedings is his representation by a lawyer (Doak, 2005), the development and improvement of this institution should be considered as one of the guarantees of ensuring criminal proceedings

in this area. That is, the improvement of legal regulation and the methodology of the lawyer's activity in representing the victim in a road accident should become a new milestone in the development of national policy in the field of road safety. However, this should concern borrowing foreign practices and methods of national policy to standardize the legislation of Ukraine and bring it into line with the legislation of the European Union (EU).

The analysis of the latest publications suggests the rather low activity of scientific discussions on the issue of regulating the activity of a lawyer in the representation of a victim in a road accident, as well as the need to improve the legal regulation of the representation of the interests of the victim of a traffic accident (Chervinskii, 2022). Furthermore, the theoretical basis for conducting this study is the work of Ukrainian and European scientists on the issue of regulating the activity of a lawyer in representing the interests of the victim in a criminal trial. Thus, R. Emelianov (2023) indicates the need to create an effective system of protection of the victim in criminal proceedings, indicating the frequent presence of such violations as failure to ensure the mandatory participation of a representative in the proceedings, limitation of the right to freely choose a defence attorney. However, the main idea is to substantiate the provisions of the procedural status of the representative lawyer and to form the organization of the lawyer's activities from such representation.

A significant contribution to the development of the procedural status of the victim was made by I. Gloviuk (2013), O. Kuchynska (2009), and T. Varfolomeeva *et al.* (2011). The issue of the lawyer's role in representing the interests of the victim was investigated by N. Elbers *et al.* (2020), specifically, the aspect of the right to legal representation of the victim according to EU Directive 2012/29<sup>2</sup>, namely investigating the need to involve lawyers for victims and their contribution to guaranteeing and exercising the rights of victims in criminal proceedings.

The purpose of this study was to investigate the issue of representing the interests of the victim in a road accident in criminal proceedings under national legislation. The task of this study was to analyse the practices of the EU and the USA, to borrow foreign practices and improve the criminal procedural law of Ukraine, as well as eliminating gaps in the system of national legislation.

The scientific originality of this study lies in the created model of mandatory involvement of the victim's representative lawyer and the development of a list of crimes in which it should be implemented, as well as in the presented methods of regulating the payment of

<sup>1</sup>Law of Ukraine No. 1231-IX "On the Introduction of Changes to Some Legislative Acts of Ukraine Regarding the Strengthening of Responsibility for Certain Offenses in the Field of Road Safety". (2021, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1231-20#Text>.

<sup>2</sup>Directive of the European Parliament and of the Council No. 2012/29/EU "On Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA". (2012, October). Retrieved from <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>.

compensation to victims of road accidents at the state level and ensuring their guarantees, which has not been considered so far at the national level.

## Materials and Methods

To conduct this study, the following general and special methods of scientific cognition were used, among which the dialectical method and the comparative legal method play a special role. Furthermore, methods of synthesis and analysis, formal-legal method, and historical-legal method were used.

This study is an analysis of the institution of representation in several European countries, specifically the Netherlands, Great Britain, and Germany, in comparison with national legislation to improve the legal regulation of the activities of representatives of victims of traffic accidents. The dialectical method helped investigate the essence of the institution of representation of victims, the content of the activities of the representative lawyer, as well as to study the tasks and principles underlying them.

In the context of comparative analysis, a study was conducted of the current Criminal Procedure Code of Ukraine, the Criminal Code of Ukraine in comparison with the legislation of other states. Specifically, the institution of victims' representation in the Netherlands was investigated, the issue of appointment and payment of compensation, the issue of protection of the rights and interests of victims, the issue of the obligation to enter criminal proceedings by a representative of victims and some other aspects in this topic were studied. Furthermore, a comparative analysis of the issue of representation of the interests of road accident victims in Germany and Ukraine helped reveal a few other gaps in national legislation and outline ways to improve the legal regulation of the organization of a lawyer's activities<sup>1</sup>.

In addition, a sociological method was used, using an experiment conducted in the USA regarding the effectiveness of involving a lawyer to protect the interests of road accident victims was studied and investigated.

The methods of synthesis and analysis helped analyse in detail the state of the procedural status of the representative of the victim in the current legislation, as well as analyse in detail the state of research and development of the institution of representation of the rights of victims in the European Union.

Using the statistical method, the aspect of the use of threats of violence and intimidation against the victim of a criminal offence was analysed, and arguments were given in favour of the involvement of a lawyer representing the victim of a traffic accident as a guarantee of the

protection of the victim of a crime against illegal actions.

During the study, the work and theoretical achievements of Ukrainian and European scientists, as well as several regulations, were used. Thus, the Criminal Procedural Code of Ukraine was investigated and researched, as well as a few EU Directives on the protection of crime victims<sup>2</sup>. Furthermore, the study investigated the criminal procedural legislation of Germany, the Netherlands, Great Britain, and partially the United States.

## Results

Restoring justice, punishing the guilty, and ensuring public safety are on the same level as protecting the rights and legitimate interests of the victim in any criminal proceeding, and therefore cases in the field of road traffic safety are no exception. They should be provided directly by the activities of pre-trial investigation bodies, the purpose of which is to establish the guilty persons and events of the crime. However, apart from this, the victim can influence the course of criminal proceedings by protecting their interests and rights through their representative, who is a lawyer. The institution of representation is one of the guarantees of the implementation of the specified task and a way of influencing the fair restoration of the rights and interests of the victim. However, the analysis of the formation and development of the institution of representation in criminal proceedings, regardless of the type of crime, indicates rapid changes and increased attention to the role of the victim. Thus, the only duty of the victim was to testify and inform the relevant authorities about the committed crime (The Right to..., 2022). Currently, there is a tendency to increase attention to the role of the victim, especially in European legislation. The institution of representation in criminal proceedings, specifically in crimes in the field of road safety, is a key factor in the effective and proper legal protection of the rights, freedoms, and interests of individuals in civil society (Ten Boom & Kuijpers, 2012). However, if the issue of the participation of a defence attorney in the process is actively developed and improved at all levels, the protection of a person against whom a criminal offence was committed requires active research, especially in Ukraine.

The first milestone towards change was the adoption of the United Nations Declaration on Basic Principles of Justice for Victims of Crime<sup>3</sup>. Thus, the main idea was the victims' access to justice, compensation for the damage caused, and fair treatment of the victim. Subsequently, in 2001, the Council of the EU adopted the Decision on the Status of Victims in Criminal Proceedings, binding on all member states, in which the right

<sup>1</sup>German Criminal Code. (2021). Retrieved from [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html).

<sup>2</sup>Directive of the European Parliament and of the Council No. 2012/29/EU "On Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA". (2012, October). Retrieved from <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>.

<sup>3</sup>Declaration № 40/34 "On Basic Principles of Justice for Victims of Crime and Abuse of Power". (1985, November). Retrieved from <https://www.unodc.org/pdf/rddb/CCPCJ/1985/A-RES-40-34.pdf.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>.

of victims to access to information, protection, recognition, and so-called mediation was consolidated<sup>1</sup>. In recent decades, the EU Directive 2012/29/EU<sup>2</sup>, according to which all member states of the European Union are legally obliged to provide certain rights to crime victims, has become an indicator of changes, which more clearly defines the standards of rights and protection of crime victims, while paying the greatest attention to violent crimes directed against human life and health<sup>3</sup>.

However, despite this, there is still no unified opinion and vision regarding the role of the victim and their support in the criminal process, especially regarding consideration of the cases of victims in traffic accidents. For instance, the Convention on Compensation for Victims of Violent Crimes<sup>4</sup>, adopted in 1983, which makes provision for the establishment of a minimum level of financial compensation for all victims of crimes, was ratified by only 26 EU member states, which indicates that there are still gaps in the institution of the protection of the rights of the actual victims. The fact is that the main attention of the legislators of other states, namely the EU, falls on particularly serious and grave crimes, among which sexual crimes, human trafficking, and crimes based on racial or religious hatred prevail.

For instance, it was the increase in sexual crime in the Netherlands that prompted the introduction of an advance payment scheme for victims of such crimes, which was adopted in 2011 (Elbers *et al.*, 2020). However, it was precisely this that stimulated the development of the institution of representation and the activity of lawyers in all criminal proceedings, forming its category of lawyers-representatives of victims (Parliament adopts new..., 2021). Since the Netherlands is based on EU legislation, the issue of representing the interests of victims in criminal proceedings in the field of crimes against traffic safety and transport operation should be investigated in detail, considering the rapid movement of Ukraine and its recognition as a candidate for EU membership and the need to bring the legislation to uniform standards and to improve the latter.

The issue of representation of the victim in Ukraine is regulated by the current Criminal Procedural Code, specifically, Article 58, which specifies that a representative can represent the interests of the victim in criminal proceedings, i.e., a person who has the right to act as a defence attorney in criminal proceedings. Logically,

such an equalization of the rights of the representative and the defender of both sides of the proceedings, the national legislator makes for equal access of the parties to the defence. According to Article 45 of the Criminal Procedural Code, the defender is exclusively a lawyer whose information is entered in the Unified Register of Lawyers of Ukraine<sup>5</sup>. In fact, according to Article 1 of the Law of Ukraine "On the Bar and Practice of Law", an individual is recognized as a lawyer, who conducts legal activities according to the procedure prescribed by this Law<sup>6</sup>.

On the other hand, advocacy is recognized as the professional activity of a lawyer, which lies in the implementation of protection, representation, and any other types of legal aid to the client. That is, based on the definitions of the terms provided by the national legislator, it is logical to state that the representation of the interests of victims of traffic accidents in criminal proceedings belongs to the category of the lawyer's activity. The purpose of such representation of the victim's interests fully coincides with the tasks of the Criminal Procedural Code of Ukraine (CPCU) outlined in Article 2 of the same code and lies in ensuring an impartial and complete investigation of the crime and bringing the guilty to criminal liability<sup>7</sup>.

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Thus, the institution of representation plays a key role in the matter of observing the rights and freedoms of victims of a criminal offence and their equality in the right to protect their interests. Thus, for instance, a study was conducted in the USA, which investigated the impact of the institution of victim representation on the observance of their rights in the USA. As a result, over 125 victims of several types of crimes were interviewed about the state of observance of their rights and information about the state of the case. The results of

<sup>1</sup>Council Framework Decision No. 2001/220/JHA "On the Standing of Victims in Criminal Proceedings". (2001, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001F0220>.

<sup>2</sup>Directive of the European Parliament and of the Council No. 2012/29/EU "On Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA". (2012, October). Retrieved from <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>.

<sup>3</sup>Council Framework Decision No. 2001/220/JHA "On the Standing of Victims in Criminal Proceedings". (2001, March). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001F0220>.

<sup>4</sup>European Convention "On the Compensation of Victims of Violent Crimes". (1983, November). Retrieved from <https://rm.coe.int/1680079751>.

<sup>5</sup>Criminal Procedural Code of Ukraine. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text>.

<sup>6</sup>Law of Ukraine No. 27 "On the Bar and Practice of Law". (2013). Retrieved from <https://unba.org.ua/assets/uploads/legislations/pologennya/1-law-of-ukraine-on-the-bar-and-practice-of-law.pdf>.

<sup>7</sup>Criminal Procedural Code of Ukraine. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text>.

the study showed that crime victims, whose interests were represented by a lawyer, were more often informed about the trial of the case, about the change of preventive measures for the accused, about referral for examinations, or for consideration by special services. Proceeding from this, in cases where a representative of the victim is present in case review and investigation, this refers to increasing guarantees for the realization of their legal rights and interests by victims of crimes. Since the prosecutor's purpose is to "punish" the perpetrator of a criminal offence, the issue of compensation and restoration of the victim's interests is exclusively the area of competence of their representative (Kazis, 2016).

Turning to the legislation of the Netherlands, it can be concluded that the criminal law system is generally characterized as "moderately incriminating", which leads to the pre-trial investigation being preferred over the trial itself. As for the institution of representation, i.e., the participation of the victim's lawyer, as a rule, they enter from the moment of notice of the law enforcement authorities about the commission of a crime and before the closing of the criminal proceedings, i.e., the sentencing.

In contrast to Ukrainian practice, legal representation in the Netherlands has undergone significant changes and development thanks to the stimulation of the country's legislative bodies. Thus, to give victims access to legal representation, a law was passed in 2006 that allows them to receive payment from the state for the services of a lawyer in the amount of 1,155 euros, although this only applied to victims of grave and especially grave crimes (Boer, 2023). However, this provision and the program indicate the existence of the so-called Institute of lawyers for Victims of crime or lawyers representing victims. Furthermore, lawyers for victims of criminal crimes in the Netherlands must be members of a special organization and have a special course on representing victims in criminal proceedings, as their activity is recognized by the legislator as specific and unrelated to defence as a type of lawyer's activity.

In the national legislation, the legislator provides the following clarification regarding the term "representative of the victim". Thus, according to Article 58 of the CPCU, the representative of the victim is a person who has the right to be a defence attorney in criminal proceedings. Despite this, this legal norm, unlike Article 45 of the CPCU, does not use the term "lawyer who protects the rights and interests of the victim"<sup>1</sup>. However, the realities are such that the concept of protection and the concept of providing legal aid in criminal proceedings should be distinguished. Since, when a victim of a traffic accident reaches out to a lawyer for legal aid, the procedural interests and their function are different from the interests of the defence counsel of the accused.

A lawyer who provides legal aid to a victim represents them to protect the latter's interests and resolve the case in their favour, while pursuing the achievement of completely different goals, and therefore such activity is different from protection as a type of lawyer's activity. Thus, the general practice of the criminal procedure of the Netherlands should be considered and applied at the level of national legislation, distinguishing between the concepts of a defence attorney and a representative as different subjects of criminal proceedings, changing Article 58 of the CPCU by replacing the concept of a representative, who can only be a defender in criminal proceedings, with the concept the lawyer-representative of the injured party, which will have a direct impact on the consideration of road accident cases<sup>2</sup>. This adjustment will contribute to the development of the representative office in Ukraine both in general and in cases in the field of road traffic safety.

Furthermore, based on the practice of the Netherlands regarding the possibility of obtaining a subsidy for the services of a lawyer representing the victim, it would be logical to create such a program for victims of road accident cases that led to serious consequences (serious bodily injuries or death of the victim). The fact is that in such cases, the victim or their blood relatives can communicate directly through their representative, a qualified lawyer, directly with the perpetrator of the event, or their defender. Such a decision would encourage a reduction in the use of influence, violence, and threats against victims during pre-trial and judicial proceedings. According to the conducted survey on the use or threat of use of violence against the victims occurs in 50% of cases according to 10% of respondents in criminal proceedings as presented in Figure 1.

Furthermore, most often in cases of the death of the victim or the occurrence of serious bodily injuries as a result of a traffic accident, the perpetrator, taking advantage of the shocked state of the victim's relatives, tries to intimidate or "negotiate" the closure of the case and the refusal of accusations, which is completely contrary to the principles and goals of punishing the guilty in the commission of an offence. Therewith, conciliation is a completely legal solution even in criminal proceedings, but with the mandatory participation of a representative lawyer. Thus, for instance, the Procuratorate of Yuhua and Shijiazhuang Provinces in China applies the Regulation on the Application of Conciliation by Prosecutors during Trial Cases, which stipulates that conciliation is allowed only in minor criminal cases and in those cases where the offender is a minor, actually referring to such of cases – proceedings on traffic accidents (Gelman, 2015).

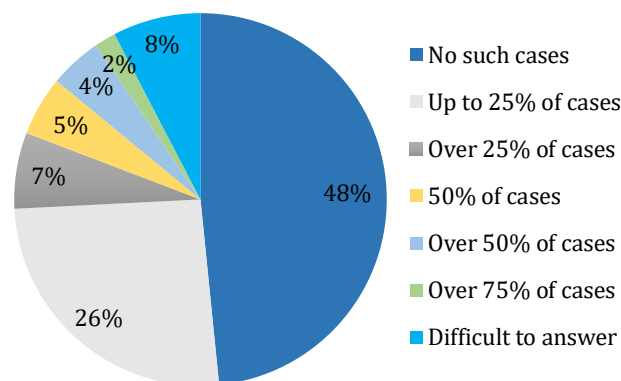
Analysing the criminal justice systems of European countries in general, they are conditionally divided into

<sup>1</sup>Criminal Procedural Code of Ukraine. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text>.

<sup>2</sup>Ibidem, 2013.

two types according to the scope of the victim's procedural rights. Thus, in the former case, according to the Anglo-Saxon model of justice (which includes such countries as Great Britain, the USA, and Canada), the victim does not appear as a figure in the criminal proceedings, which leads to an almost complete lack of regulation of their position in the procedure, although giving preference to an efficient system social protection for crime victims (Baumgartner, 2008). The criminal procedural law of Great Britain is one of the oldest in the general procedural law system of the world

and therefore requires a special analysis. The specific feature and the biggest difference from other legal systems is that the victim does not have any legal status in the criminal procedure. That is, the victim of a crime, directly and injured as a result of a traffic accident, is considered from the standpoint of an ordinary citizen who has a list of rights and responsibilities, directly and about assisting the investigation of the case by the police. As for their testimony, they are necessary only if the victim of the crime acts as a witness for the prosecution (Emelianov, 2020).



**Figure 1.** Survey of the frequency of violence against the victim in criminal proceedings

**Source:** compiled by the authors based on the study by A. Orlean *et al.* (2020)

As for the lawyer's activity to protect the victim from crimes, namely in the field of road accidents, it is divided into two so-called categories – "barristers" and "solicitors". "Barristers" are lawyers whose powers include representation of the client's interests in court. Furthermore, they are engaged in procedural activities and advisory issues (Emelianov, 2020). However, their duty is not to search for and disclose information, conduct an investigation, or communicate with witnesses, which indicates an unfavourable environment for the victims themselves and their protection. "Solicitors" are those who are engaged in the investigation and whose competence is the search and disclosure of information. They can receive instructions from the client, investigate strategies and protection options. Moreover, they can prepare a lawyer for the defence in the trial, advise on the line of defence and further actions, prepare the case for a hearing in court, conduct negotiations on the pre-trial settlement of the case, and conduct interviews with witnesses or experts in the case.

They can also act as advocates in court, but their right to speak publicly in court is limited (Cameron, 1981). However, despite the clear division of responsibilities of advocacy, in the UK legal system, the victim is still not given enough attention, and therefore it is defined as unfavourable for the protection of their

rights (Johnston, 2019). Despite this, the idea of dividing lawyers is quite logical and can be applied in the field of national legislation.

Considering the institution of representation in the USA, it is necessary to note a sharp increase in attention to the issue of protecting the rights of victims of criminal crimes in the late 1950s due to the increase in crime. Currently, the US criminal procedure makes provision for the right of a lawyer to represent and protect the interests of the victim at all stages of the criminal procedure (Emelianov, 2020). However, of interest is the Victim and Witness Protection Act of 1982, which prescribes the right of victims to be protected from the offender, the right to be notified of court proceedings, the right to take part in all court proceedings, the right to consult with the accuser, the right to restitution, and for information about the sentence or release of the defendant<sup>1</sup>. The legislative consolidation of such fundamental rights of the victim is an effective mechanism for guaranteeing the victim's participation in the legal procedure, especially when it comes to road accident cases. That is, the victim has their legal right to communicate with the accuser, to have full access to information about the state of the process, and therefore, with a high probability, they also receive the restoration of their violated rights.

<sup>1</sup>Law of United States No. 92122 "On Victim and Witness Protection". (1983). Retrieved from <https://www.ojp.gov/ncjrs/virtual-library/abstracts/victim-and-witness-protection-act-1982-aba-guidelines-fair>.

Despite this conditional classification, there are considerable changes in US law regarding the approach to expanding the rights of crime victims and strengthening their guarantees. However, if the lawyer's right to represent the interests of the accused and defend them is established at all stages, despite the historical recognition of the right of the victims to representation, the procedural status of the representatives-lawyers of the victims is not regulated by the legislation, but the same is guaranteed to both the defender and the representative. In the field of traffic accidents in the USA, there are so-called "injury lawyers" who represent the interests of victims of car accidents. Therewith, their main goal is to win in a civil case, namely regarding the issue of compensation, since without the involvement of a representative, even with the clear guilt of the accused, the court may not issue a decision on compensation for damages (Butschky, 2023).

The second group includes countries with continental law and judicial systems that traditionally recognize the victim as a participant in criminal proceedings. Analysing the legislation of the Netherlands, it can be concluded that the role of the lawyer representing the victim of a traffic accident consists in substantiating the claim, finding the necessary facts or information, conducting examinations, as well as directly representing the interests of the victim in court. Given the presence of a special state fund for compensation for victims, upon filing a lawsuit and quality protection of their interests by a representative lawyer, the victim receives compensation regardless of the defendant's availability of funds. This refers to the state making an advance payment to the victims, after which the state itself demands it from the perpetrator. Thus, under this program, in the case of violent crimes, the amount is not limited, for all other types of crimes, the maximum amount of compensation is 5,000 euros. The guarantee of receiving compensation for the victim and defending their interests stimulates the appeal to the institution of representation among the victims, which can be borrowed into national practice.

As an example, one can take the practices of Germany regarding the application of the right of the victim in a traffic accident to representation during criminal proceedings. Thus, the Fifth Book of the German Criminal Code is fully devoted to the issue of the participation of the victim in the procedure, and Article 397 contains the norm according to which the victim in criminal proceedings is aided in inviting a lawyer, if the case is complex from a legal standpoint, and the victim cannot properly equal to protect their interests<sup>1</sup>.

The procedure for involving a lawyer-representative, in this case, is as follows: the presiding judge in criminal proceedings invites a lawyer, and the victim can independently choose his representative during the specified

period. However, the victim cannot appeal the court's decision on the need to engage a lawyer for legal aid. In addition, the injured person can involve his lawyer-representative if the first acts as a civil defendant in the proceedings in matters of compensation for damage caused by a traffic accident (moral and material), however, in case of refusal to involve a lawyer and in case of refusal to compensate for damage, appeal the victim has no right to a decision.

Such mandatory involvement of a representative lawyer can be effective for the legal regulation of a lawyer's activities in criminal proceedings in the field of road traffic safety in Ukraine. For example, the division of cases into those that require the mandatory involvement of the victim's lawyer representative may occur as follows: in cases of inflicting serious bodily injuries on the victim; a traffic accident with signs of alcohol intoxication, which led to serious consequences; the death of a victim in a road accident; causing material damage to the victim's property in particularly large amounts; if there are signs of intimidation of the victim, threats of use or use of violence against him; when the victim is a minor or a disabled or incapacitated person; when it comes to representing a civil defendant in criminal proceedings.

Such a classification determines the most serious risks and requires the intervention of a qualified specialist to protect the interests of the victim or his close relatives and should be mandatory in criminal proceedings. In cases where it is impossible to attract a representative to protect the victim at his own expense, one should talk about the mandatory appointment of a representative lawyer at the expense of the State Budget of Ukraine.

The legislation of Sweden and Switzerland, similar to the legislation of the Netherlands, provides for the victim to be provided with a free representative lawyer at the expense of the state (Emelianov, 2020).

Thus, considering the analysis of the legislation of some European states, the vector of national legislation should be aimed at distinguishing the category of the lawyer of the victim in road accident cases in national legislation and establishing clear cases of their mandatory involvement in road accident cases.

## Discussion

The development and reformation of criminal and criminal procedural law in Ukraine has led to changes in the protection of the rights of participants in criminal proceedings. If earlier, it was possible to speak of various methods and defences only in the context of the suspect or the accused, today the issue of protecting the victim from the crime and their active involvement in criminal proceedings is increasingly being raised. As indicated by H. Olasolo and A. Kiss (2010),

<sup>1</sup>German Code of Criminal Procedure. (1987, April). Retrieved from [https://www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html](https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html).

the involvement of a victim of a criminal offence in the proceedings can serve as a guarantee that their interests will be factored in, even if they differ from the interests of the prosecution. Given the complicated situation with the investigation of cases based on the facts of road accidents, today the issue of protecting victims of car accidents is on the agenda both in academic circles and at the legislative level (Road traffic injuries..., 2023).

However, legal regulation is reduced to general rules and does not have a clear mechanism, which often leads to the closing of proceedings on formal grounds, and reconciliation on unfavourable terms for the victim. Furthermore, the biggest issue is the absence of an obligation to pay compensation in the absence of a representative of the victim. Having considered the legislative aspects of this issue using evidence from some countries in Europe and the USA in comparison with Ukraine, it is also necessary to understand the very content of the representation of the interests of the victim of a traffic accident, justify the need to distinguish the lawyer representing the victim from the lawyer defending the accused, regulating their procedural status and distinguishing tasks essential for the performance of the victim's representative.

The institution for the representation of victims of crimes is a guarantee of the implementation of the task of protecting the rights, freedoms, and interests of victims of crime. Furthermore, this refers not only to the consideration of the institution of representation from this standpoint but also to the impact on compliance with the principle of adversarial justice in the criminal procedure. Thus, the Criminal Procedural Code of Ukraine specifies that the interests of the victim in criminal proceedings may be represented by a representative, i.e., a person entitled and authorized to act as a defence attorney in criminal proceedings<sup>1</sup>.

The representative is granted the procedural rights of the victim, whose interests they directly represent, except for those exercised directly by the victim themselves. However, as O. Kostyuchenko (2016) points out, a big question arises regarding the distribution of these procedural rights between the representative and the victim. That is, according to the author, the list of rights that can be exercised by the victim's representative is not clearly defined by the national legislator and is exclusively an "evaluative concept". Thus, this refers to the possibility of limiting the scope of the rights of the representative at the sole discretion of the victim, investigator, or other representative of law enforcement agencies, proceeding from the idea that a particular right can be exercised only by the victim. Furthermore, O. Kostyuchenko (2016) believes that the injured person and their representative are given a fairly wide list of rights, but it should be supplemented with several

rights, including the right to express a legal position in court debates regarding the scope and content of the accusation. However, when it comes to public prosecution, such a right cannot be transferred to the victim or their representative.

A separate issue that raises quite a few questions is the purpose of representing the victim in road accident cases. The victim, as well as the suspect in criminal proceedings, needs qualified legal aid to exercise their procedural rights and to obtain a specific result. And as a rule, proceeding from this, as R. Emelianov (2023) points out, an active form of behaviour in the investigation and consideration of the case is characteristic of the injured person, including the road accident, which does not involve voluntary removal from participation in the procedure, despite the admissibility of the person's refusal, which delegated its powers to a representative. Thus, the purpose of the actions of the victim's representative is to implement and ensure the rights and legitimate interests of the victim of a crime, i.e., it is a matter of directly performing actions aimed at defending the interests of the person they represent. As already mentioned above, the main task of the representative of the victim is to protect their rights and freedoms according to the objectives of the CPCU, which they implement through certain actions<sup>2</sup>. This refers to committing procedural and non-procedural activities (Chervinskii, 2022). However, according to R. Emelianov (2023), the implementation of the professional activity of the representative of the victim in the criminal procedure is not unambiguous due to regulation only in general terms. This refers to the real lack of specification of the criteria for the legality of the lawyer's actions.

The law makes provision for the right to collect evidence, read and understand the materials of the pre-trial investigation, take part in investigative actions during the investigation, and other procedural actions. However, the issue of the lawyer's activity, which holds an extra-procedural nature, i.e., actions that are not procedurally regulated, such as recording certain data, recording the situation at the scene of a traffic accident, receiving a video taken by random witnesses, detecting the fact of illegal influence on the victim or other participants in criminal proceedings – are still unenforced by law and need to be regulated (Chervinskii, 2022).

Given the wording in the national legislation regarding the definition "representative of the victim", in practice, there is no real problem with the protection of the rights of the victim and the participation of the lawyer representative in the proceedings. However, defence and representation, admittedly, are critically different categories in their essence, considering the purpose of defence, which lies in refuting suspicion and accusation, in this case, according to

<sup>1</sup>Criminal Procedural Code of Ukraine. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text>.

<sup>2</sup>Ibidem, 2013.

Articles 286-288 of the Criminal Code of Ukraine, for establishing innocence, lesser culpability or exclusion of criminal charges responsibility, or – closure of criminal proceedings<sup>1</sup>.

The problem is the lack of regulation of the mandatory participation of the victim's representative in the proceedings. The question of the mandatory participation of a representative has long been considered in national legal practice and was analysed above considering the practices of the Netherlands and Germany. But, in practice, there is no regulation, which causes an unequal position of the parties to the criminal proceedings in terms of their legitimate interests, rights, and positions. The idea to introduce an analogous practice into the criminal procedure of Ukraine has existed for quite some time and is directly supported by such scientists as O. Kuchynska (2009). The author pointed out the need to appoint a defence attorney to the victim as their representative only in certain cases (underage victim, mental or physical disabilities, etc.).

J. Butschky (2023) supports the opinion on the need to appoint a mandatory lawyer to the victim to preserve and respect the right to equality in the judicial procedure, which is logical and does not cause objections. However, apart from this, it is necessary to discuss the obligation to appoint a representative of the victim under the conditions that were given above. Therewith, including the possibility of appointing a lawyer for the victim at the expense of the State Budget.

The issue of research and delimitation of the terms "representative", which is defined by the national legislator as a person who is entitled to be a defence attorney in criminal proceedings, and "legal representative", who is involved in the case when the victim of a crime is a minor, deserves separate consideration. Such representation has a completely different nature. Thus, when it comes to representation, the powers must be confirmed by appropriate documents certifying the right to engage in legal activities, or by a warrant or a written contract with the victim on the provision of legal aid. And therefore, the victim independently delegates their rights to their representative, according to their own choice and decision.

As indicated by R. Emelianov (2023), the concept of the "representative" is based on the fact that the victim needs qualified legal aid to exercise their rights. Legal representation is carried out exclusively to prevent violations of the rights of minors or individuals with a limited or total disability and is regulated by Article 44 of the CPCU<sup>2</sup>. Their actions must not conflict with the interests of the person they represent, and they fully enjoy the rights of the person they represent, except those procedural rights that can be exercised by the victim

themselves. However, despite this regulation, the legislator does not provide or explain any of the legal representative's duties. Still, legal representation is not an activity that lies in providing qualified legal aid.

## Conclusions

The study results strongly suggest that the issue of representing the interests of victims of traffic accidents, as well as the institution of victim representation, has many gaps in Ukrainian law and needs serious improvement. Considering the difficult political and economic circumstances, the full-scale invasion, and the state of war on the territory of the state, there is a tendency to decrease attention to the issue of investigating crimes in the field of traffic safety and the operation of vehicles. Due to the busyness of law enforcement agencies, quite often the guilty go unpunished, and the rights and interests of the victims are not defended. Furthermore, the low legal awareness and ignorance of the victims about their rights deprives them of the opportunity to compensate for moral or material damage caused as a result of a traffic accident.

Orientation towards EU standards, the entry and recognition of Ukraine as a candidate for membership of the European Union, and the vector of development of Western European values necessitate the assimilation of national legislation with European legislation and bringing it to uniform standards. Furthermore, the borrowing of foreign practices, especially in the aspects of legal regulation of the institution of representation, the activities of the victim's lawyer, their methods of action, and mechanisms of protection, are crucial and critically necessary for the system of national law. That is why the analysis of the European practices, and the borrowing of legal ideas can be an effective solution to the issue at the national level. That is, this specifically refers to such changes as the introduction of amendments to Article 58 of the Criminal Code of Ukraine and the inclusion of the proper concept of "advocate-representative", as well as the issue of regulating the payment of compensation to victims of road accidents at the state level and ensuring their guarantees, the issue of the mandatory involvement of a representative of the victims of road accidents in cases of, namely, the death of the victim, infliction of serious bodily injuries, disability or limited capacity of the victim, if the victim is present before they reach the age of majority, etc. Despite the presence of analogous ideas on the part of Ukrainian scientists, there is still no similar practice at the legislative level. That is why, considering the legislation of the Netherlands and Germany, it would be suitable to establish the mandatory participation of the victim's lawyer in criminal proceedings in the presence of several circumstances.

<sup>1</sup>Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text>.

<sup>2</sup>Criminal Procedural Code of Ukraine. (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text>.

However, apart from this, it is worth specifying the need for future research in this area, specifically, they should be an analysis of judicial practice and the impact of court decisions on the resolution of road accident cases, research into the issue of paying compensation to victims of road accidents as a mandatory element in criminal proceedings, regardless of the presence a claim from the victim, as well as the introduction of special training for

representative lawyers based on the model of the Netherlands for real guarantees of the protection of their rights.

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### Conflict of Interest

None.

### References

- [1] Baumgartner, E. (2008). [Aspects of victim participation in the proceedings of the international criminal court](#). *International Review of the Red Cross*, 90(870), 409-440.
- [2] Boer, W. (2023). *Legal aid in the Netherlands*. Retrieved from <http://surl.li/ioxb>.
- [3] Butschky, J. (2023). *Maryland drunk driving accident victims: Don't let the tables get turned on you! Why you need an experienced injury lawyer*. Retrieved from <https://www.marylandattorneys.us/maryland-drunk-driving-accident-victims-don-t-let-the-tables-get.html>.
- [4] Cameron, J.D. (1981). [English barrister system and the American criminal law - A proposal for experimentation](#). *Arizona Law Review*, 23(3), 991-1002.
- [5] Chervinskii, V. (2022). Representation of the interests of the victim in the form of road transport use in criminal prosecution. *Legal Science Electronic Journal*, 11, 704-707. doi: 10.32782/2524-0374/2022-11/169.
- [6] Doak, J. (2005). [Victims' rights in criminal trials: Prospects for participation](#). *Journal of Law and Society*, 32(2), 294-316.
- [7] Elbers, N., Meijer, S., Becx, S., Schijns, A.J.J.G., & Akkermans, A. (2020). The role of victims' lawyers in criminal proceedings in the Netherlands. *European Journal of Criminology*, 19(4), 830-848. doi: 10.1177/1477370820931851.
- [8] Emelianov, R. (2020). Foreign experience regulating the criminal procedural activities of the lawyer-representative of the victim. *Criminal Law, Criminal Process and Criminology*, 119-127. doi: 10.32782/LAW.2020.3.19.
- [9] Emelianov, R. (2023). [Lawyer – representative of the victim in the criminal process](#) (Doctoral dissertation, Donetsk National University of Internal Affairs, Kropyvnytskyi, Ukraine).
- [10] Gelman, U. (2015). [Alternative way store solve disputes in criminal prosecution](#). Khmelnytsky: Khmelnytsky University of Management and Law.
- [11] Gloviuk, I. (2013). [Problems of determining the functional directivity of the victim's activity in the criminal prosecution of Ukraine](#). *Bulletin of Kharkiv National University named after V.N. Karazin. Series: Law*, 16, 233-236.
- [12] Holovkin, B. (2022). Assessment of road traffic accidents and the severity of its consequences in Ukraine. *Problems of Legality*, 156, 52-75. doi: 10.21564/2414-990X.156.252879.
- [13] Johnston, E. (2019). The adversarial defence lawyer: Myths, disclosure and efficiency - A contemporary analysis of the role in the era of the criminal procedure rules. *The International Journal of Evidence & Proof*, 24(1), 35-58. doi: 10.1177/1365712719867972.
- [14] Kazis, N. (2016). [Tort concepts in traffic crimes](#). *The Yale Law Journal*, 125(4), 796-1149.
- [15] Kostyuchenko, O. (2016). [Certain aspects of implementing the victim's right to professional legal assistance in criminal proceedings in Ukraine](#). *Herald of Criminal Justice*, 4, 40-46.
- [16] Kuchynska, O.P. (2009). [Problems of protecting the rights of the victim in the criminal process of Ukraine](#). *Lawyer*, 5, 9-12.
- [17] Olasolo, H., & Kiss, A. (2010). The role of victims in criminal proceedings before the international criminal court. *Revue Internationale de Droit Penal*, 81(1-2), 125-163. doi: 10.3917/ridp.811.0125.
- [18] Orlean, A., Palyukovets, T., Krapivin, Y., Latyuk, D., & Chovgan, V. (2020). [The rights of victims of violent mischief in Ukraine: International standards and national practices](#). Kyiv: ARTEK.
- [19] Parliament adopts new rules to improve protection of road accident victims. (2021). Retrieved from <https://www.europarl.europa.eu/news/en/press-room/20211014IPR14929/parliament-adopts-new-rules-to-improve-protection-of-road-accident-victims>.
- [20] Road traffic injuries and deaths – A global problem. (2023). Retrieved from <https://www.cdc.gov/injury/features/global-road-safety/index.html>.
- [21] Ten Boom, A., & Kuijpers, K.F. (2012). Victims' needs as basic human needs. *International Review of Victimology*, 18(2), 155-179. doi: 10.1177/0269758011432060.
- [22] The right to effective representation in criminal proceeding sand the ex officio appointment system. (2022). Retrieved from <https://www.osce.org/files/f/documents/8/0/523952.pdf>.

- [23] Varfolomeeva, T., Goncharenko, V., Boyarov, V., Goncharenko, S., & Popelyushko, V. (2011). *Forensics: Academic course*. Kyiv: Yurinkom.
- [24] World road traffic accident report. (2023). Retrieved from <https://www.worldlifeexpectancy.com/world-road-traffic-accidents-report>.

## Зарубіжний досвід представництва потерпілого від дорожньо-транспортної пригоди в кримінальному провадженні

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### Анотація

Суттєве зростання кількісних показників статистики дорожньо-транспортних пригод в Україні за останні роки, а також тенденція до зниження результативності розкриття цього виду злочинів унаслідок зменшення уваги до проблеми призводить до безкарності винних, а також неможливості захисту потерпілими своїх прав та інтересів. Попри збройну агресію російської федерації, такі базові інститути, як представництво інтересів потерпілих, особливо у сфері злочинів проти безпеки руху й експлуатації транспорту, повинні мати чітке правове регулювання на державному рівні, чим власне й зумовлена актуальність цього дослідження. Метою роботи був аналіз зарубіжного досвіду інституту представництва потерпілих як у загальному контексті, так і в розрізі злочинів проти безпеки руху та експлуатації транспорту, а також стандартизація та вдосконалення чинного законодавства шляхом запозичення іноземних правових ідей. Основу методологічного підходу становлять діалектичний та компаративістський методи, завдяки яким було проаналізовано законодавство низки країн Європи. У дослідженні проаналізовано законодавство Нідерландів, Німеччини, США та Великої Британії з метою компаративістського аналізу та пошуку прогалин у національному законодавстві. Доведено потребу в розмежуванні понять «представник потерпілого» та «законний представник», а також відмежуванні категорії «адвокат-представник потерпілого» від загального поняття «захисник у кримінальному провадженні». Також було наведено низку положень, за якими має бути закріплено законодавчо обов'язкову участь адвоката – представника потерпілого в справах про дорожньо-транспортну пригоду та наявності певних умов. У дослідженні приділено увагу питанню компенсації шкоди, завданої потерпілому внаслідок аварії, та можливі аспекти її врегулювання на державному рівні, урахувавши досвід Нідерландів. Результати, отримані під час проведення цього дослідження, є важливою теоретичною базою для вдосконалення правового регулювання питання діяльності адвоката-представника потерпілого від дорожньо-транспортних пригод

### Ключові слова:

адвокат-представник; право на судовий захист; угода про примирення; слідчі дії; організаційно-правова діяльність адвоката; злочини проти безпеки руху та експлуатації транспорту