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Some questions of the victimological concept of the victim

The purpose of this article is to investigate the concept of «victim» of crimes. The article deals with issues related to the definition of victim of crime, the relationship between the terms «victim» of crime and «victim». The different views of scientists on the concepts of «victim», «victim» and «subject of crime» are analyzed. The methodological basis of the study is the scientific provisions of criminal law, criminology and victimology. In the course of studying modern theories of definition of «victim» concept, conclusions were obtained through qualitative and quantitative analysis of socio-legal, criminal-legal phenomena and processes. Current realities show that victimization is closely linked to criminalization. In the context of globalization, during the declaration of a global pandemic with a wide spread of crime, the number of victims increased, and a large number of people joined the criminal community. Isolating a person from society, living locked up in quarantine conditions has influenced the increase in the number of victims of domestic violent crimes, high-tech crimes. Accordingly, during the formation of a theoretical view of the concept of the victim of crimes, the need to define their rights, as well as their legislative approval, is justified. That is, the need to create a system of subjective rights considering the right to restore the legal status of victims of crimes whose rights were violated by unlawful actions was revealed. The results obtained in this article can be used in the educational process, to write textbooks or workbooks, and to publish articles on the given subject.

Keywords: victimology, criminology, criminal law, criminal procedure code, victim of crime, victim, subject, damage, moral damage, material damage.

Introduction

For centuries, society did not recognize persons who suffered physical, spiritual, moral harm by criminals, and their interests were not taken into account by the legal system. However, since the beginning of the last century, lawyers, sociologists, law enforcement officials began to show interest in victims of crimes, and since 1960, various social movements openly began to show concern towards victims of crimes. The women's movements that emerged during this period challenged the indifference of men to violence against women, opened crisis centers for women who were victims of torture and domestic beatings, and launched various assistance projects.

In this regard, the UN Declaration of November 29, 1985 «Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power» indicated the need for compassion for victims of crime and respect for their dignity. The right of victims of crime to have access to justice mechanisms and immediate compensation for harm caused was also provided under national law [1].

Compared to the past, the suffering of victims of crime is one of the most pressing issues that attracts public attention. Many countries have adopted special laws for the protection of victims of crime, and have established various national organizations and foundations, committees and aid unions. In particular, victims of crimes are provided with appropriate legal, psychological and, where necessary, with material assistance in the following countries: in the Federal Republic of Germany — the public association «White Ring,» assisting victims of crime, in the United States — National Association for Victim Assistance and the committee «Women in Combating Threats of Rape,» in England — the National Association for the Support of Victims of Crime, in France the National Institute for the Assistance of Victims of Crime.

That is why, in order to establish an effective system for the protection and assistance of victims of crime in the Republic of Kazakhstan, taking into account the principles of the UN Declaration of 29 November 1985, it is necessary to improve criminal, criminal procedure and penal enforcement legislation governing the legal status of victims of crime.

The purpose of the study is to study the concept of a victim of a crime.

Objectives: Define the relationship between «victim of crime» and «affected because of crime.»

Methods and materials

Methodology. In the process of writing this article, historical, comparative legal, dialectical and other methods were used to study and analyze the doctrine of the concept of the victim of crime.

Contribution to the development of the doctrine of the victim of crimes was made by Russian scientists V.I. Zadorozhny, K.V. Vishnevetsky, E.N. Kleshchina, N.V. Akhmedshina. In their works mentioned authors considered the legal, organizational issues of victimological crime prevention, the problems of criminogenic victimization of social groups in modern society, the problems of the victim of crimes as an object of criminal victimology. However, in these works, all the theoretical and practical aspects of criminological teaching about the victims of crimes and the ways to solve them were not fully reflected.

In the Republic of Kazakhstan, although not as intense as in Russia, research is still being carried out in the field of victimology. In particular, we can see the example of the work of E.O. Alaukhanov, D.B. Kainazarova, E. Kairulla, N.K. Kotova, B.A. Kulmukhanbetova, N.D. Mukhamedyanova, R.T. Nurtaev.

Results

It is necessary to distinguish between the concepts of «affected», «victim of crime».

In criminal proceedings the affected is recognized as a person, in respect of whom there is reason to believe, that he was affected directly a criminal offense caused moral, physical or property damage. The person is recognized as an affected in criminal proceedings after the relevant order has been issued.

The term «victim of a crime» is broadly understood to refer to persons who have been individually or collectively harmed, including bodily or moral injury, emotional suffering, material damage or substantial impairment of their fundamental rights as a result of an act or omission that violates the existing national criminal laws of Member States, including laws prohibiting criminal abuse of power. The term «victim», as appropriate, includes close relatives or dependants of the immediate victim, as well as persons who have suffered harm while attempting to assist victims in distress or to prevent victimization. Accordingly, the victim may be a natural or legal person; the victim may be either an individual or a collective entity; the victim may be either a citizen of the Republic of Kazakhstan or an alien or a stateless person; a victim is a person who has suffered physical, property or moral harm, as well as a person who is threatened with causing such harm; in the event of the death of the immediate victim, the victim may be close relatives of the victim, dependants.

The term «affected» is enshrined in criminal procedure law, and means a specific procedural figure with its criminal procedure rights and obligations explicitly enshrined in the current Code of Criminal Procedure.

The term «victim of a crime» is broader than «affected» — every «affected» is «victim of a crime,» but not every «victim of a crime» is «affected».

Scientific novelty. Despite scientific developments, a conceptual theory of victimological understanding of the victim of crimes has not been created. As a result, the theoretical provisions of victimology remain unclaimed in the preventive activities of law enforcement agencies, and the victimological definition of the victim of crimes is not fully included in the arsenal of law enforcement.

To solve these problems, attention should be paid to studying the identity of the affected in a specific life situation, and not only to studying the individual characteristics of the person of the offender. This knowledge is necessary, since the crime is the result of the interaction of the life situation with the antisocial personality of the perpetrator, and in a particular life situation both the personality and the behavior of the affected person are manifested to one degree or another.

It should be recognized that until 2014, the rights of victims of crimes were very limited in criminal proceedings. Suffice it to say that the real subject of legal relations in the criminal process was only the affected, and there were no references to the victim of the crime in the criminal procedure law.

Discussion

The identity of the victim of the crime has been investigated by criminology, criminal law, criminal process and forensic science. However, each area of law defines the victim of a crime in different ways, in accordance with own goals and objectives. According to the Code of Civil Procedure, a person is recognized as affected if there is reason to believe that he was directly caused moral, bodily or property harm as a result of a criminal offense [2]. The person conducting the pre-trial investigation recognizes the person as the victim.

Criminal law often addresses the problem of the criminal procedure of the victim. P. Yani proposes to introduce the following concept into criminal legislation: «A victim in a criminal case is a person whose life, health, honour and dignity protected by criminal law, as well as political, labor, property and other rights and freedoms, have been subjected to a criminal attack, that is, a socially dangerous act containing signs of a crime, sufficient data on which served as a basis for initiating a criminal case. After initiating a criminal case, the investigator immediately notifies the said person of the recognition of his victims, explains the rights that he can use» [3; 18]. Some authors disagree with this approach because they do not consider the victim to be a subject of criminal law [4; 18]. According to S.V. Anoshchenkov, the criminal law of the victim should be considered as an element of public relations protected by criminal law, a participant in criminal legal relations. The identification of the signs of the victim is therefore very important as circumstances affecting the classification of the crime, the differentiation of criminal responsibility, and the individualization of punishment [5; стр??].

What is the relationship between «victim of crime» and «affected» based on the above?

The term «affected» should be considered within the framework of the sciences of criminal law and criminal procedure. Since criminal procedure law means the end of the relationship between the offender and the victim. This relationship arises from the beginning of pre-trial proceedings and ends with the issuance of an order. The order means the end of the suffering of the victim of the crimes. Consequently, in accordance with article 39 of the Criminal Code, the sentence imposed must restore social justice [6].

However, as N.V. Akhmedshina correctly noted, even if the offender is sentenced to death, will the suffering of a wounded, robbed or raped person cease [7; стр??].? Of course, the suffering of a person will not stop only with the definition of punishment.

Therefore, if the term «affected» means the criminal procedure status of a person, the term «victim» refers to the field of criminological, victimological research.

In criminological studies, the personal characteristics of a person are considered as a «victim.» From a victimological point of view, the victim is an affected person, suffered because of crime.

A victim is a person who has suffered physical, moral or property harm as a result of unlawful acts. Therefore, the victim of a crime must be understood as the person who has suffered any harm. Unlike the subject of the crime, the victim of the crime can be any living person from young to old.

Some authors consider as a victim not only a person, but also legal persons, state, society, international order, legal and moral system of society, use the term «victim» in an extensive sense [8; стр??].

However, this expansion of the concept of «victim» in practice does not meet the need for crime prevention. Of course, we can recognize various social groups, family, working group as a victim. As a result of the commission of a crime, any member of a social group can suffer consequences. That is, anyone can become a victim of a crime. But some people, due to their inherent objective and subjective: biological, psychological, social qualities, are more susceptible to material, moral or physical harm as a result of criminal attacks.

Biological qualities include, for example, sex, physical development of a person, somatic state, age. That is, a person, due to his physical condition, cannot call for help, cannot avoid a criminal assault, due to low auditory, visual ability, due to age, cannot be properly protected or cannot realize the danger to society of a socially dangerous act committed.

Psychological qualities include temperament, behavior, character. Usually rude, unprepared, selfish people not only commit crimes, but also can themselves become the victim of a crime.

Social qualities include official position, profession. For example, persons whose behaviour is not socially approved; Persons are highly likely to be victimized in connection with official or social tasks; Persons whose behaviour is socially approved may be victims of a crime.

Qualities related to the economic situation of a person. For example, victims of a crime may be persons with financial or material assets. If they show these values to other people, the victimhood of holders of material values increases [9; 14].

In the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) The term «victims» refers to persons who have been individually or collectively harmed, including bodily or moral injury, emotional distress, material damage or material impairment of their fundamental rights as a result of an act or omission that violates the existing national criminal laws of Member States, including laws prohibiting criminal abuse of power.

In this case, the victim may also be a person who suffered as a result of assisting the immediate victim of the crime. All these persons need restoration of the violated right, compensation of damage, and many — socio-psychological rehabilitation [10; 118].

Based on the definition of the victim of crime given in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), the following victimological definition of the victim of crime can be given.

A victim of a crime is a person who has been directly or indirectly harmed as a result of the commission of a crime, regardless of giving that person the status of victim of crime in accordance with the established procedure.

Damage includes physical damage, material (property) damage, moral damage.

Physical damage should be understood as damage to human life and health caused by the corresponding unlawful act: death of the victim, small, moderate and serious harm to health.

Material (property) damage caused by the crime is assessed in accordance with the norms of the Civil Code of the Republic of Kazakhstan and the Civil Procedural Code of the Republic of Kazakhstan. Moreover, in the Civil Code of the Republic of Kazakhstan the term «losses» is used, which means expenses that a person whose right has been violated, has made or will have to make in order to restore the violated right, loss or damage to his property, (real damage), as well as unearned income that this person would receive under the usual conditions of civil turnover if his right was not violated (lost profit) [11]. In the science of criminal law, the term «losses» is replaced by the term «damage,» while retaining the meaning adopted in the Civil Code of the Republic of Kazakhstan.

Moral harm, according to the Normative Decision of the Supreme Court of the Republic of Kazakhstan No. 7 of 27.11.2015 «On the application by the courts of legislation on compensation for moral harm», refers to moral or physical suffering caused by actions (inaction) that encroaches on the intangible benefits belonging to a citizen from birth or by law (life, health, personal dignity, business reputation, privacy, personal and family secrets, etc.) or infringing personal non-property rights (the right to use their name, the right to authorship and other non-property rights in accordance with the laws on protection of the rights to the results of intellectual activity) or infringing the property rights of a citizen [12].

Conclusions

In the process of developing the doctrine of the victim, we should not move away from the legal definition of the victim of the crime and should try to give a more complete definition, including victims of attempted crimes, close relatives of the dead victims and «guilty» victims. The concept of victimological sacrifice should not be linked to the recognition of a citizen as a victim from a procedural point of view. Modern research in the field of victimology still cannot fully determine who can become the victim of a crime. As a victim, we must recognize a person who has suffered physical, moral or property harm as a result of an unlawful act connected with the subjective intent of the offender or an objective situation that has arisen, regardless of recognition or non-recognition of the victim in the manner prescribed by law and his subjective assessment of himself as such.

An analysis of the development of the victim doctrine showed that at the moment there is no unambiguous theoretical and operational interpretation of the main concepts and categories of victimology, which led to the need to study the content of the concept of the victim, victimized behavior and other elements of the conceptual apparatus of the general theory of victimology.

The practical significance of the results of this phase of the study is that the results of the study:

- In the research field, they can be the basis for further development of relevant problems;
- In the field of law-making, they can be used to prepare and clarify a number of criminal law and procedural rules in the field of ensuring the security of the person, society, the state and combating crime;
- In law enforcement activities, their use will make it possible to increase the effectiveness of processes and procedures to ensure the security of the person, society, the state and the implementation of crime prevention;
- In the educational process it is possible to use textbooks and workbooks in the disciplines «Criminal Law», «Criminology», «Victimology», «Crime Prevention» and others.

References

- 1 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (approved by UN General Assembly Resolution 40/34 of November 29, 1985). // <http://kk.wikipedia.org/wiki/>.
- 2 Уголовно-процессуальный кодекс Республики Казахстан. Кодекс Республики Казахстан от 4 июля 2014 г. № 231-V З РК. — [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz/rus>.
- 3 Иани П. Законодательное определение потерпевшего от преступления / П. Иани // Российская юстиция. — 1995. — № 1. — С. 18–24.
- 4 Полубинский В.И. Правовые основы учения о жертве преступления / В.И. Полубинский. — Горький: Горьк. высш. шк. МВД СССР, 1979. — 84 с.
- 5 Анощенко С.Б. Уголовно-правовое учение о потерпевшем / С.Б. Анощенко. — [Электронный ресурс]. — Режим доступа: Legal Reference System. — Network version. — Electronic data. — Moscow: Scientific Industrial Enterprise Garant-service. — Access mode: computer network of National library of Tomsk state university, free.
- 6 Уголовный кодекс Республики Казахстан. Кодекс Республики Казахстан от 3 июля 2014 г. № 226-V З РК. — [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz/rus>.
- 7 Ахмедшина Н.В. Криминологическая виктимология / Н.В. Ахмедшина. — Томск: Изд-во Том. гос. ун-та систем упр. и радиоэлектрон., 2011. — 202 с.
- 8 Гаджиева А.А. Виктимология и ее роль в профилактике преступлений: дис. ... канд. юрид. наук: 12.00.08 — «Уголовное право и криминология; уголовно-исполнительное право» / А.А. Гаджиева. — Махачкала, 2000. — 206 с.
- 9 Квашис В.Е. Основы виктимологии. Проблемы защиты прав потерпевших от преступлений / В.Е. Квашис. — М., 2008. — 231 с.
- 10 Галушко Д.М. Ювенальная виктимология (криминологические и социально-психологические проблемы): дис. ... канд. юрид. наук: 12.00.08 — «Уголовное право и криминология; уголовно-исполнительное право» / Д.М. Галушко. — М., 2003. — 149 с.
- 11 Гражданский кодекс Республики Казахстан. Кодекс Республики Казахстан от 27 декабря 1994 г. № 268-ХIII. — [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz/rus>.
- 12 Нормативное постановление Верховного Суда Республики Казахстан от 27 ноября 2015 г. № 7 «О применении судами законодательства о возмещении морального вреда». — [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz/rus>.

Д.Б. Мәліков, Ш.Б. Мәлікова, А.Б. Избасова

Құрбанның виктимологиялық ұғымының кейбір сұрақтары

Мақаланың мақсаты — қылмыс «құрбаны» түсінігін зерттеу. Мақалада қылмыс құрбанының түсінігін анықтаумен байланысты сұрақтар, қылмыс «құрбаны» мен «жәбірленуші» терминдерінің арақатынасы мәселелері қарастырылған. «Құрбан», «жәбірленуші» мен «қылмыс субъектісі» түсініктері жөніндегі ғалымдардың түрлі көзқарастары талқыланған. Зерттеудің әдістемелік негізін қылмыстық құқық, криминология және виктимологияның ғылыми ережелері құрайды. «Құрбан» ұғымын анықтаудың заманауи теориясын зерттеу барысында әлеуметтік-құқықтық, қылмыстық-құқықтық құбылыстар мен процестерді сапалы және сандық талдау арқылы тұжырымдар алынды. Заманауи өмір виктимизациялану үдерісінің криминализациялану үдерісімен тығыз байланыста екендігін көрсетеді. Жаһандану жағдайында, дүниежүзілік пандемия жариялануы кезінде қылмыстылық кең қанат жайған сайын қылмыстың құрбанының саны да көбейіп, көптеген адамдар шеңбері криминалды ортаға тартыла түсуде. Адамның әлеуметтен алшақтанып, қатаң карантин жағдайында қамалып отыруы тұрмыстық зорлық-зомбылық қылмыстарының, жоғары технологияларды пайдалана отырып жасалатын қылмыстардың құрбандарының санының артуын көрсетіп отыр. Сәйкесінше, қылмыстың құрбаны ұғымын анықтауға қатысты теориялық көзқарасты қалыптастыру барысында олардың құқықтарын айқындап, заңнамалық тұрғыдан бекіту қажеттілігі негізделген. Яғни, қылмыс құрбандарының құқықтарының құқыққа қайшы іс-әрекетпен бұзылған тұлғаның құқықтық мәртебесін қалпына келтіру мүмкіндігін қарастыратын субъективтік құқықтардың жүйесі екендігі ашылған. Алынған нәтижелерді оқу процесінде, оқулықтар немесе оқу құралдарын жазу мен аталған мәселелер бойынша мақалалар жариялау үшін пайдалануға болады.

Кілт сөздер: виктимология, криминология, қылмыстық заң, қылмыстық-процестік кодекс, қылмыс құрбаны, жәбірленуші, субъект, залал, моральдық зиян, материалдық зиян.

Д.Б. Маликов, Ш.Б. Маликова, А.Б. Избасова

Некоторые вопросы виктимологического понятия жертвы

Цель настоящей статьи — исследовать понятие «жертва» преступлений. Авторами рассмотрены вопросы, связанные с определением понятия жертвы преступления, соотношения терминов «жертва»

преступления и «потерпевший». Проанализированы различные точки зрения ученых о понятиях «жертва», «потерпевший» и «субъект преступления». Методологическую основу исследования составляют научные положения уголовного права, криминологии и виктимологии. В ходе исследования современных теорий определения понятия «жертва» выводы получены посредством качественного и количественного анализа социально-правовых, уголовно-правовых явлений и процессов. Современные реалии показывают, что процесс виктимизации тесно связан с процессом криминализации. В условиях глобализации, в период объявления мировой пандемии, с широким распространением преступности увеличилось и количество жертв и людей, приобщенных к криминальным кругам. Изоляция человека от социума, жизнь взаперти в условиях карантина, повлияла на рост числа жертв бытовых насильственных преступлений, преступлений с использованием высоких технологий. Соответственно, в ходе формирования теоретического взгляда относительно понятия жертвы преступлений обоснована необходимость определения их прав, а также их законодательного утверждения. То есть выявлена необходимость создания системы субъективных прав, рассматривающих право восстановления правового статуса жертв преступлений, чьи права были нарушены противоправными действиями. Результаты, полученные в настоящей статье, можно использовать в учебном процессе, при написании учебников или учебных пособий и публикации статей по данной проблематике.

Ключевые слова: виктимология, криминология, уголовный закон, уголовно-процессуальный кодекс, жертва преступления, потерпевший, субъект, ущерб, моральный вред, материальный вред.

References

- 1 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (approved by UN General Assembly Resolution 40/34 of November 29, 1985). *kk.wikipedia.org* <http://kk.wikipedia.org/wiki/>
- 2 Uholovno-protsessualnyi kodeks Respubliki Kazakhstan ot 4 iul'ia 2014 hoda № 231-V ZRK [Code of Criminal Procedure of 3 July 2014.]. *adilet.zan.kz/rus* Retrieved from <http://adilet.zan.kz/rus> [in Russian].
- 3 Iani, P. (1995). Zakonodatelnoe opredelenie poterpevsheho ot prestupleniia [Statutory definition of victim of crime]. *Rossiiskaia yustitsiia — Russian Justice*, 1, 18–24 [in Russian].
- 4 Polubinskii, V.I. (1979). Pravovye osnovy uchenii o zhertve prestupleniia [Legal framework for the teaching of the victim of crime]. Gorkii: Gorkovskaia vysshaia shkola MVD SSSR [in Russian].
- 5 Anoshchenkov, C.B. (2004–2010). Uholovno-pravovoe uchenie o poterpevsheho [Criminal law doctrine on the victim]. Konsultant-Plus — Consultant-Plus [in Russian] [Electronic resource]: Legal Reference System. — Network version. — Electronic data. — Moscow: Scientific Industrial Enterprise Garant-service. — Access mode: computer network of National library of Tomsk state university, free [in Russian].
- 6 Criminal Code of the Republic of Kazakhstan of July 3, 2014. *adilet.zan.kz/rus* Retrieved from <http://adilet.zan.kz/rus> [in Russian].
- 7 Akhmedshina, N.V. (2011). Kriminologicheskaia viktimologhiia [Criminological victimology]. Tomsk: Izdatel'stvo Tomskogo gosudarstvennogo universiteta sistem upravleniia i radioelektroniki [in Russian].
- 8 Gadzhieva, A.A. (2000). Viktimologhiia i ee rol v profilaktike prestuplenii: 12.00.08 — Uholovnoe pravo i kriminologhiia; uholovno-ispolnitelnoe pravo [Victimology and its role in crime prevention]. *Candidate's thesis*. Makhachkala [in Russian].
- 9 Kvashis, V.E. (2008). Osnovy viktimologii. Problemy zashchity prav poterpevsheho ot prestuplenii [Basics of victimology. Challenges in protecting the rights of victims of crime]. Moscow, 231 [in Russian].
- 10 Galushko, D.M. (2002). Yuvenalnaia viktimologhiia: kriminologicheskie i sotsialno-psikhologicheskie problemy [Juvenile victimology: criminological and socio-psychological problems]. *Candidate's thesis*. Moscow [in Russian].
- 11 Hrazhdanskii kodeks Respubliki Kazakhstan. Kodeks Respubliki Kazakhstan ot 27 dekabria 1994 hoda N 268-XIII [Civil Code of the Republic of Kazakhstan of 27 December 1994.] *adilet.zan.kz/rus* Retrieved from <http://adilet.zan.kz/rus> [in Russian].
- 12 Normativnoe postanovlenie Verkhovnogo Suda RK No. 7 «O primenenii sudami zakonodatelstva o vozmeshchenii moral'nogo vreda», 27.11.2015 [Normative Decision of the Supreme Court of the Republic of Kazakhstan No. 7 «On the application by the courts of legislation on compensation for non-pecuniary damage» of 27.11.2015]. *adilet.zan.kz/rus* Retrieved from <http://adilet.zan.kz/rus> [in Russian].