

It seems that the victim should be an integral part of the criminal process when considering the issue of the application of an amnesty, since the commission of a crime violated his legal rights and interests, which is the duty of the state to protect. Therefore, we consider it expedient to consolidate, at the legislative level, the duty to take into account the opinion of the victim and to compensate him harm caused by a crime in deciding on the application of an amnesty.

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#### **CONCEPTS AND TYPES OF AUTHORITIES AS VICTIMS OF THREATS OR VIOLENCE AGAINST AN OFFICIAL OR A CITIZEN WHO PERFORMS PUBLIC DUTY**

In the criminal law, the term «official» is given twice (in ch. 3 and 4, Article 18, as well as in the note to Article 364 of the Criminal Code of Ukraine), both in terms of content and scope of the criminal law to which they may be applied different. Their difference lies in fact that the first (Part 3 of Article 18 of the Criminal Code of Ukraine) covers the assignment of those persons who permanently or temporarily occupy positions in any enterprises, institutions or organizations related to execution of organizational and administrative or administrative and economic functions, while the second definition (clause 1 of the note to Article 364 of the Criminal Code of Ukraine), among other things, covers classification of only persons who permanently or temporarily occupy positions in «state or communal» enterprises, institutions or organizations, related with implementation of organizational and regulatory or administrative and economic functions. Definition

contained in Part 3 and 4 of Art. 18 of the Criminal Code of Ukraine, apply to all criminal law, with the exception of the rules specified in paragraph 1 of the note to Article. 364 of the Criminal Code of Ukraine. The latter belong to Art. 364, 368, 3682, 369 of the Criminal Code of Ukraine. That is, in these articles, the definition of the term «official person», which is set forth in clauses 1 and 2 of the note to the article, is used. 364 of the Criminal Code of Ukraine. In other cases (other articles of the Criminal Code of Ukraine), including the crime envisaged in Art. 350 of the Criminal Code of Ukraine, the definition of «official» should be applied, which is enshrined in Part 3 and 4 of Art. 18 of the Criminal Code of Ukraine.

Part 3 of Art. 18 of the Criminal Code of Ukraine, an official identified a person who permanently, temporarily or under special powers carries out the functions of a representative of the government or local self-government, and also permanently or temporarily occupies positions in state authorities, local self-government bodies, enterprises, institutions or organizations, with the fulfillment of organizational-administrative or administrative-economic functions, or performs such functions under special powers, which a person is empowered by the authority of state authority, organ m of local self-government, the central body of state administration with a special status, a plenipotentiary body or authorized official of an enterprise, institution, organization, court or law [7, p. 65]. Since Part 3 of Art. 18 of the Criminal Code of Ukraine does not specify the form of ownership of enterprises, institutions or organizations in which a person may hold positions associated with the implementation of organizational and administrative or administrative and economic functions, it can be concluded that the ownership of these enterprises, institutions and organizations may be any one In addition, the mention of officials of a legal entity of private law (Article 364-1 and Article 368-3 of the Criminal Code of Ukraine) without a separate definition of this concept, confirms the conclusion of any form of ownership of enterprises, institutions or organizations, on which, respectively to Part 3 of Art. 18 of the Criminal Code of Ukraine, a person may hold positions related to the performance of organizational-administrative or administrative-economic functions.

The difference in these definitions refers only to enterprises, institutions or organizations where a person can perform organizational, administrative or administrative functions. In the first case, it refers to any

enterprise, institution or organization, then in the second case it is only about state or communal. Under such conditions state and communal enterprises, institutions or organizations are only a kind (in form of ownership) of any enterprises, institutions or organizations. Therefore, it is logical that their ratio can be expressed as the ratio of the part and the whole, where the part is state and communal enterprises, institutions or organizations, and whole – any enterprises, institutions or organizations, since the latter also cover private enterprises, institutions or organization. The legislator distinguishes between the notion of «official of a legal entity of private law» (Articles 3641 and 3683 of the Criminal Code of Ukraine), and therefore allows for the recognition of an official who occupies positions in private enterprises, institutions or organizations related to the execution of organizational or administrative or administrative and economic functions. In the previous edition, the definition of the term «official» did not distinguish the category of representatives of local self-government, so they could be attributed to officials only by the category of representatives of the authorities.

Therefore, it is expedient to distinguish between concept of «representative of power» and «representative of local self-government», since their essence is different, although some scientists identify these concepts, considering the representatives of power of persons working in local self-government bodies. Confirmation of the latter is the position of scientists O. Dudorova and G. Zelenova, who identify these two concepts, understanding, under the representatives of the authorities and local self-government, of persons who, acting on behalf of all branches of state power or local self-government, implement the powers granted to them, which entails legal consequences for an indefinite circle of «persons not subordinate to them» [4, p. 569].

Sharing the position of scientists regarding the delimitation of government officials and representatives of local self-government as possible categories of officials, we draw attention to a certain limited degree of government representatives. A representative of authorities is a person who is in service in local self-government bodies, acting on their behalf (on their behalf) and within the scope of their competence carries out (implements) functions of these bodies. Such representatives, in particular, include: deputies of local councils, city, village, town chairmen, employees of local government bodies, and others [6, p. 67]. According to R. Maximovich, the circle of representatives of the

government can not be associated with the division of state power into three branches (legislative, executive and judicial), since there are state-and-state institutions that do not belong to any of them (the President of Ukraine, prosecutor's office, etc.), however, their representatives are empowered and may give mandatory instructions to non-subordinate persons. Therefore, according to his definition, «representatives of authorities are those who carry out functions of public authority (state power and local self-government), in particular the President, members of the Government, deputies, heads of local self-government bodies, judges, people's assessors, jurors, prosecutors, investigators, persons conducting inquiries, heads of local state administrations and their deputies, employees of state inspections, members of public organizations for the protection of public order and the state border, as well as other employees who have the right to hedgehogs make demands of their competence, to decide whether to apply coercive measures against individuals and entities regardless of their subordination or subjection» [5, p. 125, 271].

The position of O. Grudzur, that the representative of government and local self-government should be endowed with two features: 1) belonging to state authorities, their structural subdivisions or to local self-government bodies; 2) presence of power and administrative powers [2, p. 117].

Therefore, representative of government is a person who works in an authority of state power or is an independent public official and, in the nature of his functions, has the right to give instructions and orders that are mandatory for non-subordinated persons. The circle of these persons should not be connected with the division of state power.

Instead, a local self-government representative is a person who directly performs the tasks of local self-government (local self-government body) and, in the nature of its functions, has the authority to set requirements and make decisions binding on legal or natural persons in the respective territory, regardless of their departmental membership, or subordination [1, p. 142]. That is, representative of local self-government is a person who is a member of local self-government body and, by nature of authority, can give instructions and set requirements that are mandatory for the performance of non-subordinated persons.

In addition to positions of scientists, the fact that representative of the government and a representative of local self-government is not identical can serve as a confirmation that in art. 140 of the Constitution of

Ukraine stipulates that local self-government is the right of a territorial community – residents of a village or a voluntary association in a rural community of residents of several villages, towns and cities – to independently solve local issues within the framework of the Constitution and laws of Ukraine. And in Art. 5 and 6 of the Basic Law states that the source of power in Ukraine is the people who exercise power directly and through the organs of state power and local self-government [3].

An interesting aspect is that, according to Part 3 of Art. 18 of the Criminal Code of Ukraine, such functions can be performed by a person permanently, temporarily or under special powers. Therefore, the circle of persons performing functions of a representative of government or local self-government is wider than the circle of representatives of government or local self-government. Therefore, it is expedient to take into account only the nature of functions of representative of government or local self-government, and person's belonging to the appropriate state authority or local self-government is not decisive in this case. This concept of functions is broader than the concept of «responsibilities» and covers the scope of the activity and authority of an official.

Consequently, on basis of foregoing, the following conclusions can be drawn: that the authority to represent a body of state power (state power) or a local self-government body, acting on their behalf, and giving instructions and imposing binding requirements, is a determining factor for establishing the characteristics of an official persons who are not subject to her service. A representative of government is a servant who works in an authority of state power or is an independent public official and, by the nature of his authority, has the right to give instructions and to impose requirements that are mandatory for non-subordinated persons. A representative of local self-government is a person who is a member of the local self-government body and, according to the nature of his authority, can give instructions and set requirements that are mandatory for the performance of non-subordinate persons.

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#### **INDEPENDENT USE OF INSIDER INFORMATION: CRIMINAL AND LEGAL PHYSICAL ANALYSIS**

Most of the developed stock markets in the world have laws that prohibit the sale of insider information by «insiders», which are usually attributed to a relatively broad range of individuals who have access to such information.

On May 20, 2011, the President of Ukraine signed a law prohibiting the use of insider information on the stock market and envisages the introduction into the Code of Administrative Offenses of Ukraine, the Criminal Code of Ukraine, the Laws of Ukraine «On State Regulation of the Securities Market in Ukraine» and «On Securities and Stock market «of the relevant changes aimed at preventing the use of insider information on the stock market [1, c. 56-58].