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**THE CONCEPT OF THE PROCEDURAL AND LEGAL POSITION OF A
WITNESS IN LEGAL PROCEDURE OF UKRAINE**

In paper such categories as procedural interest and legal position are considered and analyzed. Through a prism of these categories the activity of such a subject as the witness is considered. It is designated that indications of witnesses on the volume, the contents and value in the majority of criminal proceedings make a basic element of criminalistic information. The conclusion that the witness has no personal interest during criminal proceedings, and also interest in its results is drawn.

Key words: *criminal legal proceedings, procedural interest, legal position, witness.*

In criminal proceedings the interest serves as a force that results in the movement of the entire system of criminal justice. The lack of such interest or having other interest can stop the momentum of the criminal process [1, p. 73]. The criminal process is generated by its participants who are the subjects of criminal justice. Upon the contents of their activity depends the result of criminal proceedings, its fairness and efficiency. Each participant of the criminal process implements the function to which it was drawn or attracted. In this regard, the interests are the driving force of the process as a whole, because the criminal procedural activity is permeated with the interests of its participants. On one side, are the interests of the parties, on the other – charges [2, p. 1174]. Uncertain you can recognize the interests of individuals who are attracted to criminal process and performance of a supporting role [2, p. 1184].

The actors that implement a secondary function in the criminal process, are attracted to investigate criminal offences in such conditions that are not always dependent on their will and wishes. Questions about procedural interest and the legal position of these subjects almost have been never investigated in the legal literature. But the testimony of witnesses by volume, meaning and value in the vast majority of criminal proceedings is the leading element of forensic information. They cover virtually all the circumstances of the case, subject of proof are the factor of checking and evaluation of the received information during the investigation. Information properties of the testimony of a witness must meet the challenge of criminal procedural evidence and at the same time meet the theoretical methodology of obtaining and transmitting information in the modern world. The task of the paper is the clarification of the question of the presence or absence of procedural interest in entities that perform supporting function in criminal proceedings, as well as the consideration of the concept "legal position". To general aspects relating to the interests of the subjects involved in criminal proceedings, are devoted the works of such scholars as L. Maslennikova [3], F. Bagautdinov [4], O. Shpotakivska, [5], D. Arabuli [6], N. Snegiryova [7], M. Cherpasov [8], and others. The novelty of the work lies in the fact that the author made an attempt to segregate such concepts as "procedural interest" and "legal position" regarding witness.

Procedural interest of the individuals who contribute to bring in General is to provide them the opportunity to perform the tasks assigned to them by the State of procedural duties [9, p. 65]. Given the above mentioned, for the special attention deserves the last procedural figure – the witness, because this is a subject, which often is attracted to the pre-trial investigation and trial of criminal cases. He is the principal carrier of evidence-based information, therefore the significance of a witness to achieve the goal of the criminal justice cannot be overstated [10, p. 3]. As it is known, the formation of a testimony passes three stages – perception, memorization and playback. However, this sequence is not a perfect scheme, because the processes of perception, memorization and playback affect many objective and subjective factors, more strongly identified in preparation for the criminal activity, its performance and the following

situations related to prejudicial proceedings. Formed for today, coupled with the fact that, supposedly not having independent procedural status, the witness is burdened only with the duty to give truthful testimony, does not meet nor the objective condition, nor the needs of practice. A person who is a witness of a criminal offence or has an indirect relation to the circumstances of the evidence in the case, always goes beyond the usual scope of their ideas about the outside world, in connection with what often has its own relationship to observable events. This process can not be called an interest, because a witness could not assert their claims in criminal proceedings, however, almost always there is a formed opinion on the testimony. Therefore, on the formation of testimony internal and external factors affect. The Interior can be attributed to age, education and experience, attitude to the defendant or the victim, physical ability to accept circumstances committed by criminal offences, as well as the size, selectivity and concentration on the perception, emotional stability, the ability to memorize and reproduce the observed events. The external factors include: the crime event in terms of its objective content; the subjective, its perception by the witness [11, p. 3].

I. Kolesnik believes that the interests of the witness and investigator fully coincide: both sides seek to establish the truth in the case. At the same time, this point of view is unacceptable, because it has such a negative factor as conscientious errors that prevent the establishment of reliable information, which is essential in these cases [12, p. 160].

It appears that when designing the concept of procedural interest should come with a philosophical understanding of the categories of interest. Philosophical dictionary defines an interest as the cause of action for individuals, social communities (class, nation, a professional group) that makes their social behavior [13]. In criminal proceedings T. Duishenbiyev defines the interest as generated by the system needs (care and protection) of the personality and society conscious incitement, aimed at profitable satisfaction needs in favor of the carrier (the society, the State, collective, individual) through the acts under criminal procedural law [14, p. 13]. S. Shestakova notes that the interest is expressed in a specific behavior of the participant's criminal justice need for total criminal procedural activity [15, p. 93]. A more successful approach must be admitted this by G. Martinchik, who understands the interest in criminal proceedings as

an aspiration of one or another participant in the remedial activities achievement a certain goal in criminal proceedings [16, p. 89]. A more complete definition of the proposed by V. Azarov, who considers the interest as a desire (desire) to achieve (saving) of certain material goods subject to criminal procedural relationship, that are not contrary to the basic principles of the Administration of Justice in criminal cases, is consistent with its objectives and purposes [17, p. 16]. A. Malko offers considered legitimate interests in the broad and narrow sense. Under the legitimate interests in the first case it must be understood all legitimate interests, reflected in the subjective rights and legal responsibilities. Legitimate interests in the narrow sense, respectively, include not only indirect interests caused with the rights and duties, but, nevertheless, taken by the State under its protection [18, p. 37]. Y. Zavyalov offers to understand under lawful interests only those interests that serve the required needs of the subject, recognized society and State, as well as got the reflection in the Act [19, p. 10]. E. Krashennnikov believes that the legitimate interest is recognized by the law by granting special rights of the entity for the implementation of this interest [20, p. 135].

Procedure of interest is expressed in a specific behavior of the participant to ensure that the result of the criminal procedural activity became a definite result. Contraposition of one procedural interest otherwise unnecessarily restricts the meaning of the term. Protection is not always aimed for a full retraction of the allegation. Procedural interests of the accuser and the accused may not be just the opposite, but also partially overlapped, even matched. So it is more correct to define the party as a participant in the process, endowed with legal status, which provides the opportunity to affect the movement of criminal proceedings in accordance with its procedural interests through the use of legal drugs, indentity, whereby the other party implements its procedural interest [21, p. 36]. True, in our view, seems to be the position of V. Subochev, which, unlike other researchers, is suitable for the consideration of the legitimate interests of well-rounded, revealing the importance of different aspects of this concept and not associating it with the direct style in the Act. The author broadly interprets the concept of legitimate interest and offers the following its characteristics: 1) a legitimate interest as a legal category denoting the implied wishes of citizens

claiming a legal protection and characterized by a certain attitude on the part of the State, its organs; 2) legitimate interest representing an opportunity not mounted in the law through which every entity can possess the legality of the means to satisfy their own interests; 3) legitimate interest – a subjective right to use a specific law or achievement [22, p. 47–48].

In addition, another feature of the procedural status of the witness is the lack of the ability to influence the course of criminal proceedings, the decision about its direction, to challenge such decisions [23, pp. 297–298]. Next, O. Kuchinska notes that the legislator in a new CC of Ukraine deprived the witness of the right to appeal against the actions and decisions of the investigator or the Prosecutor. Such a situation was the result of a long domination in the domestic criminal procedural the doctrine about what the witness may not have a personal interest during the criminal proceedings. And then, for what reason to assign the right of an appeal against the order of the participant criminal proceedings, which interests this proceeding does not affect. This position is conditioned by a slightly unprejudiced understanding the legitimate interest of the person in the criminal process. Therefore, with regard to witness more correctly it would be talked about the absence of his interest in the solution of the case (material-legal interest), but not about the absence of a legal interest during their participation in criminal proceedings (procedural interest). Procedural interest of a witness can be expressed in pursuit of the most strict compliance with the order of questioning or other procedural actions involving the witness, the application of the security measures envisaged by the law if applicable [23, p. 299]. In some aspects we agree with O. Kuchinska, however, we believe that a witness has no procedural interest in criminal proceedings, and certain legal position.

The most complete, comprehensive concept in the procedural sense is given by M Strogovich. He described it as a statement that the federal remedial activity finds it necessary to advocate during the criminal proceedings, to seek its acceptance, in accordance with which he carries out the procedural steps aimed at confirming his thoughts and to challenge the assertions of other participants of the process. The

position of Member of the process at its core is the position in relation to the charge for which the accused was tried to court [24, p. 57].

According to the values listed in the Great Encyclopedic Dictionary, the position is a point of view, the attitude to anything; action, behaviour, caused by this attitude [25]. Philosophical dictionary interprets this term (from LAT. “positio”) as position, statements; point of view [13]. Regarding the legal position, V. Vapnyarchuk argued that this system of opinions, judgments expresses the relation of the subject to legal phenomena and processes [26, p. 220].

The witness has no personal interest during the criminal proceedings, as well as the interest in the resolution of the case. He must give truthful testimony in the case when a person is an eyewitness to a criminal offence or has an indirect relation to the circumstances of the evidence in the case, always goes beyond the usual sphere of their own ideas about the world, in connection with what often has his own attitude to the observed events. This process can not be called an interest, because a witnesses can not assert their claims in criminal proceedings, however, almost always there is a formed opinion on played by them testimony – the legal position. In further research it should be more focused on the clarifying the legal position of the other subjects of criminal proceedings, performing a supporting function.

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