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EUROPEANIZATION OF CRIMINAL JUSTICE AND LEGAL STATE OF VICTIMS

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ABSTRACT

On 1 October 2010, a new Criminal Procedure Code of Georgia entered into force which fully replaced the inquisitional system of criminal proceedings with an adversarial system. The reform affected the institution of victims too, fundamentally changing its role and largely bringing the rights of a victim, in line with the rights of a witness. The result of this is that due to imperfect legislative regulation, victims do not have the possibility to adequately engage in criminal proceedings. Defining such a passive role for a victim is negatively assessed in international and national literature and sources. Therefore, the issue under discussion is what kind of role a victim should have in the criminal justice system. How comprehensive and sufficient is the lawmakers' position concerning victims? Is there a need to grant additional levers to victims? Could the current system pose a threat to the principle of fair trial?

INTRODUCTION

The entry of a new Criminal Procedure Code into force triggered active debates about the rights of a victim who is no longer a party to the proceeding but rather is delegated to the status of a participant in it. It is proved by international legal acts and recommendations concerning the status of a victim of crime and the rights of a victim that the legal status of a victim remains the topic of

debate in various countries and international community. These include a number of interesting recommendations and directives adopted in the European Union. One should note that the process of Europeanization of the criminal justice has been intensive, which manifested, inter alia, in the enhancement of victims' rights on the EU level in the past few years.¹ Georgia is part of the European Neighborhood Policy and therefore, the processes that are underway in the EU affect the legal processes in Georgia. The partnership between the EU and Georgia is not of a mere declarative nature and not limited to separate narrow spheres.² After engaging in the European Neighbourhood Policy, Georgia has been consistently making an effort to approximate its legislation to the EU norms and standards.³ It is therefore important for Georgia to consider the experience of advanced European countries, including with regard to creating sufficient guarantees for victims of crime, in order to avoid the problems and challenges that necessitated the process of Europeanization of the criminal justice.⁴ Society has a reasonable expectation that the state will pursue an effective criminal justice policy and ensure a safe environment for people.⁵

This paper aims at analyzing the legal status of a victim and identifying shortcomings in the legislation. To study separate issues, logical, analytical, grammatical, historical, systemic and comparative-legal research methods are used. Moreover, the rights of a victim are assessed from the standpoint of national legislation as well as European experience and regulations.

1. INTERNATIONAL APPROACHES AND REGULATIONS CONCERNING THE VICTIM'S RIGHTS

General trends in the criminal justice policy show that focus has shifted to the victim. This change has been clearly reflected in criminology which, since its origin, has studied the impact of external factors on the development of crime. However, after World War II, the victim became the subject of interest and research of this field.⁶ In contrast to that of an accused person or a prosecutor, European countries do not have any ready-made recipes or common models concerning the status of a victim. The main goal is the satisfaction of victim's interests, which is not limited to material or financial satisfaction but also implies an adequate punishment of an offender. Debates on the rights of a victim remain topical in a number of judgments of the European Court of Human Rights

1 Heger M., Adversarial and inquisitorial Elements in the criminal justice systems of European Countries as a Challenge for the Europeanization of the Criminal Procedure; DEUTSCH-GEORGISCHE STRAFRECHTSZEITSCHRIFT №2, 2016, 3, 9; <http://bit.ly/2r1gUzG> [7.06.2017].

2 Jishkariani B., European Criminal Law (within the EU), Tbilisi, 2013, 29.

3 Tumanishvili G., Criminal Procedure, Review of general Part, Tbilisi, 2014, 6.

4 Jishkariani B., European Criminal Law (within the EU), Tbilisi, 2013, 9.

5 Reddy P., Role of the Victim in the Criminal Justice Process, Student Bar Review, National Law School of India University, 2006, Vol 18 (1), 2; <http://bit.ly/2r5LFbS> [8.07.2017].

6 Trechsel Sh., Human Rights in Criminal Procedure, Tbilisi, 2009, 60. See reference: Kaizer (1996) §47 N3; Kiliyas (2002); Kunts (2001) §26 N24; also, see: Tumanishvili G., Criminal Procedure, Review of general Part, Tbilisi, 2014, 166.

as well as EU directives and recommendations. Everyone agrees that depriving a victim of all rights in an ongoing criminal proceeding is unjustified and unsuitable.⁷

1.1. The EU law

Paragraph 2 of Article 82 of the Treaty on the Functioning of the EU speaks about the necessity for the European Parliament and the Council to adopt directives in order to facilitate judicial decisions in criminal matters. This, in turn, will establish minimum rules and guarantees on various procedural issues. The rights of victims of crime were among the issues to be regulated, according to the treaty. At the same time, the treaty states that the adoption of the minimum rules will not prevent Member States from maintaining or introducing relevant regulations for the protection of individuals.⁸ Instruments adopted by the EU provide a whole set of recommendations to be considered by Member States for the protection of victims. These recommendations, inter alia, concern the protection of victims from degrading treatment both inside and outside a court as well as access of victims to legal remedies.

It is worth noting that Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to a fair trial. This article does not differentiate between the right to a fair trial and effective remedy of an accused person and a victim. The article includes the right of a victim to a fair and public hearing within a reasonable time, the right to representation, the right to a legal aid, et cetera.⁹

The 2012 EU Directive establishing minimum standards on the rights, support and protection of crime victims specifies the rights that victims must enjoy in criminal proceedings. According to this document, all victims are guaranteed an equal level of support services. This right also includes access to legal and other aid.¹⁰ For the purposes of the Directive, a victim means a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; also family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.¹¹ For these persons, the Directive ensures the rights to be recognized and treated in a respectful manner, to receive detailed information¹² and a possibility to participate in criminal proceedings. This means that bodies carrying out criminal proceedings must hear victims and allow them to provide

7 Trechsel Sh., *Human Rights in Criminal Procedure*, Tbilisi, 2009, 61.

8 Treaty on the Functioning of the EU, Article 82 2 (c), <http://bit.ly/2rL87UF> [20.09.2017].

9 Victims of crime in the EU: the extent and nature of support for victims, European Union Agency for Fundamental Rights, Luxembourg, 2014, 28.

10 Smith C. Alyna., *GUIDE TO THE EU VICTIMS' DIRECTIVE: ADVANCING ACCESS TO PROTECTION, SERVICES AND JUSTICE FOR UNDOCUMENTED MIGRANTS*, 2015, 12, <http://bit.ly/2tuFcE3> [20.09.2017].

11 DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012, establishing minimum standards on the right, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Article 2.

12 Ibid, § 26-33.

evidence.¹³ Besides, it is important to ensure that communications with victims are given in simple language and take into account the personal characteristics of the victim including any disability that may affect the ability to understand or to be understood.¹⁴ Even more, according to Article 7 of the Directive, victims who do not speak the language of the criminal proceedings concerned are provided, upon request, with interpretation free of charge.

Along with these important rights, the Directive also provides victims with the possibility, at least in regard to certain types of crime, to review the prosecutor's decision not to initiate a criminal prosecution or a decision of higher bodies to terminate the prosecution. In addition, it specifies that complaint procedures must be clear, transparent and without extra bureaucratic elements so as to ensure that victims apply them without any hindrance. At the same time, limited financial resources should not be an impeding factor for the review of a decision.¹⁵

The necessity to prevent the repeat victimization of victims is discussed in other recommendations emphasizing medical, psychological, social and material support to victims.¹⁶ The possibility to challenge a decision is also specified in the 6 October 2000 recommendation of the Council of Europe Committee of Ministers, which states that decisions by prosecutors not to prosecute may be challenged at a higher body either by way of judicial review, or by engaging private proceedings.¹⁷

Yet another noteworthy piece of regulation is the 28 June 1985 Recommendation of Council of Europe Committee of Ministers on The Position of the Victim in the Framework of Criminal Law and Procedure. This recommendation emphasizes the importance of providing information to victims both during investigations and court hearings. A victim should be informed of the date and place for the hearing concerning the offence which caused him/her suffering.¹⁸ Also, according to the Recommendation, when taking a discretionary decision, the prosecutor should take into account interests of the victim; the victim should have the right to appeal to a higher official or a court to review a decision not to prosecute.¹⁹

Thus, the analysis of above mentioned documents makes clear the obligation of the state to give due consideration to and not to disregard interests of the victim. All the above mentioned regulations contain useful instructions and standards aimed at protecting victims' interests in crimi-

13 Ibid, Article 10.

14 Ibid, Article 3.

15 Ibid, § 43, Article 11.

16 Recommendation №R 87 (21) OF COUNCIL OF EUROPE COMMITTEE OF MINISTERS OF THE COMMITTEE TO MEMBER STATES ON ASSISTANCE TO VICTIMS AND THE PREVENTION OF VICTIMISATION, adopted by the Committee of ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies, § 4; Recommendation №R (83) 7 OF COUNCIL OF EUROPE COMMITTEE OF MINISTERS OF THE COMMITTEE TO MEMBER STATES ON PARTICIPATION OF THE PUBLIC IN CRIME POLICY, adopted by the Committee of ministers on 23 June 1983 at the 361th meeting of the Ministers' Deputies, III § D (27).

17 Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system, COUNCIL OF EUROPE COMMITTEE OF MINISTERS, § 34.

18 Recommendation №R 85 (11) OF COUNCIL OF EUROPE COMMITTEE OF MINISTERS OF THE COMMITTEE TO MEMBER STATES ON THE POSITION OF THE VICTIM IN THE FRAMEWORK OF CRIMINAL LAW AND PROCEDURE, adopted by the Committee of ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies, § C (9).

19 Ibid, § B (7).

nal proceedings and ensuring their access to objectively realizable services. Moreover, the above mentioned documents lay down minimal rules while the Member States may extend these rights to provide a higher level of protection.

1.2. Approaches of the European Court of Human Rights

The European Convention on Human Rights is part of Georgian legislation and the text of the Convention must not be read in isolation from the case law. According to the standards established by the European Court of Human Rights, the Convention does not confer any right to victims to private revenge.²⁰ It does define the fact that victims enjoy certain rights in criminal proceedings, which imply the right to be treated with compassion, including, respect for dignity and involvement in the process of investigation to the extent necessary to safeguard his or her legitimate interests.²¹ Victims of a crime also have the right to access information which concerns the terms and procedure of criminal proceedings. In particular, they have the right to be informed of the launch of prosecution or the refusal to prosecute, the opportunity to ask for a review of decisions and, in the case of review, of expected decisions. It is also important for victims to have access to criminal case materials.²² If regulations set down in national legislation are not adequately applied in practice, these regulations will be merely of a formal nature and fail to ensure that investigations are fully accountable to society.²³

1.2.1. Guarantees for the protection of victims' right to respect for private life.

Article 8 of the European Convention on Human Rights envisages the prevention of those violations that endanger the fundamental values of an individual's private life. Requirements of Article 8 are fulfilled when a victim is guaranteed effective protection mechanisms.

The European Court of Human Rights discussed guarantees for the protection of victims' interests in one of its decisions on the case *X and Y v. The Netherlands* which involved the infringement of the right to privacy.²⁴ The case concerned the rape of an underage girl who was placed in an institution for mentally handicapped children. This incident had traumatic consequences for her. Since the girl was mentally handicapped, her father filed a complaint with the police and asked for criminal proceedings to be instituted. However, the prosecutor's office decided not to open proceedings against the offender, provided that he would not commit a similar offence within the next two years. The victim's father appealed this decision to the Court of Appeal, which dismissed the

20 McBride J., Human rights and criminal procedure, The case law of the European Court of Human Rights, Council of Europe, 2011, 276.

21 Hugh Jordan v. the United Kingdom, no. 24746/94, 4 May 2001, § 109.

22 Kelly and Others v. the United Kingdom, no. 30054/96, 4 August, 2001, § 118-136; Gorou v. Greece, no. 12686/03, 20 May, 2009, § 36-42.

23 Ramsahai and others v. The Netherlands, no. 52391/99, 15 May, 2007, § 321.

24 *X and Y v The Netherlands*, no. 8978/90, 26 March, 1985, § 7, 8.

appeal noting that in order to launch an investigation, it was necessary for the appeal to be lodged by the victim herself. The European Court of Human Rights pointed out the importance of the use of criminal law mechanisms for the protection of various aspects of the private life of a victim. According to the Court, effective deterrence is indispensable in this area and it can be achieved only by criminal-law provisions. Thus, the Court concluded that the appeal court's decision was in violation of Article 8 of the Convention because the legislature required the filing of a complaint by the victim to open the investigation and did not grant the authority to a legal representative to act on behalf of the victim. Consequently, the legislation did not ensure effective protection of the victim.²⁵

The Court found a violation of Article 8 of the Convention in yet another case which concerned the placement of an advertisement on an Internet dating site in the name of an underage girl. In this case too, the Court emphasized the importance of the right to privacy and pointed out that to protect the interests of victims of crimes committed against their physical or psychological well-being the state was required to identify the offender and bring him to justice. However, in this case, no effective measures were undertaken to ensure this.²⁶

1.2.2. Scope of the right to a fair trial for victims

Since an addressee of fair trial guarantees within Article 6 of the European Convention on Human Rights is mainly an accused person, complaints on the violation of Article 6 of the Convention lodged by victims were initially considered inadmissible by the European Court of Human Rights. However, later the Court extended the application of Article 6 of the Convention to victims and pointed out the necessity to protect the rights and interests of crime victims in a number of its decisions. In the Court's view, although the Convention grants broad rights to the defense, it does not mean that the Court can ignore the plight of victims and downgrade their rights.²⁷ Consequently, criminal proceedings must be fair, to not only an accused person but also to witnesses and victims. Although a general approach is that Article 6 of the European Convention on Human Rights does not take victims' interests into consideration, it may sometimes occur that their life, health and safety are at stake. In such cases, the principle of a fair trial requires a balance between the interests of the defense and the victim.²⁸ Victims' interests may not be limited to the right to receive compensation but should also include the conduct of an effective investigation and the identification of offenders.²⁹ Thus, when assessing the fairness of criminal proceedings, the European Court of Human Rights takes into consideration the interests of victims to have offences adequately investigated and offenders punished.³⁰

25 Ibid, § 27-30.

26 *K.U. v Finland*, no. 2872/02, 2 December, 2008, § 47-50.

27 *Perez v France*, no. 47287/99, 12 December, 2004, § 72.

28 *Doorson v The Netherlands*, no. 20524/92, 26 March, 1996, § 70.

29 *Kaya v Turkey*, no. 158/1996/777/978, 19 February, 1998, § 107.

30 *Horncastle and others v. the United Kingdom*, no. 4184/10, 16 December, 2014, § 130.

In one case, the Grand Chamber of the European Court of Human Rights took into consideration the 6 October 2000 Recommendation of the Committee of Ministers and expressed the view that victims should be able to challenge decisions by prosecutors not to prosecute.³¹

At the same time, apart from possibilities within Article 6 of the European Convention on Human Rights, Article 13 also requires that the state provides effective remedies for protecting the rights ensured under the Convention. It is important to have legal norms on a national level for the consideration of alleged violations of the Convention and satisfaction of victims.

1.2.3. Victims' rights in cases concerning the right to life and the prohibition of torture

Articles 2 and 3 of the European Convention on Human Rights guarantee the protection of life from unlawful violence and torture. Where allegations are made under the abovementioned articles, the European Court of Human Rights applies a particularly thorough scrutiny whether effective investigations have been conducted. At the same time, European Court does not deem that it is bound by the findings of the national courts. If there are valid, important and persuasive arguments available, it may depart from and set aside those findings.³² In cases of death, torture and inhumane treatment, a positive obligation of the state is not limited to compensation of damages alone. According to the European Court, in case of violation of the mentioned rights, the reinstatement of victims' rights lies in the effective investigation of the crime and the punishment of offenders.³³

In the European Court's view, an effective investigation of a violation of Article 2 of the Convention implies the involvement of the relatives of the deceased in the criminal proceedings to the extent necessary to safeguard their legitimate interests.³⁴

In its decision against Turkey concerning the death of a person as the result of a special operation carried out by security forces, the European Court of Human Rights found the violation of a procedural aspect of Article 2 of the Convention because relatives of the deceased had no access to the case file and were not otherwise informed of the progress in the investigation.³⁵ In yet another decision, the Court emphasized that although the second applicant was granted victim status, there was no indication that the issue of granting that status to the first applicant was ever considered, despite the fact that the authorities must have been clearly aware of her kinship with the missing person. Moreover, the applicants had no access to the case file and were not kept properly informed of the progress of the investigation; consequently, they could not effectively challenge the activities of the investigating authorities before a court. The Court held that Article 2 of the Convention was

³¹ *Perez v France*, no. 47287/99, 12 December, 2004, § 68-72.

³² *Enukidze and Girgvliani v Georgia*, no.25091/07, 26 April 2011, § 286.

³³ *McKERR v The United Kingdom*, no. 28883/95, 4 May, 2001, § 113, 115; *Mahmut Kaya v Turkey*, no. 22535/93, 28 March, 2000, § 124.

³⁴ *Carabulea v Moldova*, no. 45661/99, 13 July, 2010, § 131 *Enukidze and Girgvliani v Georgia*, no.25091/07, 26 April 2011, § 243.

³⁵ *Ogur v Turkey*, no. 21594/93, 15 December, 1997, § 92-93.

breached in its procedural aspect.³⁶ In a case which concerned the death of a person as a result of special operation involving the search of apartment, the Court negatively assessed the results of the investigation. It also declared that the applicant and members of his family were not informed that the proceedings were underway and were not afforded the opportunity to tell the court their very different version of events.³⁷ The European Court also ruled that Article 2 had been breached in its procedural aspect in another case because the relatives of the deceased were denied the access to the case file and were not informed of the termination of criminal proceedings.³⁸

In its rulings against Georgia, the Court also noted that family of a deceased must be informed of progress during the investigation into a death³⁹ and that for an investigation to be effective, its conclusions must be based on a thorough, objective and impartial analysis of all relevant elements.⁴⁰ Yet another interesting case concerning the breach of the right to life is the one in which the government of Georgia. The court ruled that the government breached its obligation under Article 2 of the Convention, as, despite regular complaints by the applicant, the investigation was underway for several years without showing any progress.⁴¹

Much like violations of the right to life, the involvement of victims in criminal proceedings and a public control are important for investigation into degrading treatment to be effective.⁴² In one case, the Court held that Article 3 of the Convention was violated because the applicants had no access to the case file and were not properly informed of the progress in the investigation and therefore, could not effectively challenge activities of the investigating authorities before a court.⁴³

2. CONSTITUTIONAL LAW GROUNDS OF VICTIMS' RIGHTS

In a democratic state, the state alone holds the monopoly on identifying offences and punishing offenders. Victims cannot resolve conflicts with their offenders and, therefore, self-justice is impermissible. However, in parallel to the monopoly on the punishment of offenders, the state must pay attention to the rights of victims and safeguard their interests in criminal proceedings in order to

36 *Malika Dzhamayeva and Others v Russia*, no. 26980/06, 21 December, 2010, § 112, 115, 118.

37 *Gül v Turkey*, no. 22676/93, 14 December, 2000, § 93, 95.

38 *Slimani v France*, no.57671/00, 27 July, 2004, § 44, 47-48.

39 *Khaindrava and Dzamashvili v Georgia*, no. 18183/05, 8 June, 2010, § 60.

40 *Tsintsabadze v Georgia*, no. 35403/06, 15 February, 2011, § 75, 85

41 The European Court of Human Rights, fourth section decision, 9 September 2009.

42 *El Masri v The Former Yugoslav Republic of Macedonia*, no. 39630/09, 13 December, 2012, § 142; *Case of Husayn (Aby Zubaydah) v Poland*, no. 7511/13, 24 July, 2014, § 489.

43 *Khadisov and Tchechoyev v Russia*, no. 21519/02, 5 May, 2009, § 122.

spare them from repeated harm.⁴⁴ A legal state shall pay a great deal of attention to victims and enable them to enjoy the basic rights in the administration of justice that are guaranteed under the constitution.⁴⁵ Although the Constitution of Georgia, as the supreme law of the country, does not explicitly refer to the rights of victims, it provides the means to safeguard victims' interests and rights in a general context of the human rights.

2.1. Ensuring the protection of victims' dignity.

Citizens of Georgia live in a democratic state and, therefore, they expect that the laws of the country will be applied to them fairly and adequately. The law shall equally protect the rights and interests of all persons regardless of their status in criminal proceedings.⁴⁶ Besides, a legal system in the state must not give rise to feelings of hopelessness and defenselessness among citizens. People must be confident that their rights and interests will not be violated and if violated, legal remedies will be available to be used effectively.⁴⁷

Article 16 of the Constitution of Georgia guarantees everyone's right to the free development of his/her personality and this guarantee also implies the protection of interests and the inviolability of the dignity of victims.⁴⁸ The state is particularly responsible for the protection of human dignity in criminal proceedings, which implies not only the acknowledgment of offender's dignity but also the protection of victim's dignity.⁴⁹ Consequently, the state must not allow the infringement of victims' dignity in criminal proceedings; namely, it shall not force victims to publicly speak about details of their personal lives and such circumstances that concern their privacy and private experience.⁵⁰

Article 17 of the Constitution of Georgia enshrines the principle of the inviolability of an individual's honor and dignity. The significance of an individual's dignity is particularly apparent in criminal law, which deems it impermissible for an individual to be an object or an instrument of the activity of state agencies. The state violates its obligation when it considers an individual not as a subject with dignity, an end, but as a means to an end.⁵¹ Also, according to a judgment of the Constitutional Court of Georgia, the restriction of honor or dignity causes fear, pain and sense of inferiority in a victim, therewith degrading the physical or moral condition of the victim.⁵²

44 Tumanishvili G., Victims in modern criminal procedure law, Law Journal, №2, Tbilisi, 2009, 64.

45 Tumanishvili G., Criminal Procedure, Review of general Part, Tbilisi, 2014, 165.

46 Gurieli A., Rights of victim in criminal legislation of Georgia, magazine Law and World №4, Tbilisi, 2016, 217.

47 Gotsiridze E., in the book: Comments on the Constitution of Georgia, Chapter 2, Citizenship of Georgia, Basic Human Rights and Freedoms; editor: Paata Turava, Tbilisi, 2013, 111-112.

48 Tumanishvili G., Victims in modern criminal procedure law, Law Journal, №2, Tbilisi, 2009, 66.

49 Shalikashvili M., Victimology – science about victims of crime, Tbilisi, 2011, 118.

50 Tumanishvili G., Victims in modern criminal procedure law, Law Journal, №2, Tbilisi, 2009, 67.

51 Kublashvili K., Basic Rights, Tbilisi, 2014, 86-89; also, Decision of the Constitutional Court of Georgia on the case *Citizen of Georgia Maia Natadze and others v Parliament of Georgia and President of Georgia*, №2/2-389, 26 October 2007, II-30.

52 Decision of the Constitutional Court of Georgia on the case *Citizen of Georgia Maia Natadze and others v Parliament of Georgia and President of Georgia*, №2/2-389, 26 October 2007, I-6.

2.2. Victims' right of access to justice

According to Paragraph 1 of Article 42 of the Constitution of Georgia: "Everyone has the right to apply to a court for the protection of his/her rights and freedoms." The right of access to court is one of the fundamental constitutional guarantees to protect an individual's rights, which, at the same time, is a means to provide protection for other rights and interests.⁵³ Consequently, for this or that right to be fully enjoyed, it is important to ensure the possibility to defend this right in a court. Otherwise, the application of this right will be questioned.⁵⁴ This provision envisages the possibility to apply to a court as well as the comprehensive protection of an individual, which implies appealing to a court and a legal review of decisions of all those state agencies that violate human rights.⁵⁵ The cited provision reckons that when a person's rights are violated as a result of proceedings, that person is granted a possibility to influence the proceedings and a court decision. No one can be a mere object of a court trial. Consequently, every participant in proceedings shall have the possibility to express their views and positions.⁵⁶ According to the Constitutional Court of Georgia, Article 42 of the Constitution obligates the state to ensure access to a court not only in case of a violation of rights but also for the settlement of any issue that directly or indirectly affects the content, scope and restriction of an individual's rights.⁵⁷ Thus, a necessary precondition for the use of the right to a fair trial is the availability of that right, that benefit that an individual has to defend in a court.⁵⁸

The right to apply to a court to defend one's interests must also extend to victims whose interests may be materially violated in criminal proceedings.⁵⁹ A victim of crime has a legal interest to participate in criminal proceedings against the accused person and it does not matter whether this participation has financial or moral motives.⁶⁰ Access to justice for victims encompasses the right to an effective remedy, the right to participate in the judicial process, the right to be treated with respect and dignity, the right to protection, the right to reparation, and the right to assistance and support, including legal assistance and psychological support.⁶¹ Besides, the restriction of the right to apply to a court clearly conflicts with the Constitution of Georgia, principles of international law

53 Decision of the Constitutional Court of Georgia on the case *Citizens Giorgi Kipiani and Avtandil Ungiadze v Parliament of Georgia*, №1/3/421,422, 10 November 2009, II-1.

54 Decision of the Constitutional Court of Georgia on the case *Public Defender of Georgia v Parliament of Georgia*, №1/466, 28 June 2010, II-14.

55 Kublashvili K., *Basic rights*, Tbilisi, 2014, 339; also see, Kublashvili K., in the book: *Comments on the Constitution of Georgia, Basic Human Rights and Freedoms*, Tbilisi, 2005, 364.

56 Kublashvili K., *Basic rights*, Tbilisi, 2014, 339; also see, Kublashvili K., in the book: *Comments on the Constitution of Georgia, Basic Human Rights and Freedoms*, Tbilisi, 2005, 364.

57 Decision of the Constitutional Court of Georgia on the case *Citizens Giorgi Kipiani and Avtandil Ungiadze v Parliament of Georgia*, №1/3/421,422, 10 November 2009, II-2.

58 Decision of the Constitutional Court of Georgia on the case *Citizens of Georgia Khatuna Shubitidze v Parliament of Georgia*, №1/8/594, 30 September 2016, II-6.

59 Tumanishvili G., *Victims in modern criminal procedure law*, Law Journal, №2, Tbilisi, 2009, 70; see reference: BVerfGE 19, 32 (36); 25, 40 (43); Dahs H., *Das rechtliche Gehör im Strafprozess*, Munchen, 1965, 56; Luderksen K., *Das Recht des Verletzten auf Einsicht in beschlagnahmte Akten*, NSTz, 1987, 250.

60 Trechsel Sh., *Human Rights in Criminal Procedure*, Tbilisi, 2009, 64.

61 OSCE/ODIHR, *Trial Monitoring Report Georgia*, Warsaw, 2014, 143, §287.

and the practice of Constitutional Court of Georgia.⁶² The criminal legislation envisages numerous crimes which differ from one another by their content and degree of gravity. Each crime violates a number of rights guaranteed under the constitution, such as the rights to life, dignity, freedom, private property, et cetera. Victims appeal separate decisions by prosecutors only when a committed crime is especially grave. However, in addition to especially grave crimes, grave and less grave crimes can also result in a violation of the above mentioned constitutional rights. It is therefore important that victims are provided with a possibility of effective justice in all cases.

3. VICTIMS' RIGHTS ACCORDING TO THE EFFECTIVE CRIMINAL PROCEDURE LEGISLATION

In October 2009, the Parliament of Georgia adopted a new Criminal Procedure Code, which entered into force on 1 October 2010. By adopted the new Code, Georgia was attempting to transition from the inquisitional system to the adversarial system.⁶³ This law introduced numerous novelties, including different regulation of the institution of victim. The new Criminal Procedure Code regulates the status of a victim and his/her rights in criminal proceedings in a new way. In contrast to the 1998 Criminal Procedure Code, under the new Code, a victim is no longer classified as a party to the proceeding and his/her rights has been actually brought in line with the rights of a witness, albeit with some differences. For example, a victim has the right to be informed of various stages of the criminal proceedings.⁶⁴ Reform in the area of victims' rights did not end there and in 2014, the criminal procedure legislation was amended to increase the rights of victims. In particular, victims have been given the possibility to challenge the decision not to prosecute or terminate criminal proceedings taken by the prosecutor within the scope of his/her discretionary power. In addition, a person who believes that he/she sustained damage as a result of criminal offence may apply to a prosecutor for the issuance of a decree recognizing the person as a victim. At the same time, a victim may have access to a criminal case file provided that it will not conflict with the interests of investigation. A victim has also been given the right to attend court hearings or part of court hearings regardless of whether they are closed or open.

62 Meparishvili G., Chkheidze I., Regarding principle of discretion in criminal procedure, Collection of scientific papers, <http://bit.ly/2rXAPQT> [20.09.2017].

63 Bowman H., Chkheidze G., Advocacy in criminal procedure for Georgian lawyers, Tbilisi, 2014, 2.

64 Bokhashvili I., Issue of temporary procedure of interrogation during investigation, the Advocate magazine, №2, 2009, 80.

3.1. Recognition of an individual as a victim or a successor to the victim

The criminal procedure legislation provides for two ways and possibilities to recognize a person as a victim. First, where relevant grounds exist, a prosecutor issues a decree recognizing a person as a victim. Second, a person who believes that an offence caused physical, material or moral damage to him/her, may apply to the prosecutor for the issuance of a decree recognizing him or her as a victim. In both instances, the prosecutor grants the procedural status of a crime victim to an individual. The same possibility is extended to the next of kin of the victim of a murder. In such a case, a next of kin of the deceased is given the rights and obligations of a victim and the procedural status of a successor to the victim. In addition, in the case of a crime committed against a legal person, all the rights and obligations of victim are granted to the person equipped with the authority of representation. If the state is a victim in the case, the interests of the state in criminal proceedings are defended by a prosecutor as a public prosecutor.⁶⁵ However, opinions differ on the latter issue. Namely, since the prosecution is a body for criminal prosecution, and any prosecutor who acts in court as a public prosecutor shall bear the burden of proof for the prosecution, a prosecutor in a criminal case cannot be a person enjoying the status of victim. Therefore, although in a court a prosecutor supports the public prosecution, the legislation does not provide him/her with the possibility to represent the interests of a victim in criminal proceedings or/and to enjoy the rights granted to a victim. Consequently, in cases where state bodies suffered damage from a crime, the prosecution must recognize the state as a victim. Although the Criminal Procedure Code does not separately provide for the participation of the state as a victim in an investigation or court trial, the legislation also does not envisage the possibility for cases that give the rights and obligations of a victim to a prosecutor.⁶⁶ Thus, when the state is a victim, it is reasonable to grant the rights of a victim to a representative of that concrete state agency that suffered or allegedly suffered damage, in other words, as in cases of crimes committed against legal persons.

Interestingly, the criminal procedure legislation does not specify material, moral or physical damage. However, the dispositions of crimes provided in the Criminal Code envisage possibilities of causing damage and types of damage and therefore, for identifying damage a prosecutor must pay attention to the object of a crime.⁶⁷ For example, in the case of theft or burglary, damage is caused to the assets and or property of individual.

In any case, the recognition of a person as a victim requires certain procedures. A prosecutor issues a decree on his/her own initiative, or upon the filing of the relevant application, on recognizing a person as a victim or as a legal successor of the victim. If a prosecutor does not satisfy the application within 48 hours after it has been filed, the person in question may appeal the decision to a superior prosecutor and, in cases of especially grave crime, appeal the decision of a superior prosecutor to a court. Interestingly, a prosecutor sometimes does not take any decision to either

65 Tumanishvili G., in the book: *Comment on the Constitution of Georgia*, editor: G. Giorgadze, as of 1 October 2015, Tbilisi, 2015, 219.

66 Report of the Public Defender of Georgia, *The Situation in Human Rights and Freedoms in Georgia*, 2013, 150.

67 Makharadze A., *Concept of damage and problems of recognizing a person as a victim*, the Justice magazine, №1, Tbilisi, 2009, 56-57.

satisfy of deny an application, but in practice, such an approach is regarded as the refusal to recognize a person as a victim or a successor of the victim.⁶⁸ According to a decision of the Tbilisi City Court, “although the procedural document, which is envisaged by the Criminal Procedure Code and the legality of which must be considered by the court, is not available, the court must consider this complaint in order to prevent the neglect of the rights provided in the criminal procedure legislation for a successor of victim, including the right to appeal a decision of a prosecutor on the refusal to recognize a person as a successor of the victim.” As regards the term for the appeal of a decision to a superior prosecutor, Article 95 of Chapter XIII on general rules for the review of motion and appeal provides the possibility for the appeal of a prosecutor’s decision and specifies the term of 10 days for filing an appeal after the appellant learns about the decision. Thus, although the legislation does not lay down any special regulations for the appeal to a superior prosecutor, general norms and terms may be applied.

It should be noted that the legislation does not set any standard for the recognition of a person as a victim, but specifies appropriate grounds as a criterion for recognizing a person as a victim. It is of course necessary to set a standard for defining/recognizing a person as a victim. This should be done at the initial stage of an investigation because if a prosecutor decides to stop the investigation or not to institute criminal proceedings, a person without a procedural status of victim will not have the possibility to appeal such a decision. It is also necessary for victims to be properly involved in criminal proceedings from the very start. Therefore, a reasonable interpretation of the provision requiring appropriate grounds for recognizing a person as a victim is important in order to ensure that victims are not prevented from using their minimal rights due to the refusal of a prosecutor to recognize them as victims or successors of victims.⁶⁹ The earlier a victim of crime is able to engage in criminal proceedings, the greater the possibility that he/she defends his/her rights.⁷⁰ According to an opinion expressed in legal literature, a person becomes a victim the moment the offence is committed against him/her and, therefore, when criminal proceedings are instituted that person must be simultaneously recognized as the victim.⁷¹ According to a commonly held position, for a person to be recognized as the victim, relevant evidence is required which would indicate “with sufficient probability” that the damage was caused as a result of the crime; this, consequently, provides sufficient grounds to assume, when taking a decision on recognizing a person as the victim, that moral, material or physical damage was caused as a result of the crime.⁷² If an assumption about recognizing the person as a victim proves wrong, the legislation provides a prosecutor with the possibility to abolish the decree on the recognition of a person as the victim.⁷³ In a one case concerning a

68 Tbilisi City Court decision №3/8106, 22 April 2015.

69 Report of the Public Defender of Georgia, *The Situation in Human Rights and Freedoms in Georgia*, 2013, 213-219; also see a special of the Public Defender of Georgia, *Practice of Investigation of Alleged Crimes Committed by Law Enforcement Officials, Regulations and International Standards on Effective Investigation*, Tbilisi, 2014, 60; Report of the Public Defender of Georgia, *The Situation in Human Rights and Freedoms in Georgia*, Tbilisi, 2014, 345-349; Report of the Public Defender of Georgia, *The Situation in Human Rights and Freedoms in Georgia*, Tbilisi, 2015, 552-562.

70 Makharadze A., *Concept of damage and problems of recognizing a person as a victim*, the Justice magazine, №1, Tbilisi, 2009, 60, 63.

71 Paliashvili A., *There is a need for a brand new criminal procedure code*, the Justice magazine, №10-11, Tbilisi, 1992, 28.

72 Makharadze A., *Concept of damage and problems of recognizing a person as a victim*, the Justice magazine, №1, Tbilisi, 2009, 62-63.

73 Article 56 of Chapter VI of the Criminal Procedure Code of Georgia.

premeditated murder, when the sister of the deceased demanded recognition as the successor of the victim, the Tbilisi City Court noted that the absence of an accused person in the case was not a circumstance that could impede the recognition of a person as the victim. It ruled that the prosecutor's refusal to recognize that person as the successor of the victim was unfounded and virtually deprived the person of the possibility to enjoy the rights granted to her under the law.⁷⁴

Thus, the refusal to grant a status of the victim/successor of the victim due to the failure to identify an offender or an offence, also without such substantiation, will be a misinterpretation of effective legislative provisions and a wrong approach to the issue.⁷⁵

3.2. Involvement of a victim in criminal proceedings

After being recognized as a victim, a person acquires certain rights and obligations by which he/she defends his/her legal rights and interests. The interest of a victim is to have the crime against him/her investigated properly, the true offender identified, an offence correctly and adequately evaluated and finally, a correct and fair decision taken.⁷⁶ When a crime is committed, it is in the interest of the victim and society that the offender is punished.⁷⁷ This facilitates not only the effective and adequate compensation of damage, but also the satisfaction of the victim's sense of justice, an illustration that the state is willing and motivated to defend his/her rights and is not indifferent to his/her problems.⁷⁸ Fair criminal justice includes the rights of not only accused persons but victims too. However, Georgia lacks sufficient legal and institutional framework and this creates problems in terms of victims' access to justice.⁷⁹

3.2.1. Reading case materials and making their copies

The 2014 legal amendments enabled victims to read materials related to the criminal case, unless it would contradict the interests of the investigation.⁸⁰ The law allows them access to the materials at least 10 days before the preliminary hearing.⁸¹ Being aware of case materials enables a victim to be properly informed about various details of the ongoing proceedings. Interestingly, the refusal to allow victims to read case-related materials on the ground that it contradicts with the

74 Tbilisi City Court decision №3/8106, 22 April 2015.

75 Report of the Public Defender of Georgia, *The Situation in Human Rights and Freedoms in Georgia*, 2013, 213.

76 Decision of the Constitutional Court of Georgia on the case *Citizens of Georgia Khatuna Shubitidze v Parliament of Georgia*, №1/8/594, 30 September 2016, II-10.

77 Tskitishvili T., For the issue of application of punishment, Collection of works dedicated to 75th anniversary of Guram Nachkebia, Tbilisi, 2016, 132.

78 Decision of the Constitutional Court of Georgia on the case *Citizens of Georgia Khatuna Shubitidze v Parliament of Georgia*, №1/8/594, 30 September 2016, II-10.

79 OSCE/ODIHR, *Trial Monitoring Report Georgia*, Warsaw, 2014, 12-13, §9; 131-145, §251-287

80 Subparagraph H of Paragraph 1 of Article 57 of the Criminal Procedure Code of Georgia.

81 Subparagraph J of Paragraph 1 of Article 57 of the Criminal Procedure Code of Georgia.

interests of the investigation provides ample room for interpretation and thus there is a risk that an incorrect and deficient practice could be established. Therefore, a refusal by the prosecutor must be specific and based on clear grounds. On the one hand, the position of the investigative authorities must be unambiguous so a victim understands why he/she has been refused access to case materials. On the other hand, such a restriction must be necessary and proportionate to the aim pursued, in order to avoid creating an impression of bias and subjectivity.⁸² It is important that apart from reading case materials, victims have the right to make copies of them. Sometimes victims need case materials to defend their rights by other means too. In particular, the absence of case materials is a hindrance in applying to the European Court of Human Rights to challenge a protracted or/and ineffective investigation. Also, victims might want to file a complaint on the compensation of damages with a civil court and to this end they need case materials in order to pre-plan their strategies and evaluate the effectiveness of the action. Although the handover of case materials to victims contains certain risks, for example, the disclosure of personal data, this risk can be reduced by blacking out such data or obligating victims not to disclose information about the investigation, as specified in Article 104 of the Criminal Procedure Code of Georgia.

Thus, on the one hand, it is important for a prosecutor to base his/her refusal to grant a victim access to read case materials on concrete reasons. On the other hand, if a prosecutor thinks that giving the victim access to the case materials does not contradict the interests of the investigation, the victim must be provided with a legal possibility to make copies of these documents.

3.2.2. The right to receive information on criminal proceedings

A victim has the right to be informed of the progress of the investigation and court hearings of the case.⁸³ In particular, upon the request of a victim, the prosecutor must inform him/her in due time about the place and time of the following procedural actions: the initial appearance of the accused in a court; the preliminary hearing; hearing of the case on the merits; hearing of a plea bargain; the sentencing hearing; and the appellate or cassation hearing. Also, upon request, a victim may obtain information on the measure of restraint applied against the accused, and information concerning the accused/convicted person's release from a penitentiary facility, unless this creates a risk for the accused/convicted person.⁸⁴ It is worth noting that after the 2014 legislative amendments, the burden to request information is now on the victims. Before that it was mandatory for a prosecutor to inform victims, even without their request, about hearings.⁸⁵ Thus, the legislative amendments worsened the situation in regard to the right of a victim to be informed. Victims often lack the possibility to monitor criminal proceedings and properly understand the sequence and specifics of relevant procedures as they are mainly ignorant of the criminal procedure legislation. Therefore, this legislative wording creates a serious risk that victims will not receive information on

⁸² Report of the Public Defender of Georgia, *The Situation in Human Rights and Freedoms in Georgia*, Tbilisi, 2014, 351-352.

⁸³ Article 58 of the Criminal Procedure Code of Georgia

⁸⁴ Subparagraph I of Paragraph 1 of Article 57 of the Criminal Procedure Code of Georgia.

⁸⁵ Article 58 of the Criminal Procedure Code of Georgia as of 25 January 2014.

the stages of criminal proceedings. Consequently, informing victims should not be dependent on the initiative of victims; rather it must be specified in the law as an obligation of a prosecutor to notify victims in advance about various procedural actions, as it was defined in the Criminal Procedure Code prior to the 2014 amendments.

Victims must believe and have an expectation that they are not neglected by the state. This may be achieved by providing as much information as practicable on the stages of the investigation or court hearing.⁸⁶ Such an approach will be more conducive to opening the crime because if victims feel irrelevant, they may not cooperate with law enforcement agencies and the system, which is dependent on citizen participation, would function less effectively as a result.⁸⁷

3.2.3. The right to appeal

Victims enjoy a restricted right to appeal the individual decisions of a prosecutor. According to Paragraph 5 of Article 56 of the Criminal Procedure Code, if a prosecutor does not satisfy the application of a person to be recognized as a victim within 48 hours after it has been filed, the person in question may apply once to a superior prosecutor to be recognized as a victim or a legal successor of the victim. If, after issuing a decree on the recognition of a person as a victim, it is established that there are no appropriate grounds for such recognition, the prosecutor shall annul that decree and inform the victim about this in writing. A victim may appeal this decision to a superior prosecutor too. With regard to this right, it is important that a victim has the right to appeal a prosecutor's decision to terminate an investigation or/and criminal prosecution. Pursuant to Articles 106 and 168 of the Criminal Procedure Code, in case the decision is taken to terminate an investigation or/and criminal prosecution or not to institute criminal proceedings, the prosecutor shall, within a week after such decision, submit a copy of the decree to the victim. After that a victim may appeal a decree of the prosecutor to terminate an investigation and/or a criminal prosecution or not to initiate criminal proceedings to a superior prosecutor.

In all the above cases, the decision of the superior prosecutor shall be final and it may not be appealed. However, as a result of the 2015 legislative amendments, a victim may appeal the decision of the superior prosecutor, who has not satisfied the victim's request, to a court when the investigation concerns a particularly serious offence. A court shall then deliver a judgement on the appeal of the person/victim within 15 days, with or without an oral hearing, and this decision cannot be appealed.

The Constitutional Court of Georgia indicates that victims must have a possibility to control and monitor state bodies. In some instances, the prosecution may act arbitrarily, show incapability or negligence and therefore, fail to effectively defend the victim. Sometimes the prosecutor is not properly motivated to fully investigate all circumstances related to a crime. This may be caused by

⁸⁶ Reddy P., Role of the Victim in the Criminal Justice Process, Student Bar Review, National Law School of India University, 2006, Vol 18 (1), 6; <http://bit.ly/2r5LFbS> [20.09.2017].

⁸⁷ Welling S., Victims in the Criminal Process: A Utilitarian Analysis of Victim Participation in the Charging Decision, Arizona Law Review, 1988, Vol 30, 92-93; <http://bit.ly/2rEXnZo> [20.09.2017].

a workload or lack of understanding. Bearing these factors in mind, the risks of mistakes in criminal proceedings, which may harm the interests of victims, always exists.⁸⁸

It is ambiguous what a victim should do when, for example, he/she believes that the termination of the criminal prosecution by the prosecutor was totally unlawful and unsubstantiated and that there are clear signs of offense in the action of this person.⁸⁹ In separate cases, the absence of a control lever on decisions of the prosecutor is a provocation by itself, encouraging negligence and improper approach to the case. The system must be effective, enabling the review of the soundness of decisions on opening or not opening criminal prosecution as well as other decisions taken during the process. In this regard, the review of the lawfulness of investigation acts by means of appealing to a court, in order to exclude or minimize instances of negligence or mistakes on the part of prosecutor, particularly important.⁹⁰ Although a victim is not the subject of criminal prosecution him/herself, by using this right he/she tries to defend his/her rights.⁹¹ To control the administration of justice, a victim must be given the legal possibility to appeal decisions taken by the prosecutor on the refusal to prosecute or terminate a criminal prosecution.⁹² Court oversight is the strongest and most effective way to force the prosecutor to use his/her discretionary power in an objective and impartial way.⁹³ This will be an additional lever for victims to prevent unlawful acts by the prosecutor.⁹⁴

Will granting the right of appeal to victims on all crime categories lead to overwhelming the courts? In one case, the Constitutional Court indicated that the development of alternative or additional procedures may lead to some costs and an additional load on court resources, but according to the standards established by the Constitutional Court, any difficulty of general administrative nature which may arise in case of an appeal cannot become the grounds for the restriction of the right to appeal to a court.⁹⁵ The threat of overburdening the courts may arise in the courts of appeal, as there are only two such courts in the country—in Tbilisi and in Kutaisi. However, given that such cases will be resolved in lower courts and no longer be appealed to higher courts, there is no danger of overburdening the courts of appeal. The law provides for the possibility to consider, in lower courts, a complaint of a victim without an oral hearing,⁹⁶ therewith sparing it from the threat

88 Decision of the Constitutional Court of Georgia on the case *Citizens of Georgia Khatuna Shubitidze v Parliament of Georgia*, №1/8/594, 30 September 2016, II-41.

89 Benidze V., Criminal procedure legislation eneds further improvement, Issues of Law, Collection of works dedicated to the 70th anniversary of Roman Shengelia, Tbilisi, 2012, 533.

90 Decision of the Constitutional Court of Georgia on the case *Citizens of Georgia Khatuna Shubitidze v Parliament of Georgia*, №1/8/594, 30 September 2016, II-50.

91 Meurmishvili B., Institution and implementation of criminal prosecution in criminal proceedings (on the investigation stage), Tbilisi, 2015, 280.

92 Tumanishvili G., Victims in modern criminal procedure law, Law Journal, №2, Tbilisi, 2009, 84.

93 Decision of the Constitutional Court of Georgia on the case *Citizens of Georgia Khatuna Shubitidze v Parliament of Georgia*, №1/8/594, 30 September 2016, II-50.

94 Chkheidze I., Victim's right in criminal proceedings, the Justice and Law magazine №2 (37), Tbilisi, 2013, 123-124.

95 Decision of the Constitutional Court of Georgia on the case *Citizens of Georgia Ilia Chanturaia v Parliament of Georgia*, №2/2/558, 27 February 2014, II-46.

96 A judge delivers a judgement on the appeal of the victim with or without an oral hearing, Criminal Procedure Code as of May 2017, Paragraph 7 of Article 56, Paragraph 1¹ of Article 106, Paragraph 2 of Article 168.

of overburdening. Although the granting of the right of appeal to victims limits public interests — the prevention of overburdening the courts — the restriction of the public interests is not of such a scale that it may paralyze courts. Given that a complaint of a victim will not go beyond the activity of lower courts, the balance between public and private interests will be maintained.

CONCLUSION

Thus, a number of shortcomings that hinder victims from effective and full engagement in criminal proceedings have been identified. On the path towards the Europeanization of Georgia's legislation and practice, it is important to maximally adjust the country's criminal procedure to meet EU standards. Despite the significant amendments to the criminal procedure legislation made in 2014, which have improved the protection of victims' interests, deficient and ambiguous norms remain. These make it difficult for the victims of crime to fully and effectively defend their rights. Besides, granting certain privileges to victims must not imply the reinstatement of the status of a party to proceedings. Thus, the rights of victims must be extended, but not through limiting the rights of the defense and strengthening their subjective influence on criminal proceedings. It is important to allow victims to engage in criminal proceedings from the very initial stage of investigation and grant them the procedural status of a victim/successor of a victim. If a person, having applied to the prosecution to open an investigation into damages suffered by him/her, were to be granted a status of victim at this stage, he/she would be guaranteed the possibility to implement his/her procedural rights.⁹⁷ Recognizing a person as a victim is linked to the use of the rights guaranteed by the constitution. In particular, a victim has the right to obtain information about the investigation and court hearings, including about the measure of restraint applied against the accused, and the accused/convicted person's release from a penitentiary facility. All this serves the aim of protecting his/her interests, life and health. However, the receipt of this information is the right of a victim and a person cannot use it unless he/she is granted the status of a victim/successor of a victim. One of significant shortcomings resulting from the 2014 legislative amendments is the change of the wording of the provision, which made the receipt of information about criminal proceedings dependent on the victim's initiative. This attitude needs to be changed so that information about court hearings is provided not upon the request of the victims, but as an obligation of the prosecutor to notify victims about the place and time of court hearings in due time, as it was before the 2014 amendments. Failure to properly inform victims may affect their ability to fully use their rights. Uninformed victims may fail to use important rights such as the right to be informed of the place and time of court hearings, to provide information about sustained damage to the court during court hearing, et cetera.

⁹⁷ Makharadze A., Concept of damage and problems of recognizing a person as a victim, the Justice magazine, №1, Tbilisi, 2009, 62.

It is also important that victims fully use their right to appeal to a court and have the right to appeal the prosecutor's decisions on all categories of crime. The fact that victims do not have the right to appeal in cases of less grave or grave crimes runs counter to Paragraph 1 of Article 42 of the Constitution and deprives individuals of the possibility to apply to a court for the protection of their rights and freedoms.

The elimination of all these shortcomings will notably improve the situation with the protection of the rights and interests of victims. Moreover, granting these rights to victims will not restrict the interests of the defense of the accused; will not impede the establishment of the truth; and will not undermine the effectiveness of the existing model of criminal proceedings.