

**Malikova Sh.B.<sup>1</sup>, Omarova A.B.<sup>2</sup>, Omarova Sh.B.<sup>3</sup>**

<sup>1</sup>Candidate of Juridical Sciences, docent, e-mail: Sholpan.Malikova@kaznu.kz

<sup>2</sup>Candidate of Juridical Sciences, docent, e-mail: omar\_17@mail.ru

<sup>3</sup>teacher, e-mail: venera\_sb@mail.ru

al-Farabi Kazakh National University, Kazakhstan, Almaty

## **THE CONCEPT OF A VICTIM OF CRIME AS THE MAIN VICTIMOLOGICAL CATEGORY**

In this article, the authors consider the legal aspects of defining the concept of a victim of a crime.

The purpose of this article is to investigate the concept of the victim in the victimological sense as a person to whom harm is directly caused by a crime, regardless of its recognition as such in a criminal procedural sense, i.e. category "victim of crime".

The very problem of criminal policy is a complex, systemic socio-political and legal problem of modern Kazakhstan, conditioned by general and special economic, political, spiritual, methodological, legal, criminological, criminological and other factors. Victimological policy is considered as one of the branch directions of criminal policy, a means of influencing crime in the mainstream of world trends.

In today's Kazakhstan, a comprehensively developed theoretical and regulatory framework for the development of the system of victimological crime prevention, protection of the rights of victims and victims of crime has been formed. Meanwhile, in modern legal literature and in crime prevention practice, a point of view has been formed according to which the victimological direction is only part of the strategy and tactics of crime prevention and criminal legal protection of citizens. Numerous studies have not yet led to the development of a sufficiently accurate and complete picture of the victimological counteraction of crime as a sphere of criminal policy. This determines the novelty of this study. In the proposed article, the authors hold and disclose the position that in terms of content, subject matter of regulation, subjective composition, victimological policy in a certain sense is broader than the scientifically based strategy and tactics of crime prevention and regulation of criminal legal relations implemented in modern criminal policy, which necessitates a comprehensive scientific research conceptual foundations of victimological policy.

In the proposed article, based on the study and generalization of existing theoretical views, the essence of the conceptual approach to determining the victimological policy of the state in the sphere of combating crime is presented in a generalized form. The authors reflect scientifically substantiated provisions and conclusions about the theoretical foundations of victimological crime prevention, which determines the scientific significance of this article. In addition, the main problems on the topic and the main directions of their solution are identified, which determines its practical significance.

The methodological basis of the research is the scientific provisions of criminal law and criminology on the nature of crime and criminality, their impact on the state and public security, victimization, victimization, victimology. In the course of research into the modern concept of determining the nature of victimological crime prevention, the conclusions are obtained through qualitative and quantitative analysis of social, legal, criminal-legal phenomena and processes.

The legal analysis carried out by the authors makes it possible to provide recommendations for the definition of new promising areas of Kazakhstan's criminal policy in the sphere of combating crime, contributing to the solution and overcoming of the international aspect in the field of victim crime prevention, which requires the establishment of cooperation with other states.

The results obtained in this article can be used in the educational process, for writing textbooks or teaching aids and publishing articles on this topic

**Key words:** the victim of crime, criminality, crime prevention, victimology policy, victimality, victimization.

Маликова Ш.Б.<sup>1</sup>, Омарова А.Б.<sup>2</sup>, Омарова Ш.Б.<sup>3</sup>

<sup>1</sup>доцент, e-mail: Sholpan.Malikova@kaznu.kz

<sup>2</sup>заң ғылымдарының кандидаты, профессор, e-mail: omar\_17@mail.ru

<sup>3</sup>оқытушы, e-mail: venera\_sb@mail.ru

өл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.

### **Виктимологиялық санат негізі ретінде қылмыс жәбірленушінің түсінігі**

Мақалада авторлар қылмыс құрбанының түсінігін анықтаудың құқықтық аспектілерін қарастырған.

Аталған мақаланың мақсаты – «қылмыс құрбаны» ретінде қылмыстық процессуалдық мағынада танылғанын тәуелсіз түрде, қылмыс арқылы тікелей зиян келтірілген адамды виктимологиялық мағынада жәбірленуші ретінде зерттеу.

Заманауи Қазақстанда қылмыстылықтан виктимологиялық алдын алу жүйесін дамыту, жәбірленушілердің құқықтарын және қылмыс құрбандарын қорғау үшін жан-жақты дамыған теориялық және нормативтік құқықтық база бар. Дегенмен де, қазіргі заманғы заңи әдебиеттерде және қылмыстылықтан сақтандыру тәжірибесінде виктимологиялық бағыт қылмыстылықтан сақтандырудың және азаматтарды қылмыстық құқықтық қорғаудың стратегиясы мен тактикасын айқындауға қатысты қызметтің бір бөлігі деген көзқарас қалыптасқан. Жүргізілген зерттеулер қылмыстық саясаттың аясы ретінде қылмыстылыққа виктимологиялық қарсы тұру туралы жеткілікті және толық ұстаным әзірлеп шығармады. Осы жағдай зерттеудің жаңалығын анықтайды. Ұсынылған мақалада авторлар мазмұны, реттеу пәні және субъектілік құрамына байланысты виктимологиялық саясат белгілі бір мағынада қылмыстылықтан сақтандырудың ғылыми негізделген стратегиясы мен тактикасынан, заманауи қылмыстық саясатта жүзеге асырылатын қылмыстық-құқықтық қатынастарды реттеуден кең екендігі туралы ұстанымды кең түрде ашады.

Жұмыстың әдіснамалық негізін қылмыс және қылмыстылықтың мәні, мемлекеттік және қоғамдық қауіпсіздікке олардың әсері, виктимділік, виктимдену, виктимология туралы қылмыстық құқық және криминологияның ғылыми ережелері құрайды. Қылмыстылықтан виктимологиялық сақтандырудың мәнін анықтаудың заманауи тұжырымдарын зерттеу барысында әлеуметтік-құқықтық, қылмыстық-құқықтық құбылыстар мен үдерістерді сандық және сапалық талдау жолымен қорытындылар алынған. Авторлар арқылы жүргізілген құқықтық талдау қылмыстылыққа қарсы тұру аясындағы Қазақстанның қылмыстық саясатының жаңа басым бағыттарын анықтау үшін нұсқаулар, қылмыстылықтан виктимологиялық сақтандыру аясындағы халықаралық аспектілерді шешу және жеңуге үлес қосады.

Мақалада алынған нәтижелерді оқу үдерісінде, оқулықтар мен оқу құралдарын және аталған мәселе бойынша мақалалар жазу барысында қолдануға болады.

**Түйін сөздер:** қылмыстылық, қылмыстылықтан сақтандыру, қылмыстық саясат, виктимологиялық саясат, виктимдік, виктимдену, қылмыстылық құрбаны.

Маликова Ш.Б.<sup>1</sup>, Омарова А.Б.<sup>2</sup>, Омарова Ш.Б.<sup>3</sup>

<sup>1</sup>к.ю.н., доцент, e-mail: Sholpan.Malikova@kaznu.kz

<sup>2</sup>к.ю.н., профессор, e-mail: omar\_17@mail.ru

<sup>3</sup>преподаватель, e-mail: venera\_sb@mail.ru

Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы

### **Понятие жертвы преступления как основной виктимологической категории**

В настоящей статье авторы рассматривают правовые аспекты определения понятия жертвы преступления.

Цель настоящей статьи – исследовать понятие потерпевшего в виктимологическом смысле как лица, которому вред причинен непосредственно преступлением, независимо от признания его таковым в уголовно-процессуальном смысле, т.е. категорию «жертва преступления».

Сама проблема уголовной политики представляет собой комплексную, системную социально-политическую и правовую проблему современного Казахстана, обусловленную общими и специальными экономическими, политическими, духовными, методологическими, юридическими, уголовно-правовыми, криминологическими и иными факторами. Виктимологическая политика рассматривается как одно из отраслевых направлений уголовной политики, средство воздействия на преступность в русле мировых тенденций. В современном Казахстане сформировалась всесторонне развитая теоретическая и нормативно-правовая база для развития системы виктимологической профилактики преступности, защиты прав потерпевших и жертв

преступлений. Между тем в современной юридической литературе и в практике предупреждения преступности сформировалась точка зрения, согласно которой виктимологическое направление есть лишь часть деятельности по определению стратегии и тактики предупреждения преступности и уголовно-правовой защиты граждан. Многочисленные исследования не привели пока к выработке достаточно точного и полного представления о виктимологическом противодействии преступности как сферы уголовной политики. Это определяет новизну настоящего исследования. В предлагаемой статье авторы придерживаются и раскрывают позицию, что по содержанию, предмету регулирования, субъектному составу виктимологическая политика в определенном смысле шире научно обоснованной стратегии и тактики предупреждения преступности и регулирования уголовно-правовых отношений, реализующихся в современной уголовной политике, что обуславливает необходимость комплексного научного исследования концептуальных основ виктимологической политики.

В предлагаемой статье на основе изучения и обобщения существующих теоретических взглядов излагается в обобщенном виде сущность концептуального подхода к определению виктимологической политики государства в сфере противодействия преступности. Авторами отражены научно обоснованные положения и выводы о теоретических основах виктимологической профилактики преступлений, что определяет научную значимость настоящей статьи. Кроме того, обозначены основные проблемы по теме и основные направления их решения, что обуславливает его практическую значимость. Методологическую основу исследования составляют научные положения уголовного права и криминологии о сущности преступления и преступности, их влиянии на состояние государственной и общественной безопасности, виктимности, виктимизации, виктимологии. В ходе исследования современных концепций определения сущности виктимологического предупреждения преступности выводы получены посредством качественного и количественного анализа социально-правовых, уголовно-правовых явлений и процессов. Проведенный авторами правовой анализ позволяет представить рекомендации по определению новых перспективных направлений уголовной политики Казахстана в сфере противодействия преступности, может внести вклад в решение и преодоление международного аспекта в сфере виктимологического предупреждения преступности, что предполагает необходимость налаживания взаимодействия с другими государствами.

Результаты, полученные в настоящей статье, можно использовать в учебном процессе, для написания учебников или учебных пособий и публикации статей по данной проблематике.

**Ключевые слова:** жертва преступности, преступность, предупреждение преступности, виктимологическая политика, виктимность, виктимизация.

In scientific literature and in practice, there is an underestimation of the role of the victim's personality, as he is usually treated unilaterally as a carrier only for his own personal interests. Meanwhile, the personality of the victim in any case in a greater or lesser extent is inherent in the public interest. From the structure of the personality of the victim and from his behavior, which is closely connected with the person and is its function, the implementation of criminal intentions depends. Actively defending himself against criminal encroachment, preventing criminal activity, the victim defends not only his own, but also public interests. In conditions when criminological victimology in Kazakhstan is at the stage of origin and its active development and creation of conceptual bases of this branch of knowledge is required, the definition of its subject and method, the conceptual apparatus, this research should be topical.

Investigating the personality of the victim is important not only for the criminal qualification of the crime, but also for studying and preventing crime. Therefore it is logical that in recent years

considerable attention has been paid to the development of victimology as a science of the victim (Basque, 2015). At the same time, along with the term "victim" that is generally applicable in criminology, it is customary to use the term "victim" in criminal victimology, regardless of whether the person actually suffered from a crime or not. Moreover, victims are of special interest to victimology, whose behavior is negatively so that it excludes the possibility of their recognition in procedural order by the victims (Alaukhanov, 2014).

Behavior of the victim at the time of the crime, like all human behavior, depends on two categories of factors:

- the influence of the environment in the event of a criminal attack or other impact;
- individual personality characteristics that provide a diverse range of reactions to external criminal effects (from fainting to self-defense or an active attack on the offender) (Hentig, 1988: 35-41).

These personality characteristics are mainly characterized by the following categories: the type of higher nervous activity of the victim (strong,

active, mobile, with other things being equal, is in a better position), features of his character (primarily volitional qualities and, in particular, will to fight and will to resistance, and also pride, pride, shyness, etc.). Life experience is of great importance in the behavior of the victim in cases of sexual crimes, crimes in transport, in the field of violations of safety regulations (in the latter cases, the special and professional skills of the victim are of great importance). To this category are adjoined such properties of the victim as his former and present specialty and related special skills

The behavior of the victim is significantly influenced by the sense of justice: knowledge of the law and its rights provides additional opportunities in repelling a criminal attack, creates conviction in the rightness of actions that prevent criminal assault. From the point of view of the public interest, the active, purposeful behavior of the victim seems to be most appropriate, aimed at repelling and suppressing criminal encroachments and not exceeding the framework that the law (institution of necessary defense, etc.) established for these situations (Turkish, 2003).

Morally negative content of the behavior of victims increases the likelihood of committing crimes against them. Behavior is precisely the starting point from which the criminologist's interest in the victim begins both in terms of establishing the mechanism of criminal behavior, and in captivity neutralizing negative activity within the range of the pre-criminal specific life situation, including conflict. With this in mind, while investigating a crime at the level of individual criminal behavior, the victim is of interest to the extent that behavior fits into the crime event and carries a charge of crime. This property is negatively assessed by society causally related to the crime behavior of the victim.

"Victim of crime" is a concept broader than the concept of "victim". The victim of a crime is any person who has suffered moral, physical or property harm from an unlawful act, regardless of whether he is recognized as a victim in the order established by law or not (Eshchanov, 2003). In other words, "victim" is a victimological concept, "victim" is a criminal procedure. These concepts may not coincide with each other. Victimality of an individual is nothing more than the "predisposition" realized by a criminal act, or rather the ability to become a victim of a crime under certain circumstances, or in other words, the inability to avoid danger where it was objectively preventable "(Sudnik, 2008).

The classification of victims, developed in criminal victimology, depending on the nature of

the crimes that caused harm, provides a great deal of practical assistance in understanding the identity of victims of crime. The basis of this classification, as a rule, is the composition of crimes united by a common object (for example, victims of crimes against property). At the same time, studies were carried out of victims of specific types of crimes – pocket thefts, robberies and robbery, fraud, rape, murder (Eshchanov, 2003). Important is also the classification of victims, depending on the characteristics of their personality (psychophysical, moral-psychological, social-role).

Taking into account psychophysical features, there are minors, women, elderly people; moral and psychological qualities allow us to identify victims with a negative or positive moral orientation; social and role attributes underlie the attribution to the victims of persons of a certain specialty and occupation, as well as victims of previously committed crimes, witnesses to these crimes (Susanto, Almunawar, Tuan, 2011).

With any classification of victims it is necessary to be guided by moral and psychological criteria. Aggressiveness, greed, propensity to alcoholism and other negative, and sometimes positive (for example, credulity) personality characteristics to some extent determine the behavior of the victim, which in some cases contributes to the creation of the victimomogeneous situation. The same features as moral stability, caution, mindfulness of mind, good physical preparation, in many cases contribute to the suppression of the crime being committed (Taleb, 2001).

There are other grounds for classifying victims. In particular, the character of behavior distinguishes between aggressive, active, proactive, passive, uncritical and casual victim (Verheul, 2011). Studying the behavior of victims of crime in the victimology plan can contribute to the development of scientifically based tactical, psychological, and sometimes technical measures to improve their safety.

The study of crime victims is important for the prevention of crime. As it allows to identify groups whose representatives most often become objects of criminal encroachment, and equip them with qualified advice. The importance of this problem is evidenced by constant warnings and advice on how to protect themselves, which provide citizens with the media.

According to the results of the research, some authors suggest using the following classification of victims of crime. Depending on the manifestation of personal qualities in a crime situation, the following

types of victims of crime are identified (Aaltonen, 2012):

1) aggressive – the behavior is associated with an attack on the cause of harm. It is characterized by deliberate creation of a conflict (behavior can be criminal, administratively punishable or only immoral);

2) active – behavior contributes to causing harm to the victim (asking for harm, committing actions that cause harm);

3) initiative – behavior is positive, but still leads to harm (for example, active resistance to the encroached);

4) passive – does not resist the encroached (fear, physical or psychological deviations);

5) uncritical – not able to properly assess the situation;

6) neutral – did not contribute to the commission of the encroachment.

Depending on whether the offender belongs to the micro-social environment of the victim, the crimes are divided into:

1) familiar with the perpetrator (our studies showed that in 54% of the cases the victims were familiar with the criminal) of them:

a) who are in family-neighbor relations with the perpetrator – 61%;

b) having close relations with the criminal (friends, love, hostile) – 49%;

2) не знакомых, мало или случайно знакомых с преступником. Таких жертв оказалось 46% (Hawdon, 2014; Heber, 2014). 2) not familiar, little or accidentally familiar with the offender. Such victims were 46% (Hawdon, 2014, Heber, 2014).

Also, depending on the nature of the damage inflicted, it is possible to single out the victims who suffered: physical harm, moral damage and property damage.

The behavior, condition and personality traits of the victim have a significant impact on the motivation of the offender, can facilitate and even provoke the crime, or, conversely, make it difficult or impossible to criminal assault. At the same time, some moral, volitional or emotional qualities, other individual biological or social attributes of the victim can also affect the process of turning it from a potential victim into a real one.

Studies show that the behavior of a criminal is often due to both the behavior of his victim, and the special qualities of the victim, as well as the relationship of the offender with the victim, established earlier or in the process of a collision. Often criminal behavior is provoked by the negative behavior of the victim. In crimes where there are

motives of interpersonal order, this can be seen especially clearly (San-Juan, 2012).

Often, the provocative behavior of the victims creates an artificial number of crimes, pseudo-crimes arise. This situation is particularly characteristic of rape, a large number of which are provoked or the allegation is false, and not the tried-and-out courts are destroying the fate of innocent people, usually young people.

At the same time, there are certain categories of people who are attracted to the increased attention of criminals. Such people, for various reasons, can not withstand the criminal in the proper measure. These are children and adolescents, the elderly, people suffering from physical or mental disabilities. One can not but emphasize that these people are socially poorly protected in society and from criminals in particular. The condition of a person vulnerable to increased vulnerability, in terms of the possibility of becoming a victim of a criminal, is called victimization. As L.V. Frank, victimization is an increased ability, due to a number of subjective and objective circumstances, to become a target for criminal encroachments.

The victim is able to exert a strong influence on the formation of the motive by his behavior and appearance. Consequently, her behavior helps to understand the cause of the crime. By its behavior, it has a significant effect on the situation of the commission of a crime.

Some researchers have revealed one interesting circumstance that also attracted attention to the victim: criminals and victims share many characteristics.

Such "coincidence" determines: a) the movement of the criminal and the victim towards each other (the offender seeks a victim, and the victim is a criminal); b) the constant change of roles ("the criminal – the victim – the criminal," the victim – the criminal – the victim").

As well as the future criminal, the future victim estimates the developed concrete vital situation and often acts depending on results of an estimation, and also owing to the sights and inclinations, psychological and other possibilities. He interacts not only with the future criminal, but also with other elements of the situation.

In many cases, the victim is an active element in the pre-criminal situation and in the dynamics of the criminal act. Sometimes only the case decides who will be the victim and who is the criminal; it is possible to combine the criminal and the victim in one person; the same person in the same episode can alternately be both a criminal and a victim

Victims can be completely innocent of the origin of the crime situation; guilty of this as well as the criminal; even more guilty than he. The concept of "wine" is used in the criminological sense. The fault of the victim can only be said when his behavior contributes to the creation of criminal intent and its implementation. In the same sense, it is also necessary to understand the "provocation" on the part of the victim, expressed in the call of certain phenomena, motives for a concrete action

The forms of provocation are different. An active form of provocation is usually the actions of the victim, posing a great danger to his life, which he hopes to liquidate, expecting that the person being provoked by virtue of his social status, character traits or lack of physical strength will not dare to respond to him with violence. A passive form of provocation is less common than an active one, and is associated with the failure of the victim to fulfill obligations arising from public, comradely, family and other relationships. There may be an unconscious provocation, when the future victim does not realize that his careless act can cause such a reaction, which will lead to dangerous consequences.

According to Western victimologists, public self-government has a powerful potential that can neutralize the victimization impact of the behavior of victims. Public self-government can be an expression of the fundamental cultural diversity on a global scale, and at the regional and local levels, be the most democratic response to the challenges of globalization, declaring the need for respect for a special, unique, unique. In addition, public self-government can mitigate the negative consequences of the radicalization of stratification processes, especially those that are associated with local concentration and concentration in disadvantaged areas of cities representatives of the lower strata.

In Western countries, public organizations are an important element in the system of victimization of crime, which are created to protect the interests of victims of crime, to assist them, and to counteract the recurrence of victimization. The main victimological idea is the participation of the public in the prevention of crimes. To ensure the interests of victims at the legislative level, organizations hold formal and private meetings with representatives of government bodies; participate in the meetings of committees and commissions of parliament, government, in the collegia of ministries; assist in drafting bills; Invite legislators, members of the government to their congresses, congresses, meetings; form public opinion and regularly work with the media; prepare reports, messages on behalf of victims of criminal

encroachment on the authorities; they meet with the highest leaders of the state.

To coordinate the activities of victimological organizations in a number of countries, national bodies, committees, councils, etc. are being established. In England, the organization is the National Association of Victim Support Schemes, which has been in operation since 1979. In France, the National Institute for Assistance for Victims (INAVEM), which was established in 1986 to coordinate the activities of more than 60 local victimological associations. In the Netherlands, the National Organization for Victim Support (NOVS). In the United States, such an official organization is not available, but its functions are performed by the National Organization for Victim Assistance. In Italy, there is also no single organization for assistance to victims of crime, but there are associations to help victims of terrorists, organized crime, victims of thefts, etc., usually created by survivors and relatives of the victims (San-Juan, 2012).

In the Republic of Kazakhstan, unlike the countries of Western Europe and the United States, there is no effective system of victim protection for the population. In this regard, in Kazakhstan there is no victimological policy at the state level that is comparable with foreign counterparts. While we can only talk about the varying degrees of maturity of the three important prerequisites for its development.

In Kazakhstan, there is a definite, but not fundamentally developed, theoretical basis for the formation of a system of victimological prevention and a legislatively fixed legal framework for protecting the rights of victims and victims of crime; Among the state bodies, the subjects whose activities are aimed at ensuring the protection of victims and other persons subject to protection are identified. But, as the scientists note, victimological policy is not only an activity to create an adequate legal framework, law enforcement practice, legal ideology and their resource support, but also activities aimed at limiting victimization of citizens, reducing conflict and deviance in society and integrating potential victims from crimes and acts of abuse of power in a normal life (Basque, 2015: 158). Thus, there is not only a legal aspect of the issue under consideration, but also a social one. Therefore, at the present time, it is necessary to structure and stimulate the victimological movement, which is carried out from a single center by the state. Meanwhile, the modern organizational role of our state and state authorities in the formation of a unified system of victimization prevention, the development of the legislative base, does not yet correspond to the scale of existing tasks.

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