SPECIAL FEATURES OF PARTICIPATION OF THE DEFENDER IN THE PROCEDURE OF CONCILIATION OF THE SUSPECT WITH THE VICTIM DURING THE PRE-TRIAL INVESTIGATION

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Urgency of the research arise from the fact that the restorative justice is getting more important in the global and domestic legal practice. One of the models of the mentioned process is reconciliation. Today, international instruments governing this mechanism can not meet to the full extent the need for practical implementation of the principles of restorative justice. Given that the law in this sphere is characterized by gaps, there is a need for a detailed research of the mechanism for implementation of the conciliation procedure.

Since the emergence of jurisprudence, the conflict of law is its indispensable companion. In the course of the development of the human civilization, the ability to find a compromise by means of communication rather than the provocation of confrontation is becoming more important. This conclusion stems from the fact that the mechanism of reconciliation has much more advantages compared to the conventional system of penalties.

In the context of the subject, a special attention deserves the participation of the lawyer in the above mechanism. There are many approaches and analytical conclusions on the role of the counsel for the defense in conciliation in the domestic criminal literature and criminal procedural literature. In particular, the aforementioned issues were studied by Yu. V. Baulin, A. V. Bitsay, B. M. Burger, I. Gaivoronska, Ya. P. Zeikan, A. V. Ivanov, P. Kobernyk, O. V. Perepadia, O. A. Sivchuk, M. I. Khavroniuk, Yu. Yu. Tsymbal, V. A. Shkelebey, A. M. Yashchenko, etc. in their scientific works.

In Ukraine, the legislator provides subjects of criminal proceedings with two ways of reconciliation: 1) exemption from criminal liability in connection with conciliation of the perpetrator and the victim; 2) conclusion of an agreement on reconciliation between the suspect (accused) and victim. Application of the mechanism largely depends on the severity of the crime and intent.
The procedure of conciliation of the suspect (accused) and the victim during the pre-trial investigation is quite complex. The defense lawyer, who has special knowledge and relevant skills, bears the main responsibility for the proper maintenance of the conciliation procedure. In this context, it is particularly important to prove the circumstances, on which the procedure of exemption from criminal responsibility or approval of the agreement on conciliation will be based. Among them, for example are the evidence of the fact of the crime, guilt, amount of damage caused, possibility of its compensation, etc.

The aspect that should be made compulsory for exemption from criminal liability is the documentation of reconciliation. In our opinion, this fact is not sufficiently regulated by the legislator. In particular, there may be cases of actual reparation of damage, but, due to the lack of any confirmation of it, this reconciliation will be impossible to prove in criminal proceedings. In this case, the role of the lawyer is very important in the sense that he/she should initiate documenting the fact of reconciliation, to prevent violations and abuse of the rights of the defendant in the future.

Unlike exemption from criminal liability in connection with reconciliation of the perpetrator and the victim, the institution of concluding the agreement on reconciliation is more regulated. In particular, according to the Criminal Procedure Code of Ukraine, the agreement on reconciliation should state the parties, wording of the suspicion or accusation and its legal qualification indicating the articles (parts of the article) of the Law of Ukraine on criminal liability, an amount of damage caused by a criminal offense, a period of compensation, an agreed punishment and consent of the parties to its imposition or to imposition of punishment and release from enduring the punishment on probation, consequences of concluding and approving the agreement, consequences of the default in performance of the contract.

It should be noted that the documentation of the agreement is confirmed by means of a judge's ruling. The above provisions lead to the conclusion that the institution of concluding the agreement on reconciliation is regulated in more details compared to exemption from criminal liability in connection with reconciliation of the perpetrator and the victim.

In view of the above, we believe it is appropriate to amend the criminal procedural law. In particular, the fact of reconciliation can be documented by concluding a written agreement specifying the terms and conditions similar to an agreement on reconciliation. However, in this context, an important role is assigned to the defender, who oversees the correctness of executing the agreement and confirmation of an amount of reparation.

In summary, it should be noted that it is difficult to overestimate the role of the lawyer involved in the process of exemption from criminal liability in connection with reconciliation of the perpetrator and victim or approval of such reconciliation. The lawyer is the person, who is characterized by a significant legal experience and relevant qualifications. The defender is obliged to accompany the procedure of conciliation by establishing all the required conditions by means of evidence envisaged by the current Criminal Procedure Code of Ukraine and make the best possible defense of the rights and interests of his/her client.