

## Artículo de investigación

**Standardisation of the Concept of Procedural Costs in the Criminal Procedure of Ukraine****До питання унормування інституту процесуальних витрат у кримінальному процесі України**

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The article reveals topical issues related to the legal regulation of procedural costs in the criminal procedure of Ukraine. It is emphasized that the legislative standardisation of this concept is important because, on the one hand, it is an integral economic component of the State, and on the other, the embodiment of the practical implementation of the principle of procedural economy. The author argues that, in contrast to the previous term, “court costs,” the term “procedural costs” in relation to this concept is more accurate, since such costs are connected not only with court proceedings but also with pre-trial investigation. The lawmaker's involvement of costs associated with providing legal aid in procedural costs is recognized as positive. The study of procedural costs under the legislation of individual foreign countries is considered, accordingly, the CPC of Ukraine should be amended. Based on the results of the study, it was concluded that it is necessary to expand the list of procedural costs that today need reimbursement. In particular, the existing list of procedural costs should be added, as follows: 1) costs related to reimbursement of material losses incurred as a result of investigative (search) actions by victim witnesses and other participants involved in

**Анотація**

У статті досліджуються актуальні питання, що стосуються правової регламентації процесуальних витрат у кримінальному процесі України. Акцентовано увагу на тому, що законодавче унормування цього інституту має важливе значення, оскільки, з однією сторони, він є невід'ємною економічною складовою держави, а з іншої – втіленням практичної реалізації принципу процесуальної економії. Висловлена позиція, що іменування цього інституту як «процесуальні витрати», на відміну від попередньої назви «судові витрати», є більш коректним, оскільки такі витрати пов'язані не тільки зі здійсненням судового провадження, але й проведенням досудового розслідування загалом. Позитивно визнано включення законодавцем до процесуальних витрат і тих, що пов'язані з наданням правової допомоги. Окрему увагу приділено дослідженню процесуальних витрат за законодавством окремих зарубіжних країн, за результатом чого сформовані висновки щодо доцільно внесення відповідних змін до КПК України. За результатами проведеного дослідження зроблено висновок про необхідність розширення переліку процесуальних витрат,

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criminal proceedings; 2) costs related to applying security measures to participants in criminal proceedings and other persons who contribute to the prevention and disclosure of a criminal offense, as well as their close relatives; 3) costs, related to payment of lump sum cash assistance in the event of the decease (death) of a person or in the event of personal injury or other harm to his health in connection with participation in criminal proceedings. *The aim of the article* is to determine the modern model of the concept of procedural costs, to highlight its positive aspects and to form certain ways of its improvement on the basis of foreign experience study. To achieve this goal, the authors use historical, system-structural and comparative-legal methods, which enable to formulate scientific proposals and conclusions.

**Key words:** Criminal proceedings, procedural costs, reimbursement and recovery of procedural costs, accused, court fees.

## Introduction

Nowadays, Ukraine undergoes democratic and socio-economic transformations, which is why current legal reform requires considerable financial costs. They also include costs associated with the effective functioning of law enforcement bodies. This also applies directly to those costs that are aimed at achieving the objectives of criminal proceedings, since damages of the victim and the State require reimbursement in full while the perpetrator shall be found and prosecuted. Consequently, in this area of activity one of the important and priority tasks of the State is to minimize procedural costs. Therefore, the legal community and the legislator face the challenge of developing and implementing corresponding proposals aimed at the rational use of procedural costs.

*The aim of the article* is to work out the ways of improving theoretical model of the concept of procedural costs in criminal proceedings, and to

які на сьогодні потребують відшкодування. Зокрема, до існуючого на сьогодні переліку процесуальних витрат слід додати: 1) витрати, пов'язані з відшкодування матеріальних втрат, понесених у результаті проведення слідчих (розшукових) дій потерпілим, свідком та іншими учасниками, залученими до кримінального провадження; 2) витрати, пов'язані з застосування заходів безпеки до учасників кримінального провадження та інших осіб, що сприяють попередженню і розкриттю кримінального правопорушення, а також їх близьких родичів; 3) витрати, пов'язані з виплатою одноразової грошової допомоги у разі загибелі (смерті) особи, або у разі заподіяння особі тілесного ушкодження чи іншої шкоди його здоров'ю у зв'язку з участю в кримінальному провадженні. *Мета статті* – визначення сучасної моделі регулювання правовідносин, що стосуються інституту процесуальних витрат, виокремлення на цій основі як позитивних аспектів, так і тих, що потребують свого вдосконалення. Задля досягнення поставленої мети були використані історичний, системно-структурний та порівняльно-правовий метод, що забезпечило формування науково обґрунтованих пропозицій та висновків.

**Ключові слова:** кримінальне провадження, процесуальні витрати, відшкодування та стягнення процесуальних витрат, підозрюваний, обвинувачений, судовий збір.

form recommendations regarding their efficiency in law application.

## Methodology

In the study, historical, system-structural and comparative-legal methods enable to achieve the goal.

In particular, the application of the historical-legal method made it possible to identify five main stages in the development of the institution of procedural costs in the criminal process of Ukraine. Using the system-structural method made it possible to investigate the internal structure of the institute of procedural costs, namely the list of costs that are subject to compensation in criminal proceedings. The comparative-legal method was used to analyze the norms of the criminal procedural legislation of Ukraine and individual foreign states that

regulate legal relations regarding procedural costs and the procedure for their reimbursement. Using these methods, it was possible to obtain reliable and objective research results.

### Results and discussion

The analysis of historical law documents enables to distinguish five main stages of the establishment and development of the concept of procedural costs in the criminal procedure of Ukraine, namely:

- I. Before the judicial reform of 1864;
- II. The adoption of the Statute of Criminal Justice in 1864;
- III. Formation of the «Soviet» model of criminal justice (adoption of the Criminal Procedure Codes of the USSR in 1922, 1927);
- IV. The enactment of the Criminal Procedure Code in 1960;
- V. The formation of a modern model of criminal justice (changes in the legislative regulation of the concept of procedural costs under the CPC of Ukraine in 2012).

The current stage of regulation of the concept of procedural costs is related to the adoption of the new Criminal Procedure Code of Ukraine on April 13, 2012. The essential importance of the concept under study is evidenced by separate Chapter 8 «Procedural Costs», consisting of nine articles (Articles 118-126). In the current CPC of Ukraine, in contrast to the previous codes, this concept is referred to as procedural costs and not court costs as earlier (Article 91 of the 1960 CPC). In our opinion, this term is more correct, since procedural costs are associated not only with court proceedings but also with the conduct of pre-trial investigations. In addition, the legislator slightly expanded the list of procedural costs, including costs associated with providing legal aid due to the humanization of the criminal procedure legislation of Ukraine. Furthermore, the exclusion of the indication on «other costs», which is an assessing concept in criminal procedure, from the list is positive.

Therefore, the concept of procedural costs, like the criminal procedure itself, is a dynamic, changeable phenomenon. Depending on various factors, social, economic, political, it is changing, adapting to the life realities of a particular period. And this is quite natural, because under restructuring of the State system, consolidation of democratic foundations leads to a growing awareness of the importance and significance of

the issue of initiating obligatory reimbursement of certain types of procedural costs. Achieving this balance is of the utmost importance, because, on the one hand, it is an integral economic component of the State, and on the other, it is the embodiment of the practical implementation of the principle of procedural economy.

Nowadays, effective counteraction to crime, prevention, detection, termination and investigation of criminal offenses is not possible without financial and other costs related to the maintenance of law enforcement bodies and the court, equipping them with modern technical means, training and retraining of personnel, etc. In addition, some of the material expenses are subject to participants in criminal proceedings. According to Yu. M. Domin, in the current conditions, rational spending of money aimed at combating crime becomes especially important. In this regard, a rather important issue of court costs in criminal proceedings as part of the State costs, which may be reimbursed, arises (Domin, 2012).

It should be considered that the concept of procedural costs directly affects the possibility of a person to exercise the right to receive free legal aid, to go to court and to obtain protection from the State. Otherwise, the legislative restriction of access to justice, guaranteed by paragraph 1 of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, may be noted. However, this article does not directly provide for whether the requirement to pay court costs when applying to court is a violation of the right to a fair trial. The European Court of Human Rights proceeds from the fact that the provisions of paragraph 1 of Art. 6 of the CPHR does not imply an unconditional right to free proceedings. The requirement to pay fees in connection with the filing of claims cannot by itself be a restriction on the right of access to court. Moreover, the Court emphasizes that the amount of fees, set in the light of the particular circumstances, including the applicant's ability to pay and the stage of the case review at the time the restriction has been imposed, are important factors in determining whether that person has exercised his right of access to court or not (Baliuk and Luspenyk, 2008). In this regard, it is advisable to refer to the Recommendation of the Committee of Ministers of the Council of Europe No. R (81)7, which emphasises that initiation of proceedings in a case should not be subject to some fee, paid to the State, thereof amount is unreasonable in relation to the case under consideration. To the extent that court costs are a clear obstacle to access to justice, they should be

reduced or annulled wherever possible (Boglya, 2005).

At present, no criminal procedure concept can be improved without considering foreign experience, so it is expedient to study the legal regulations of other countries. For example, the provisions of Articles 162, 163 of the CPC of the Republic of Belarus set out a list of procedural costs and the procedure for their reimbursement to persons involved in criminal proceedings (CPC of Belarus). According to N.A. Sukhovenko, the analysis of the CPC of Belarus enables to state that public relations regarding procedural costs are regulated for by two legal provisions only, which are not structured into a separate chapter within the framework of criminal procedure legislation, but are concluded in Chapter 18 «Procedural terms, procedural costs» of Section VI «Other General Provisions» (Sukhovenko, 2013). It should be noted that Art. 162 of the CPC of Belarus provides for thirteen types of procedural costs to be reimbursed. Moreover, the procedure for reimbursement of procedural costs is differentiated, for example, procedural costs, provided for in paragraphs 1-5 of Part 1 of Art. 162 of the CPC of Belarus, are paid according to the decision of the body of inquiry, the person conducting the inquiry, the investigator, the public prosecutor, the judge or by a court ruling. The analysis of Article 90 of the CPC of Georgia enables to conclude that its regulations also provide for an expanded list of procedural costs. However, in contrast to the CPC of Belarus, according to the CPC of Georgia, the public prosecutor draws up the procedural costs certificate at the stage of the investigation and submits it to the judge hearing the case. In addition, this country's experience in calculating court costs, directly set by the Georgia Supreme Council of Justice, is quite interesting. For example, in case of failure of a participant to appear in court without valid reasons, the presiding judge imposes on him a fine of 100 to 5000 GEL, which does not release this participant from the obligatory appearance. The amount of the fine should be restraining, proportionate to the harm caused and appropriate to the person's financial situation (CPC of Georgia). Thus, in the CPC of Belarus and Georgia, only two articles provide for the legal regulation of procedural costs.

The perspective of the legislator of the Republic of Moldova should be noted, where procedural relations in court costs are normalized in Chapter II. For example, Article 227 of the CPC of Moldova provides for that court costs are

expenses incurred, as prescribed by law, to ensure the proper implementation of criminal proceedings (CPC of Moldova). However, in our opinion, the legislator does not quite correctly define costs listed in Part 2 of Article 227 of the CPC of Moldova as court costs, because they also occur at the stage of pre-trial investigation, so it is more appropriate to define them as procedural. In the context of the issue under study, it should be noted that two key trends in the law-making practice of European countries regarding the concept of procedural costs exist. According to the first concept, part of such procedural costs is paid in advance and, according to the second, procedural costs are not paid at all or paid by a person on the basis of a court ruling following the outcome of the case.

Therefore, to determine any costs as procedural costs, the legal essence of the concept should be considered, moreover, recovery of procedural costs is neither an additional measure of punishment for a criminal offense nor a civil measure, since it does not occur under a contract or a civil obligation.

The subject matter of the legal regulation of the concept of procedural costs is quite broad, since it covers not only the totality of legal relationships for the distribution of costs that arise during criminal proceedings between the executing authority and the person who committed the crime.

The analysis of legal literature enables to state that the concept of procedural costs has its internal organizational structure, which consists of legal provisions, divided into two parts: 1) provisions regulating the procedure for reimbursement of costs at the expense of the State budget; 2) provisions regulating the procedure for reimbursement of costs directly by the suspected, accused, convicted and other persons who are materially liable for their actions by law.

However, one cannot fully agree with O. Yu. Kuznetsov's opinion that court costs represent all expenditures of the State (direct and indirect) aimed at combating crime in the country, including expenditures pertaining to the judiciary and law enforcement bodies, as well as financing their activities. According to the scientist, procedural costs are expenditures for the organization of criminal proceedings exclusively (Kuznetsov, 2005). Therefore, it is not advisable to identify these two concepts, since court costs are the amounts that can only be calculated and reimbursed at trial stages. In turn, procedural

costs are expenditures in connection with criminal proceedings as a whole, including pre-trial investigation and court proceedings.

More progressive proceduralists, such as L. M. Loboiko, recognize procedural costs as all expenditures that have been made in connection with criminal proceedings (Loboiko, 2014), but we also cannot agree with this perspective in full, because it is only those expenditures, the compensation of which is provided by law. That is, the limits and procedure for reimbursement of procedural costs must be set forth directly in the relevant provisions of criminal procedure legislation of Ukraine.

V. V. Nazarov defines the concept of procedural costs more broadly as expenditures, provided for by criminal procedure legislation, related to criminal proceedings, reimbursement of which rests with certain participants in criminal proceedings, or in some cases is compensated by the State Budget of Ukraine, in the manner established by the Cabinet of Ministers of Ukraine (Nazarov, 2013). Thus, court costs can be considered in two meanings, namely: 1) in the broad sense, as the totality of all expenditures incurred in connection with combating crime, investigation of socially dangerous acts and the organization of criminal proceedings; 2) in the narrow sense, as expenditures related to the conduct of criminal proceedings at a certain stage or involvement of an individual entity (e.g. expert, defence lawyer, translator, etc.).

It should be noted that according to V. M. Demidov's study on the material costs of criminal justice, court costs are a share of expenditures incurred by law enforcement bodies and the court in the course of their activities. Legal regulation of all other expenditures of society for criminal justice is provided for by the provisions of other branches of law, in particular labour law (regulation of working conditions of officials of law enforcement bodies and the court); financial law (allocation of funds for the maintenance of law enforcement bodies) and others (Demidov, 1995).

Therefore, the provisions of the concept of procedural costs in criminal proceedings are somewhat similar to the provisions of the similar concepts of civil and procedure law, business procedure law, etc. However, they differ in certain issues, for example, criminal proceedings are more of public origin. In addition, the concept of procedural costs is interrelated with other concepts of criminal justice, since all criminal procedure legislation is aimed at strict and exact adherence to the rights, freedoms and legitimate

interests of participants in criminal proceedings involved in its sphere.

Consequently, the concept of procedural costs has a preventive and educational value, because everyone who has committed a criminal offense must be aware of the inevitability of not only criminal punishments, but also the liabilities to reimburse procedural costs associated with criminal proceedings.

## Conclusions

The current state of affair in the legal regulation of the concept of procedural costs indicates that the provisions defining their list, procedure for calculation, reimbursement and recovery are in the CPC of Ukraine in 2012, in a number of Instructions and Resolutions of the Cabinet of Ministers of Ukraine, and requires their further development for effective implementation of their provisions in the practice.

Nowadays, the legal regulation of the concept of procedural costs has been expanded and humanized, as costs for legal aid, previously excluded, have been added to their list. Moreover, almost all types of procedural costs require their additional regulation both in the criminal procedure legislation and in various departmental acts, instructions. Therefore, it is advisable to expand the list of procedural costs that require compensation. In particular, the existing list of procedural costs should be added, as follows: 1) costs related to reimbursement of material losses incurred as a result of investigative (search) actions by victim witnesses and other participants involved in criminal proceedings; 2) costs related to applying security measures to participants in criminal proceedings and other persons who contribute to the prevention and disclosure of a criminal offense, as well as their close relatives; 3) costs, related to payment of lump sum cash assistance in the event of the decease (death) of a person or in the event of personal injury or other harm to his health in connection with participation in criminal proceedings.

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