

DOI: <https://doi.org/10.32353/acfs.10.2024.05>
UDK 343.13 (477)

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Features of the Accused Defence in the First-Instance Court

To ensure effective defense and uphold constitutional principles within criminal proceedings, this article examines specific features defense practice by counsel in first-instance proceedings. It emphasizes that counsel's involvement in first-instance court, particularly during preparatory hearings and trial, is crucial to ensuring fair administration of justice.

This article establishes that, during preparatory proceedings, counsel's role focuses on formulating legal strategy, reviewing and verifying procedural documents, and ensuring defendant's presence at trial. At trial, counsel plays pivotal role in examination of witnesses, protecting defendant's interests, and ensuring comprehensive examination case circumstances. This article underscores that proper organization counsel's participation at both stages significantly contributes to achieving objectives criminal proceedings—establishing truth and rendering lawful judgment.

Keywords: criminal proceedings, pre-trial investigation, defense, defense party, accused, court, representation

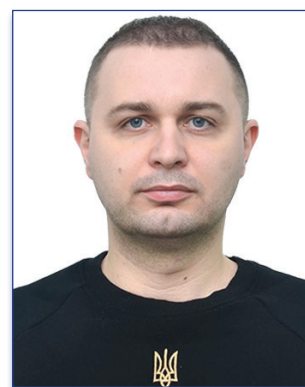
Introduction. One of the fundamental constitutional rights, a cornerstone of justice, and a societal value is an individual's right to defense. This right is appropriately enshrined in legislation, particularly in Ukraine's Constitution (Articles 55, 59, 62, 63, and 129). The right to defense against accusations is realized in criminal proceedings by individuals who hold one of the following statuses: suspect, accused, acquitted, or convicted.

This right encompasses the ability to provide oral or written explanations regarding the charges (or suspicion), to gather and present evidence, to participate in criminal proceedings, to receive legal assistance from a defense attorney, and to exercise other procedural rights guaranteed by the provisions of criminal procedural law.

An analysis of the current legal framework, which serves as the basis for conducting criminal proceedings, reveals several contentious aspects regarding the implementation of the defense of the accused in first-instance court. This issue, therefore, necessitates comprehensive research.

Literature review. Although much attention has been paid by scholars to the specifics of defending a suspect in criminal proceedings, the realization of the right to defense during the trial stage has not been explored to the same degree. Certain aspects of this issue are addressed in the research papers authored by V. H. Andrusiv, V. D. Basai, B. M. Derdiuk, T. V. Korcheva, S. A. Krushynskiy, Ya. O. Kuts, M. I. Petrushko, S. R. Rafalient, O. V. Uzunov, P. O. Tovstyk, V. V. Shapula, A. H. Shyyan, and others. However, Ukrainian researchers have not yet approached the subject comprehensively to clarify the specifics of defending the accused in first-instance court proceedings under the provisions of Ukraine's current Criminal Procedure Code

The article's objective is to identify the specific features of defense procedures conducted by an attorney in first-instance court proceedings.



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Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Disclaimer

The funder had no role in the study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Contributors

The author contributed solely to the intellectual discussion underlying this paper, case-law exploration, writing and editing, and accept responsibility for the content and interpretation.

Declaration of Competing Interest

The author declare that they have no conflict of interest.

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ОСОБЛИВОСТІ ЗАХИСТУ ОБВИНУВАЧЕНОГО В СУДІ ПЕРШОЇ ІНСТАНЦІЇ

З метою забезпечення ефективного захисту обвинуваченого, реалізації низки конституційних принципів у кримінальному провадженні мету статті визначено як з'ясувати особливості процедури захисту обвинуваченого адвокатом у суді першої інстанції. Наголошено, що участь захисника в суді першої інстанції, зокрема, під час підготовчого судового засідання та судового розгляду є важливою складовою забезпечення справедливого правосуддя. З'ясовано, що у підготовчому провадженні роль захисника спрямована на підготовку правової позиції, ознайомлення та перевірку процесуальних документів, забезпечення участі обвинуваченого у судовому розгляді. Обґрунтовано, що у судовому розгляді захисник виконує ключову функцію в допитах, захисті інтересів свого підзахисного та забезпеченні повноти дослідження обставин справи. Акцентовано, що правильна організація участі захисника на обох стадіях сприяє досягненню мети кримінального провадження — встановлення істини та ухвалення законного рішення.

Ключові слова: кримінальне провадження, досудове розслідування, захист, сторона захисту, обвинувачений, суд, представництво.

Main research. The defense function performed by an attorney is an important guarantee of the constitutional right of every individual to legal assistance, which constitutes an integral part of the right to access justice. A key role in this is played by ensuring the provision of qualified legal assistance, which can only be provided by attorneys.

It is argued that, to enhance the effectiveness of defending the rights of participants in criminal proceedings, the scope of the defense attorney's activities should be expanded through the introduction of new forms of representation aimed at protecting the rights of other subjects of criminal proceedings.

To strengthen the guarantees of procedural rights for defense attorneys, it is important to grant them the right to judicial protection. In situations where the professional rights of a defense attorney are violated by individuals conducting criminal proceedings, the attorney should have the ability to seek protection from the court, as the attorney in such cases becomes an interested party.

We believe that expanding the defense attorney's rights in this way would help ensure the proper safeguarding of the rights of participants in criminal proceedings and strengthen procedural guarantees within the justice system.

The legality and soundness of a court decision, and the speed with which a case is heard, significantly depend on the quality of party preparation. This stage is a crucial, independent phase of the criminal process, its primary goal ensuring correct and timely case resolution. This stage is mandatory for every case, regardless of complexity, and must be completed within the Criminal Procedure Code of Ukraine's timeframes.

Defense preparation at the court hearing is a creative process, dependent on many factors: lawyer qualities, case nature, lawyer involvement in pre-trial investigation, etc. Literature rightly indicates that this activity's main stages include:

- Case materials review
- Lawyer dossier compilation
- Communication with the accused before the court hearing
- Factual and legal position formulation
- Written motion preparation
- New evidence request and obtainment
- Alternative professional conclusions development
- Defense strategy for court preparation .

Case materials review enables the lawyer to determine the claim's legal nature, its elements, necessary grounds for filing the claim, party composition, other process participants, proof subject, and evidence to substantiate the legal position.

One problematic issue often arising in defense side practical activities, particularly a lawyer representing the accused at the criminal trial stage, is the problem of access to criminal proceedings materials. It is agreed that problematic situations related to the lack of a clear legislative mechanism for realizing interested parties' right to familiarize themselves with criminal proceedings materials after the court has decided to schedule an indictment hearing, almost never find a proper procedural resolution in first-instance courts¹.



¹ Узунов О. В., Товстик П. О. Участь адвоката в суді першої інстанції. *Право і суспільство*. 2015. №2 (3). С. 182-186.

BESONDERHEITEN DER VERTEIDIGUNG DES ANGEKLAGTEN VOR DEM GERICHT ERSTER INSTANZ

Im Hinblick auf die Gewährleistung einer wirksamen Verteidigung des Angeklagten und die Umsetzung einer Reihe von Verfassungsgrundsätzen im Strafverfahren sollen in diesem Artikel die Besonderheiten des Verfahrens der Verteidigung des Angeklagten durch einen Rechtsanwalt in erster Instanz festgelegt werden. Der Autor hebt hervor, dass die Teilnahme eines Verteidigers am Gericht erster Instanz, insbesondere während der vorbereitenden Verhandlung und der Hauptverhandlung, ein wichtiger Bestandteil der Gewährleistung einer gerechten Justiz ist. Es wird festgestellt, dass die Rolle des Verteidigers im Vorbereitungsverfahren darauf abzielt, eine Rechtsposition vorzubereiten, die Verfahrensunterlagen zu prüfen und die Teilnahme des Angeklagten an der Verhandlung sicherzustellen. Es wird dargelegt, dass der Verteidiger im Gerichtsverfahren eine Schlüsselfunktion bei den Vernehmungen ausübt, indem er die Interessen seines Mandanten schützt und die Vollständigkeit der Untersuchung des Sachverhalts sicherstellt. Es wird betont, dass die korrekte Organisation der Beteiligung des Verteidigers in beiden Phasen zur Erreichung des Ziels des Strafverfahrens – der Wahrheitsfindung und der Verabschiedung eines rechtmäßigen Urteils – beiträgt.

Stichworte: Strafverfahren, Ermittlungsverfahren, Verteidigung, Verteidiger, Angeklagter, Gericht, Vertretung.

Judicial practice analysis allows us to generalize that courts in similar situations usually act as follows:

1. They deny requests for access to pre-trial investigation materials: The court explains that it can only provide materials attached by the prosecutor.

2. They refer to their powers' limitations: The court refuses to oblige the prosecutor to attach all pre-trial investigation materials to the indictment, suggesting that participants independently apply to the prosecutor with corresponding requests. Such actions demonstrate a certain court helplessness in such situations.

The prosecutor's actions' algorithm in such situations is primarily as follows: When court proceedings participants apply to the prosecutor with a request to provide access to pre-trial investigation materials not submitted to the court, the prosecutor often decides these requests at his own discretion. He can either grant or refuse them, stating that all necessary materials have already been submitted to the court, and he does not consider it necessary to provide others.

Problems arise: In such situations, a vicious cycle forms where both the court and the interested parties face difficulties. Even if the issue is resolved, it requires significant effort and time. The negative consequences of this situation are that the prosecutor's actions, which can sometimes be interpreted as manipulation or abuse of their right to withhold certain pre-trial investigation materials, have several serious implications:

1. Obstacles to an objective examination of the case: Access to evidence that could prove the accused's innocence, mitigate their liability, or demonstrate the inadmissibility of certain evidence is hindered.

2. Prolonged proceedings: The accused's defense attorney, possessing copies of documents, submits motions to include them in the case in a sequence advantageous to them. This can necessitate additional document examination, calling new witnesses, and conducting other procedural actions, which is time-consuming.

3. Improper actions with procedural documents: Judicial practice records instances where prosecutors manipulate documents not disclosed under Article 290 of the Criminal Procedure Code of Ukraine or which were entirely absent from the pre-trial investigation materials. This particularly pertains to orders establishing investigative groups, defining a group of prosecutors, and documents that formed the basis for conducting covert investigative actions. These problems underscore the need to improve procedures for accessing case materials and strengthen prosecutors' accountability for non-compliance with procedural law.

The stage of examining and resolving the case is fundamental in the criminal process. It involves a comprehensive examination and resolution of the case, adhering to current legislation, ensuring the protection of the rights and legitimate interests of individuals, legal entities, and the state.

At the beginning of the court hearing, the presiding judge opens the session and announces the consideration of the relevant criminal proceedings. According to Part 2 of Article 347 of the Criminal Procedure Code of Ukraine, the hearing begins with a brief statement of the indictment, which is read by the prosecutor unless the participants in the proceedings demand that it be read in full. The defense attorney must participate in the court hearing at this stage, as it is at this stage that key issues determining the future of the case



PARTICULARITÉS DE LA DÉFENSE DE L'ACCUSÉ DEVANT LE TRIBUNAL DE PREMIÈRE INSTANCE

En vue d'assurer une défense efficace de l'accusé et de mettre en œuvre un certain nombre de principes constitutionnels dans les procédures pénales, l'objet de cet article est de déterminer les particularités de la procédure de défense de l'accusé par un avocat dans un tribunal de première instance. L'auteur souligne que la participation d'un avocat de la défense au tribunal de première instance, en particulier lors de l'audience préparatoire et du procès, est un élément important pour garantir une justice équitable. Il est établi qu'au cours de la procédure préparatoire, le rôle de l'avocat de la défense consiste à préparer une position juridique, à examiner et à vérifier les documents de procédure et à garantir la participation de l'accusé au procès. Il est établi que, dans les procédures judiciaires, le conseil de la défense joue un rôle clé dans les interrogatoires, en protégeant les intérêts de son client et en veillant à ce que l'enquête sur les circonstances de l'affaire soit complète. Il est souligné que l'organisation correcte de la participation de l'avocat de la défense à ces deux stades contribue à la réalisation de l'objectif de la procédure pénale – l'établissement de la vérité et l'adoption d'une décision légale.

Mots clés : procédure pénale, enquête préliminaire, défense, avocat de la défense, accusé, tribunal, représentation.

are resolved. This participation allows the lawyer to assess the judge's level of preparation, ascertain the prosecution's position, and identify important details of the case.

At the stage of the court hearing, to ensure compliance with procedural norms and proper order, the lawyer must perform the following actions:

Monitor the recording of the proceedings: Verify that the court hearing is fully recorded using technical means.

Motion for videoconference: If necessary, file a motion to conduct the hearing via videoconference.

Motion to exclude witnesses: Insist on excluding witnesses from the courtroom before the examination begins and demand that the court clerk ensure no communication between the examined and unexamined witnesses (Article 346 of the Criminal Procedure Code of Ukraine).

Announce the indictment: If necessary, file a motion for the prosecutor to read the indictment in full.

File a civil claim: Ensure that a brief statement of the claim is announced by the civil claimant or their representative, or in their absence, by the presiding judge if there is no motion to have it read in full.

Express a position on the scope of evidence and the order of its examination, ensuring that the order of its presentation is followed (first by the prosecution, then by the defense).

Timely react to changing circumstances by filing motions to change the scope of evidence or the order of its examination (Article 349 of the Criminal Procedure Code of Ukraine).

If necessary, file a motion to join or separate case materials.

Adhere to the sequence of motions, remembering that a denial of a motion does not deprive one of the right to file it again (Article 350 of the Criminal Procedure Code of Ukraine).

Cancel special proceedings: If the grounds for special proceedings cease to exist, demand that the court hearing begin according to the general rules (Part 4 of Article 323 of the Criminal Procedure Code of Ukraine).

If the accused objects to filming, address the court with a request to prohibit or stop the photographing or videotaping.

If there are grounds, file reasoned challenges to judges, jurors, the prosecutor, or other participants in the proceedings.

Insist on compliance with the provisions of Article 320 of the Criminal Procedure Code of Ukraine regarding the mandatory appointment of a reserve judge in complex criminal proceedings. These actions contribute to the proper protection of the defendant's rights and ensure compliance with the law during the court hearing.

In court proceedings, the court may interrogate the defendant, requiring defense counsel to coordinate with their client on evidentiary examination strategy. A key consideration is whether the defendant enters a guilty plea. If a party insists on examining specific evidence, the court cannot refuse, provided the evidence is relevant and admissible. Under Article 349 of Ukraine's Criminal Procedure Code, the presiding judge ascertains the parties' views on the scope and order of evidence examination.

The prosecution's evidence is examined first, followed by the defense's. The scope and order of examination are determined by court order and may be amend-



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СПЕЦИФИКА ОБОРОНЫ ОСКАРЖЕНОГО ПЕРЕД САДОМ ПЕРШОЇ ІНСТАНЦІЇ

В celu забезпечення skutecznej obrony oskarżonego, a także realizacji szeregu zasad konstytucyjnych w postępowaniu karnym, celem artykułu jest określenie specyfiki procedury obrony oskarżonego przez adwokata w sądzie pierwszej instancji. Autor podkreśla, że udział obrońcy w postępowaniu przed sądem pierwszej instancji, w szczególności w postępowaniu przygotowawczym i na rozprawie, jest istotnym elementem zapewnienia rzetelnego wymiaru sprawiedliwości. Ustalono, że w postępowaniu przygotowawczym rola obrońcy jest ukierunkowana na przygotowanie stanowiska procesowego, zapoznanie się i weryfikację dokumentów procesowych oraz zapewnienie udziału oskarżonego w rozprawie. Uzasadniono, że w postępowaniu sądowym obrońca pełni kluczową funkcję w przesłuchaniach, chroniąc interesy swojego klienta i zapewniając kompletność badania okoliczności sprawy. Podkreślono, że prawidłowa organizacja udziału obrońcy na obu etapach przyczynia się do osiągnięcia celu postępowania karnego – ustalenia prawdy i wydania zgodnego z prawem orzeczenia.

Słowa kluczowe: postępowanie karne, postępowanie przygotowawcze, obrona, obrońca, oskarżony, sąd, reprezentacja.

ed as necessary. Defense counsel's participation at this stage is crucial; their absence could have adverse consequences for the defendant, given the need to clearly define the case's legal prospects and assess which evidence should be examined. The Supreme Court has repeatedly documented violations of the right to defense stemming from inadequate notification of defense counsel regarding proceedings. For example, in its ruling of March 18, 2021, case Ref. No. 149/1596/16-к, the Court stated: "Despite the lack of confirmation that defense counsel had been notified of the proceedings, the appellate court proceeded with the hearing in the absence of both defense counsel and the accused. Considering the specific circumstances of this case, this constitutes a substantial violation of criminal procedure law, which could have affected the rendering of a lawful and well-founded judicial decision"². Based on foregoing, defense counsel's cassation appeal was granted, with noted violation serving as grounds for quashing challenged ruling pursuant to point 1, part 1, Article 438 Criminal Procedure Code Ukraine. In accordance with point 2, part 1, Article 436 Criminal Procedure Code Ukraine, new appellate review of this criminal proceeding is ordered.³

Defense counsel should prepare in advance written submissions with proposals regarding evidence to be examined, having coordinated chosen legal position with client. It should be noted that subsequent disagreement by accused with defense strategy and tactics previously agreed with counsel cannot be deemed limitation or violation right to defense if:

- accused independently selected counsel;
- executed legal aid agreement with counsel;
- during trial, voiced no complaints regarding counsel's actions, did not refuse counsel's services, nor requested appointment state-funded defense counsel.

Furthermore, if counsel representing accused prior to judgment is subsequently reinstated within prosecutorial authorities, this also does not constitute grounds for finding violation right to defense.

Defense counsel's closing argument during trial, at trial debates stage, plays key role. It comprises:

- analysis evidence from perspective defense defendant;
- reasoned arguments regarding substance indictment, classification criminal offense, proposals regarding sentencing;
- assessment circumstances bearing on defendant's liability.

Concluding part argument should persuasively formulate conclusions demonstrating acquittal is sole correct decision.

Conclusions. Defense counsel participation in court first instance, particularly during preparatory hearing and trial, is important component ensuring fair justice. In preparatory proceedings, defense counsel's role is directed toward preparing legal position, reviewing and verifying procedural documents, ensuring accused's participation trial. In trial, defense counsel performs key function in questioning, protecting client's interests, and ensuring complete examination case circumstances. Proper organization defense counsel participation at both stages facilitates achievement criminal proceedings' objective — establishing truth and rendering lawful decision.

² Шиян А. Г. Використання матеріалів досудового розслідування під час судового розгляду кримінального провадження в суді першої інстанції: теоретичні та практичні аспекти. *Науковий вісник Дніпровського державного університету внутрішніх справ*. 2024. № 1. С. 322-330. URL: <https://doi.org/10.31733/2078-3566-2023-1-322-330>.

³ Постанова Верховного Суду у справі № 149/1596/16-к від 18 березня 2021 р. Єдиний державний реєстр судових рішень. URL: <https://reyestr.court.gov.ua/Review/95708437>

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Received by Editorial Board: 11.10.2024

Suggested Citation:

- Kolomoitsev, M. (2024). Features of the Accused Defence in the First-Instance Court. *Archives of Criminology and Forensic Sciences*. 2 (10). 87-92. DOI: <https://doi.org/10.32353/acfs.10.2024.05>