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PRINCIPLES OF CRIMINAL PROCESS IN UKRAINE: PROBLEMS OF LEGISLATIVE DEFINITION AND ENFORCEMENT

Summary. The article deals with basis of criminal process – principles that serve as fundamental foundations and are considered to be the essentially guiding requirements for the functioning of the whole criminal procedure. Basic guarantees, human rights and freedoms are observed; fair trial is carried out through the implementation of all principles of criminal process. The fact that the foundations of criminal process are set out in a separate section of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine) directly indicates the importance of this element, not only in a procedural sense, but also in legal sense. Compliance with the principles of criminal process, including during judicial investigations, directly influences the adoption of fair, lawful and reasoned decisions in cases. Furthermore, compliance with all principles of criminal process is, in a certain sense, one of the most important guarantees of respect for human and civil rights and freedoms.

The article examines the essence, general and specific features of the principles of criminal process, their significance and role; it also forms the concept of the criminal process principles. The supplementing Article 3 of the Criminal Procedure Code of Ukraine ‘Definition of the main terms of the Code’ with the paragraph 13-1of following content: ‘The principles of criminal process are international, constitutional and other legislative standards in the field of protection of human rights and freedoms’ is proposed; which is going to determine the essential direction of criminal process as a separate type of state activity.

Key words: principles, foundations, criminal process, criminal proceedings, human rights and guarantees, freedoms, the Criminal Procedure Code of Ukraine.

Introduction. The relevance of chosen research topic lies in the fact that the principles of criminal process, which are guiding the basic legal provisions, embody the fundamental and core basis for the construction and functioning of criminal procedural legislation and shape the democratic orientation of its content. At present, there is still no consensus in legal doctrine on such important issues as the definition the criminal process principles and their enshrinement in legislative norms. The concept of the principles of criminal process is absent in criminal procedural legislation of Ukraine. However, principles are usually understood as fundamental, guiding foundations that reflect the most essential aspects of criminal process, its objectives, nature, system of procedural forms, stages and institutions. The issue of defining the concept of criminal process principles has repeatedly been the subject of scientific attention, but still there is no legislative definition. Therefore, the issue of defining the concept of criminal process principles and their content

naturally gives rise to many scientific discussions and, at the same time, causes controversial and ambiguous opinions in law enforcement. At various times, the peculiarities of the principles of criminal process have been studied by such scholars as I.L. Bepalko, P.S. Berzin, A.B. Berzina, R.A. Volynets, N.V. Hlynska, A.B. Hryniak, O.G. Zhuravlov, O.O. Kot, L.M. Loboyko, O.I. Marochkin, N.V. Milovska, D.B. Sanakoiev, O.M. Skriabin and other authors whose works have become the scientific basis for studying this topic.

Purpose statement is the analysis of theoretical aspects of the foundations of criminal process, as well as the analysis of existing problems related to the definition of the concept of criminal process principles in Ukraine, taking into account the scientific provisions and the foundations of criminal proceedings provided for by law; research into their significance, identification of existing problems related to the normative consolidation of such principles in the criminal process of Ukraine.

Main part of the research paper. In accordance with the basic provisions of legal doctrine, principles are considered to be a generalised and multifaceted phenomenon. This concept is evaluative in nature, but at the same time serves as a guarantee of strict compliance with certain established social and legislative requirements. In theory of state and law, principles are understood as fundamental, basic ideas of law that determine its essence; as basic provisions that express state policy in key areas of legal regulation; as the foundations of the structure and functioning of specific branches and institutions of law. The principles of law are always imperative in nature as universally binding requirements; they are the most important elements of the legal system. Thus, according to scholars O.O. Kot, A.B. Hryniak, and N.V. Milovska, a principle is a fundamental basis and foundation: ‘it is the main thing on which something is based; it is the starting point, the main position, the basis of a worldview, a rule of conduct’ [7, p. 7]. In addition, considering the peculiarities of the principles of criminal procedure, the scientist I.L. Bepalko notes in his monographic study that principles can be considered ‘the basis of any theory’ [2, p. 9]. Therefore, in this case, we can say that the principles of law are considered to be the guiding ideas, characterising the content of law, its essence and purpose in society, and determining the general direction of legal regulation of social relations. Legal ideas or ideals only become principles of law when they are enshrined in normative acts. Therefore, it seems reasonable to agree with the aforementioned author I.L. Bepalko, who draws attention to the scientific problem, which is expressed in the fact that the ‘absence of a definition of the concept of the principle of criminal process in criminal procedure legislation entails problems with the correct application of the

directive contained in the legal norm' [2, p. 9]. As a result, the researcher emphasises the expediency of introducing the following definition of the principles of criminal process into the Criminal Procedure Code of Ukraine dated 13 April 2012 No. 4651-VI [5] (hereinafter referred to as the CPC of Ukraine): 'The principles of criminal process are the mandatory requirements enshrined in constitutional, international and criminal procedural norms, which form the basis of the entire system of criminal procedural legislation and express the essence, objectives, structure and directions for the further development of criminal process as a special system of state activity' [2, p. 26–27].

Taking into account all mentioned above, we can conclude that the principles of criminal process are the most general, basic provisions that characterise criminal procedure as a whole, its institutions, stages, procedural status of subjects of procedural activity, etc. In other words, the principles act as basic guiding ideas that determine the direction of criminal proceedings as a whole. Unconditional compliance with (implementation of) the principles is a necessary condition for the administration of justice and the most important guarantee of the effective implementation of the purpose criminal proceedings purpose.

The current Criminal Procedure Code of Ukraine does not actually provide for the concept of principles of criminal process, but at the same time (which is no less important) it enshrines a list of foundations of criminal proceedings in Article 7, namely: '1) rule of law; 2) legitimacy; 3) equality before law and court; 4) respect for human dignity; 5) ensuring the right to liberty and security of person; 6) inviolability of home or any other possession of a person; 7) confidentiality of communication; 8) non-interference in private life; 9) security of the right to property; 10) presumption of innocence and conclusive proof of guilt; 11) freedom from self-incrimination and the right to not testify against one's close relatives and family members; 12) prohibition of double jeopardy; 13) ensuring the right to defence; 14) access to justice and the binding nature of court rulings; 15) adversarial nature of parties, freedom to present their evidence to the court and prove the preponderance of this evidence before the court; 16) directness of examination of testimonies, objects and documents; 17) ensuring the right to challenge procedural decisions, acts or omissions; 18) publicity of criminal proceedings; 19) optionality of criminal proceedings; 20) publicity and openness of judicial proceedings and their full recording using technical means; 21) reasonable time for criminal proceedings; 22) language of the criminal proceedings' [5]. Comparing the content of the principles of criminal proceedings and the principles of criminal process, the author O.G. Zhuravlov points out that the latter have a broader meaning than the former, since they 'determine the structure of the entire procedural system, as well as its individual stages' [8, p. 50]. This position is scientifically sound, since the principles of criminal process primarily determine the content of all criminal procedural norms and, in fact, criminal procedural activities, which are designed to ensure uniform practice in their application. Furthermore, unlike the legally established foundations of criminal proceedings, the principles of criminal process must be applied at all stages of criminal process, not just at certain stages, directing criminal procedural activities in the right direction. The complexity of the substantive relationship between the principles of criminal process and the foundations of criminal proceedings is explained, first of all, by the absence of their concepts in the Article 3 'Definition of Basic Terms' of the CPC of Ukraine,

which creates a favourable environment for ongoing scientific discussions. According to a number of authors, this situation is a gap in both criminal procedure legislation and law enforcement. Therefore, for a more complete understanding of the essence of the principles of criminal process we propose to highlight their common features:

- 1) the principles are fundamental in nature;
- 2) the principles must be enshrined in criminal procedure legislation;
- 3) the principles reflect the direction and the essence of criminal proceedings, as well as the purpose of criminal justice;
- 4) they are imperative in nature;
- 5) they do not contain sanctions;
- 6) they are distinguished by their long history and application;
- 7) they reflect the basic patterns of development of society and its needs;
- 8) they have independent significance in implementation of criminal proceedings and their objectives;
- 9) the principles of criminal process are interrelated with the principles of criminal law;
- 10) the principles are applied to all stages of criminal process.

The identified characteristics provide a general understanding of the criminal process principles, but we propose to highlight the substantive essence of the fundamental guiding principles of criminal process by revealing the most important features – the specific characteristics of the principles of criminal process in Ukraine, which are listed below.

1. The principles of criminal process are guiding legal ideas that reflect the socio-political, moral and legal ideals prevailing in society, as well as the objective patterns of socio-economic and political development of society and the state. Thus, according to the authors of the monographic study 'Conceptual Foundations of the Modern Criminal Process of Ukraine' by N.V. Hlynska, L.M. Loboiko and O.I. Marochkin, 'criminal procedural policy is a kind of adapter of social needs and expectations of society from the procedure for resolving criminal law conflicts' [4, p. 120]. The principles of criminal process have been shaped by the idea of Ukraine as a social state. The task of every social state is to create conditions, ensuring dignified life and free development for its citizens. That is why the principles of criminal process are closely linked to such general constitutional principles as the rule of law (Article 8 of the Constitution of Ukraine); equality of all before the law and the courts (Articles 21 and 24 of the Constitution of Ukraine); the inviolability of life, personal and family privacy (Articles 27 and 29 of the Constitution of Ukraine); human dignity and humanism (Articles 3, 21 and 28 of the Constitution of Ukraine); guarantees of the use of one's native language (Article 10 of the Constitution of Ukraine) and other basic constitutional principles [3]. All the principles of criminal procedure are based on the fact that human beings, their rights and freedoms are the highest social value (Article 3 of the Constitution of Ukraine) [3], which is the main idea of a democratic, social and legal state. These principles reveal one of the most important values of law as a guarantee of natural and inalienable freedoms of every person: the right to life, health, personal freedom, inviolability, security, the right to protect one's honour, dignity and reputation, as well as to protect from arbitrary interference in one's private life.

2. The principles of criminal process are a kind of guideline, i.e. they are subject to direct guidance in practice and are binding on

all participants in criminal proceedings. The binding nature of the principles of criminal process is guaranteed by their enshrinement in the Constitution of Ukraine, which has supreme legal force and directly applicable legal norms.

3. The principles of criminal process are applied to all stages of criminal procedure, forming a certain ideological orientation of the entire criminal process. It should be noted that the principles of criminal process not only express the essence and content of the entire criminal procedure, but also determine the subject and method of procedural regulation, and, the most importantly, characterise the level of protection of human rights and freedoms in the criminal process as a whole. The principles embody the essence of the entire criminal process, its characteristic features, and ensure the organisation of the criminal procedure as a whole, all its stages, proceedings and institutions. Therefore, being fundamental in nature, the principles of criminal process determine the essence and content of all criminal procedural norms. The legislative norms of criminal procedural law must be formulated in accordance with the content of the established principles.

4. All the principles of criminal process are expressed in normative terms and enshrined in law, and therefore have a normative, legal, authoritative and binding character. The enshrinement of principles in law ensures their direct regulatory influence on criminal procedural relations. It is well known that, no matter how valuable a scientific idea or legal opinion may be, it will not become a principle of criminal process until it acquires its normative form. Most of the principles are enshrined in specific articles of the Constitution of Ukraine in the form of guiding legal ideas; and the mechanism for their implementation in criminal procedural relations is provided for in the norms of the CPC of Ukraine.

5. The principles of criminal process are designed to ensure comprehensive protection of human rights and freedoms through the adoption of lawful decisions in criminal proceedings, ensuring the completeness, comprehensiveness and objectivity of the investigation of all circumstances of the violence committed. It is no coincidence that the doctrine of criminal process is dominated by the view that the principle of legality is one of the most important principles in criminal process. Thus, according to O.M. Skriabin and D.B. Sanakoev, 'the principle of legality is central to criminal process, as it is reflected in the key provisions of the Constitutions of modern states. Compliance with and recognition of the principle of legality is an exclusively internal matter for each state, while on the other hand, legality is considered a universal cultural value and falls within the sphere of international legal regulation' [6, p. 254]. At the same time, while researching the importance of the principle of legality for criminal proceedings, scholars P.S. Berzin, R.A. Volynets, and A.B. Berzina note that legality is the main lever that activates the mechanism of legal regulation of criminal process: 'the principle of legality is directly linked to criminal law regulation and its mechanism, influencing its "work" in modes of violation and compliance with criminal law norms and prohibitions' [1, p. 121]. Thus, the significance of the principle of legality in criminal process lies in the fact that it encompasses the entire system of principles, and all principles express its essence. The principles of criminal process do not supplement the principle of legality, but rather specify it. In fact, these procedural principles are principles for implementing legality in criminal proceedings, which is why the relationship between legality and principles in criminal proceedings

can be formulated as general and specific. Thus, legality in criminal process is the totality of all requirements established by law for the activities of the state, its representatives, citizens, natural and legal persons, as well as all other participants in social relations in the law-making and law-enforcement spheres of the implementation of criminal procedural relations.

6. All the principles of criminal process form an integral system, where the content and purpose of each guiding idea are determined by the functioning of the entire system. Violation of one principle usually entails violation of a number of other principles of criminal process and serves as a basis for the cancellation of decisions made not only by state bodies but also by citizens. The principles of criminal process are interrelated; and the implementation of one of them is linked to the implementation of another or others. Thus, it is impossible to talk about the implementation of the principle of right to defence if a person who does not speak the language of the proceedings is not provided with an interpreter. The set of principles constitutes a single system, and it is precisely on the basis of this system of principles that we can talk about the type of process, its essence and purpose at a particular stage of development of a particular state.

7. The principles of criminal process are authoritative and imperative in nature. The principles of criminal procedure are requirements for certain activities; and these requirements must be directly related to the objectives of criminal procedural activities. The performance of these activities must guarantee the achievement of the set goals, and failure to perform or improper performance must call into question the outcome of all criminal proceedings.

8. The main functional focus of the principles of criminal process should be as follows: protecting the rights and legitimate interests of individuals and organisations that have suffered from violences; protecting individuals from unlawful and unfounded accusations, convictions, and restrictions on their rights and freedoms. In general, the principles of criminal process should embody all the functions of criminal procedural law. In the field of law-making, principles play a system-forming and integrating role and serve as guidelines for further improvement of legislation. They also have a stabilising function, since changes in the law should be consistent with the system of principles. In law enforcement, principles perform a protective and regulatory function to a certain extent, and in the event of gaps or contradictions in legal regulation, they perform an interpretative function.

The established characteristics and features of the principles of criminal process testify to their great social value. They act as a legal means of ensuring objective and fair resolution of criminal cases on their merits and the adoption of a lawful, reasoned and fair procedural decision within a reasonable time, i.e. as a guarantee of the administration of justice. The principles of criminal process are fundamental to all criminal procedural institutions and to the activities of all participants in the criminal process.

Conclusions and proposals. In summary, we note that the principles of criminal process can be defined as fundamental guiding ideas that are applied to all stages of criminal process, determine its purpose and objectives, structure, and content of each provision of criminal procedural law and establish the rights and obligations of participants in criminal proceedings in order to ensure their rights and freedoms. In this regard, we propose to enshrine the definition of the principles of criminal procedure in the provisions of the CPC of Ukraine by supplementing Article 3

of the CPC of Ukraine, 'Definition of Basic Terms of the Code' with the paragraph 13¹ of the following content: 'The principles of criminal process are international, constitutional and other legislative regulatory standards in the field of protection of human rights and freedoms, which determine the essential direction of criminal process as a separate type of state activity'; which will make it possible to consider them in the context of the principles of the entire criminal procedure, rather than the separate principles of criminal proceedings or judicial proceedings, and will form the ideological basis for all criminal procedural activities. The significance of the principles of criminal process lies in the fact that, firstly, they reflect the democratic and humanistic nature of criminal process, its forms, stages and institutions; secondly, they are a basic means of ensuring the activities of the bodies of inquiry, investigation, prosecution and the court; thirdly, they are a necessary means of interpreting criminal procedure rules, the content of which causes difficulties in practice; and fourthly, they are the most important condition in the sphere of observance of the rights and freedoms of human beings and citizens of Ukraine.

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Мельничук Р. Принципи кримінального процесу України: проблеми законодавчого визначення та закріплення

Анотація. Стаття присвячена розгляду основ кримінального процесу – принципам, які виступають як основоположні засади та за своєю суттю є керівними вимогами для функціонування кримінального процесу. Завдяки реалізації всіх принципів кримінального процесу дотримуються основні гарантії, права і свободи людини, здійснюється справедливий судовий розгляд. Виокремлення принципів кримінального провадження в окремий розділ Кримінального процесуального кодексу України (далі – КПК України) безпосередньо вказує на важливість цього елемента, причому не тільки в процесуальному сенсі, а й у системі права. Дотримання принципів кримінального процесу, в тому числі й під час здійснення судового слідства, безпосередньо впливає на ухвалення справедливого, законного та обґрунтованого рішення у справі. Крім того, дотримання всіх принципів кримінального процесу в певному розумінні є одним із найважливіших гарантів дотримання прав і свобод людини і громадянина.

У статті здійснено вивчення сутності, загальних та спеціальних ознак принципів кримінального процесу, їхнього значення та ролі, сформоване поняття ознак принципів кримінального процесу, а також доповнивши статтю 3 КПК України "Визначення основних термінів Кодексу пунктом 13¹ наступного змісту: "принципи кримінального процесу – це міжнародні, конституційні та інші законодавчі нормативні стандарти у сфері захисту прав та свобод людини, які визначають сутнісне спрямування кримінального процесу як окремого виду державної діяльності"

Ключові слова: принципи, засади, кримінальний процес, кримінальне провадження, права та гарантії людини, свободи, Кримінальний процесуальний кодекс України.

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