

## **The question of reforming the criminal procedural law of Ukraine in modern conditions**

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The creation of legal guarantees of a balanced ratio of interests of the individual and the state in the fight against crime is an important task of modern legal science, law enforcement and rule-making activities. Ukraine's interest in further integration into the European community presupposes harmonization of Ukrainian legislation with a focus on protecting the rights and freedoms of a man and a citizen, implementation and the real appreciation of the rule of law principle. The essence of this policy is to optimize and to improve the efficiency of the system of criminal justice.

It should be noted that researches of many scholars are devoted to the consideration of the modern tendencies of reforming the criminal procedural law. An analysis of their publications allows to conclude that the basis of transformation of the criminal procedural legislation in Ukraine make up the centuries-old national traditions of law-making and the provisions of domestic law, which passed the test of time and meet European standards [1, p. 15]. The research also focuses on the positive experience of the functioning of the system of criminal justice and generally accepted international standards for the protection of human rights and freedoms.

We should agree with the opinion of scholars and experts who consider that a characteristic feature of the Criminal Procedural Code of Ukraine adopted in 2012, is that it takes into account current scientific ideas in the field of criminal procedural rights [2]. According to O.V. Kaplina, V.D. Shvets [3, p. 44; 4, p. 17] and other

scholars, new Criminal Procedural Code of Ukraine is different from the established notions of the criminal procedure in general. Today there is a tendency to determine an exhaustive list of the principles of criminal justice and the content of each of them in the criminal procedural law of Ukraine. The current Criminal Procedural Code extends the range of subjects of criminal procedure (the investigative judge, bailiff, pledger) and improves the procedural status of some of them. There are measures to ensure the criminal proceedings such as court call, the imposition of a monetary penalty, a temporary restriction in the use of a special right, the dismissal, the arrest of property. Also current Criminal Procedural Code introduces new measures – the house arrest, the use of electronic control devices. The procedure of initiating pre-trial investigation was changed, the idea of differentiating forms of pre-trial investigation depending on the gravity of the criminal offense was implemented. The institution of the return of criminal cases back for further investigation was abolished, which should improve the quality of the preliminary investigation according to the legislator.

Moreover, special procedures of proceedings in criminal cases, international cooperation while investigations and trials are regulated in details; the institution of restoration of the lost materials of criminal proceedings is introduced [5, p. 285].

The number of other provisions of the Criminal Procedural Code of Ukraine should be supported, in particular, compliance with reasonable terms in pre-trial and trial proceedings, the establishment of appropriate mechanisms to obtain legal aid to suspects, defendants, victims, the introduction of elements of remote justice, jury trial, etc.

However, it should be noted that certain provisions have uncertainty in terminology. Sometimes, for identifying the basic concepts of the criminal proceedings, the using terms are ambiguously perceived both by scholars and practitioners. A significant number of provisions are controversial. For example, in the first section of the Code, "General Provisions", in the second chapter (Art. 7 of the Criminal Procedural Code) "Fundamentals of criminal proceedings" the legislator does not mention such important principles of criminal procedure as the

independence and integrity of judges and their submission only to the law. It should be noted that these principles are essential to ensure the rights and lawful interests of individuals in criminal proceedings. They are guarantees for adoption of law-based and equitable solutions. It is not a coincidence that they are enshrined in the Constitution of Ukraine. Thus, mentioned principles of criminal proceedings should be provided in the Criminal Procedural Code of Ukraine.

In the third chapter "The court, the parties and other participants in criminal proceedings" (Art. 33 of the Criminal Procedural Code) the concept of "level arrangement jurisdiction" is provided and the courts of first, appeal and cassation instances that hear criminal cases are indicated. Also this chapter adjusts reopening cases upon discovery of new facts. It should be noted that level arrangement jurisdiction in the criminal proceedings exists in order to distribute powers of courts of first instance that are authorized to hear cases. The concept of level arrangement jurisdiction has no relation to the courts of appeal and cassation instance, the Supreme Court of Ukraine, because they are not authorized to hear criminal cases on the merits as courts of first instance.

Some provisions of the Code (p. 3 of the Art. 46 of the Criminal Procedural Code) restrict groundlessly the rights of a suspect and accused. Thus, the Code provides a suspect or accused can't have more than five defenders at the same time. In the legal acts including international ones, which regulate the right on defense, there are no limitations on the number of defenders invited by a suspect or accused. So, the relevant provisions of the Code can be regarded as those, that limiting the rights of suspects and accused to a free choice of the defender.

Certain articles of the Code, which contain general rules of participation of the defender, do not provide conditions for the legality of replacing the defender in criminal proceedings. We consider this as a significant gap in the regulation of the right of a suspect or accused to have defense. This could affect limitations of the right to defense in practice. It is necessary to supplement the provisions of the relevant articles of the Criminal Procedural Code. The replacement of one defender by another may take place only at the request or with the consent of a suspect, an accused or a

defendant. The replacement of the defender cannot be done without accounting the will of a suspect, an accused or a defendant. If it is done against their will, it is a violation of the right on defense.

In the second section "Measures to ensure criminal proceedings" concepts and types of measures, common grounds of their application are defined. Procedural rules of court call, temporary restriction in the use of a special right, temporary access to the objects and documents of the criminal proceedings, temporary seizure of property, arrest of property, detention of a person are regulated. It is controversial to isolate measures to ensure criminal proceedings in separate section. Provisions on the concept, the grounds, the purpose of the application of such measures, their types and classification refer traditionally to general part of the theoretical course of the science of criminal proceedings, and they take place in legislation in the sections devoted to general provisions.

In conclusion we must say that adoption of the Criminal Procedural Code of 2012 and further changes in the legislation allow to make an important step towards the rule of law principle and the development of Ukraine. The main objective of the legal and democratic state in the field of criminal justice is not only the punishment of the guilty party, but also providing such persons with more opportunities for effective protection of their rights, freedoms and interests.

#### References:

1. O. M. Bandurka, Current Issues of Implementing the New Criminal Procedural Code of Ukraine within the Activity of Internal Affairs Agencies and Personnel Training. Current Issues of Implementing the New Criminal Procedural Legislation of Ukraine and Tendencies of Criminalistics Development at the Present Stage / Materials of All-Ukrainian scientific and practical conference (Kharkiv, October 5, 2012) the Ministry of Internal Affairs of Ukraine. - P. 15-19.
2. Criminal Procedural Code of Ukraine dated from April 13, 2012 No. 4651-VI [Internet Resource]: Official Web-site-portal of Verkhovna Rada of Ukraine. – Access: <http://zakon2.rada.gov.ua/laws/show/4651-17>

3. O. V. Kaplina, The problems of Reforming Criminal Judicial Proceedings of Ukraine / O. V. Kaplina // Pre-trial Investigation: Urgent Problems and the Ways of solution : scientific and practical seminar (October 23, 2009). - Kh. : Institute of Training Legal Personnel for the Security Service of Ukraine of Yaroslav Mudryi National Law Academy of Ukraine; Oberih, 2009. - 310 p.

4. V. D. Shvets, Criminal Procedural Legislation of Ukraine: the Concept and Paradigm of Modernity / V. D. Shvets // Theory and Practice of Criminal Judicial Proceedings: materials of international scientific and practical conference (Kharkiv : May 20-21, 2011 / the Ministry of Internal Affairs of Ukraine; Kharkiv National University of Internal Affairs; - Kh. : TITUL, 2011. - 322 p.

5. Yu. P. Yanovych, Some Organizational and Legal Issues of Reforming the Pre-Trial Investigation in the Criminal Procedure of Ukraine / Problems of reforming Criminal Procedural and Criminal Legislation of Ukraine: materials of international scientific and practical conference (Kharkiv, October 14, 2011.), KhNUVS, 2011. - p. 285-287.