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## SYSTEM OF PRINCIPLES OF THE CRIMINAL PROCEDURE OF UKRAINE (DEFINING THE CONCEPT, UNDERLYING THE FEATURES)

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### SUMMARY

Given the regulatory purpose of the principles of the criminal procedure, it should be considered that it can only be implemented within the system. In this regard, the nature of the system of principles of the criminal procedure was studied in this work. Consistency is considered as one of the features of the given fundamental requirements. Its conditions are investigated. Attention is given to the interrelation of the principles of criminal proceeding, which is the basis of their consistency. As a result, the analysis of the criteria for the interrelation of the system of principles of the criminal procedure is carried out. Some conclusions and suggestions regarding the improvement of the criminal procedural legislation are formulated.

**Key words:** principles of criminal procedure, system of principles of criminal procedure, interrelation, objectives of criminal procedure, legitimacy.

## СИСТЕМА ПРИНЦИПОВ УГОЛОВНОГО ПРОЦЕССА УКРАИНЫ (ОПРЕДЕЛЕНИЕ ПОНЯТИЯ, ВЫДЕЛЕНИЕ ПРИЗНАКОВ)

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### АННОТАЦИЯ

Учитывая регуляторное предназначение принципов уголовного процесса, необходимо учитывать, что оно может быть реализовано только в системе. В связи с этим в данной работе была исследована природа системы принципов уголовного процесса. Системность рассматривается как один из признаков основополагающих требований. Исследуются ее условия. Уделяется внимание взаимосвязи принципов уголовного производства, которая является основой их системности. Как следствие, осуществляется анализ критериев взаимосвязи системы принципов уголовного процесса. Сформулированы некоторые выводы и предложения касательно усовершенствования уголовного процессуального законодательства.

**Ключевые слова:** принципы уголовного производства, система принципов уголовного производства, взаимосвязь, задачи уголовного производства, законность.

**Urgency of the research.** Foundations of the criminal proceeding are the most general, principal and fundamental legal provisions characterized by supremacy over other norms of criminal procedural activity, which, in turn, should proceed from the foundations, specify the action of any foundation, but at least not contradict them. They operate in close interrelation with each other. This is due to the fact that each of them can only be implemented under condition of proper execution and observance of all other foundations, that is, within the system. The study of this issue is very important, since the foundations of the criminal procedure can only reflect the essence, content, structure and form of criminal proceeding, characterize its historical type, national traditions, be the guidelines for fixing its objectives and building a criminal procedure system, define the subject and method of the legal reg-

ulation of criminal procedural activities, the level of development of the scientific thought and legal culture, dominant ideology and other objective factors within the system. The given work will reveal the properties of the system of the foundations of criminal proceeding, determine the impact of a separate foundation on the whole system depending on its content, develop proposals for the legislative consolidation of the content of a separate foundation in such a way that could let the whole system function properly.

**Study status.** The criminal procedural activity obeys the general foundations, which, in fact, act as regulators of such activity. The functional purpose of each separate foundation depends not only on its content, but also on the properties and content of all other foundations, which are united into one system. Understanding their legal nature will be incomplete without paying due attention

to the features of the given provisions. One of them, consistency, is investigated in this work. Many scholars have performed research of the given issue, namely: S.A. Alpert, M.M. Hrodzynskyi, Y.M. Hroshevoi, T.M. Dobrovolska, B.C. Zelenetskyi, O.V. Kaplina, L.M. Loboiko, V.T. Maliarenko, V.I. Maryniv, M.A. Markush, T.M. Myroshnychenko, M.M. Mykheienko, V.T. Nor, M.M. Polianskyi, A.L. Ryvlin, M.S. Strohovysh, I.V. Tyrichev, A.R. Tumamians, I.Y. Foinytskyi, M.O. Cheltsov, O.H. Shylo, M.Y. Shumylo and colleagues.

**Scope and objectives of the article** are aimed at the study of the legal nature of the system of the foundations of criminal proceeding of Ukraine, the establishment and study of its features and conditions of proper functioning. As a consequence to define the system of the foundations of criminal proceeding.



### Methods and materials used.

The methodological ground of this article constitutes a number of general scientific and special legal methods for the knowledge of legal phenomena. The application of the system of the given methods is conditioned by the specificity of the issues concerned and allows ensuring the reliability of the results obtained, the correctness of the formulated conclusions, the solution of the above tasks and achievement of the set goal. The system-structural method gives an opportunity to analyze a systematic approach to the foundations of criminal proceeding, as well as identify a set of features of their system.

The author used a variety of theoretical methods, analyzed literary sources and normative acts for a detailed analysis of the legal nature of the system of the foundations of criminal proceeding. The general dialectical method of scientific knowledge of reality is applied in the given work implying the consideration of phenomena in their interrelation, unity and development. This helps to imagine and thoroughly explore the nature of the system of the foundations of the criminal procedure. Historical and legal method allows tracing the tendencies of development of normative provisions and scientific views in time. The application of the formal-logical method is conditioned by the need for the formulation of the conceptual-categorical apparatus of the study. The method of generalization contributes to the consistent construction of individual facts into a single entity as well as the formation of substantiated conclusions regarding the systemic nature of the foundations of criminal proceeding. The given methods are used in the interrelation and interdependence ensuring the comprehensiveness, completeness and objectivity of the scientific results obtained.

### Statement of basic materials.

The decision on the essence of a systematic approach to the foundations of criminal proceeding is largely due to what needs to be understood under the term "system", unlike any other type of scientific analysis. One can find about a hundred definitions of the notion "system" in the literature on the theory of systems, and at the same time, any of them is incomplete in a detailed study. It

surely is necessary to take the specific areas of its use into account. If we talk about the legal sphere, then the system can be defined as a certain set of objects interconnected in a certain way, and which, due to such interrelation, form a new entity, not identical to the sum of the components. Any system in the law is a set of elements conditioned by the combination of private and public interests, whose internal organization is characterized by their unity, conformity, differentiation and grouping into relatively independent structures.

First of all, it is necessary to highlight the general properties of any system:

1) *integrity*, which lies in the fact that all elements united form a single entity – the system. This quality is determined by: the commitment to fulfilling common functions and achieving a single goal; impossibility of elements to act in isolation; unity of the legal system. The loss of integrity of a system can be compared with the damage of any part in a particular mechanism or device, which would make it not fit for its intended purpose; 2) *conformity* reflects the system as a union of elements that have genetic and functional coordination (horizontal) connection, and is characterized by the absence of contradictions between these elements, since each of them performs the role specifically assigned being in that place with the highest efficiency; 3) *internal structuring (organized nature)* meaning the unification of individual elements in the cells different in scope with regard to the relevant criteria. The organized nature of the system is expressed in the fact that its elements are united into a single entity whole not by chance, but organically, on the basis of clear interrelation.

These properties surely are characteristic to the system of criminal proceeding, but it is necessary to take into account the specifics of this sphere of state activity. As well as noted by R. Kh. Yakupov, the system of principles of criminal procedure should be built on the basis of certain requirements - adequacy, integrity, completeness, noncontradiction and independence [366, p. 54]. We consider it necessary to study them in more detail.

Adequacy should imply such a level of generalization of the foundations, which will reflect the qualitatively determined properties of the investigated object. A too high level will result in the loss of the ability to adequately capture the necessary essential qualities of the object. An insufficient level of generalization will inevitably cause the distribution of the foundations into provisions that have no signs of features inherent to the foundations.

First of all, the system is the integrity, which lies in the fact that the unification of its components is mandatory. This is due to the unity of their tasks, natural connection and interaction in the process of functioning. A distinction of the integrity of the relevant system is that the unification of the relevant parts occurs under the influence of the whole entity. Despite the fact that parts create a whole entity, the whole entity itself determines their totality, content and form, functional purpose and role in the integral system, forms and methods of their interaction combining its parts. The criminal procedure proceeds in time and space. As a system of stages consistently changing each other and having a corresponding range of tasks, the subjects involved. The system of the foundations of the criminal procedure has a property of integrity, however, there is an opinion in the criminal procedural literature about the possibility of separating the principles of an individual stage of the procedure. So, for example, V.S. Zelenetskyi distinguishes the principles of the stage of instituting criminal proceedings. The author notes that the independent principles of the preprosecutorial criminal procedure (that is, the stages of instituting criminal proceedings) are the principles (a) of the mandatory nature of admission, registration, verification and settlement of applications, statements and other information on a crime; (b) the principle of sufficient activity of state bodies in receiving, registering, verifying and settling the applications, statements and other information on a crime [109, p. 4–11]. As you can see, these provisions are nothing more than a manifestation of the foundation of publicity. Not all foundations of criminal proceeding are manifested at all stages in the same way. But the fact that some



lawyers consider the foundations of any given stages and institutions as independent is nothing more than a direct manifestation of procedural foundations with careful study, the expression of their requirements for the relevant stages and institutes of criminal proceeding. That is why one should agree with the opinion of S.A. Alpert, that there are no and cannot be independent principles inherent in any given stage [19, p. 67]. The integrity of the criminal procedure system, the close connection of all its stages are ensured above all by the fact that they are based on the general foundations of the procedure. This surely does not exclude the fact that they receive a peculiar expression in each stage, which is determined by its tasks and conditions.

The integrity of the system is a consequence of its completeness. Only a system of foundations that can adequately reflect the nature of the criminal procedure, its main qualities and regularities can be recognized as complete. It is complete only if the foundations making it provide the necessary conditions and legal guarantees for obtaining the result as a consequence of achieving the ultimate goal of the procedure [366, p. 58]. The completeness of the system should ensure the number of foundations, which will logically prove, explain the lawfulness of finding any procedural norm in this field of law.

The noncontradiction of the system means the absence of mutually exclusive foundations. They must be content with each other and not contradict. Independence presupposes that each system-forming foundation should have own, relatively autonomous content. Principles do not appear, disappear and change their content depending on the subjective desire of individuals. The system of the foundations of criminal proceedings acquires the qualities of an objective phenomenon being socially conditioned, because it is not formed as a result of arbitrary discretion of the subject of rulemaking, but is a legal reflection of the system of objectively existing social relations, since it is formed in accordance with the requirements of society and can change its own internal building responding to the dynamics of social needs. This, in turn, suggests that the system of founda-

tions is a collection of independent in its content, but interrelated and objectively determined provisions, which form the qualitative unity in this collection ensuring the stability of the system. All the above gives us the opportunity to call *consistency* one of the main features of the system of the foundations of criminal proceeding, and the disclosure of its legal nature is a prerequisite for proper understanding and application of the foundations.

Further to the above the conditions of the consistency of criminal procedure foundations should be considered. The first one should be called *interrelation*. The foundations are the interrelated system of legal norms that is the basis of the criminal procedural law. The value of each of the foundations is determined not only by its own content, but also functioning of the entire system of foundations, which suggests their interrelation, interconditionality as well as the conformity of their contents and implementation forms. Such interrelation ensures the unity of procedural order in all criminal proceedings. The consistent implementation of any of the foundations also implies the most rigorous observance of all others. Any system is primarily a set of elements that exist in unity and interrelation, where the failure of one foundation, of course, leads to violating others. So we face such a feature of the system of criminal procedure foundations as *interrelation*, which is what all foundations cannot act separately, and, therefore, they operate in a system where the ultimate goal of the procedure is only possible with the due respect to the entire foundations system. If such a relation does not exist, then we cannot talk about the procedure as a whole entity. Any given multiplicity of objects can only be recognized by the system in the presence of the system-linking connections. At the same time, it should be borne in mind that all questions of the system structure should be investigated in their inextricable connection with the object itself according to Y.M. Hroshevoi, as the structure is unable to fully describe the contents of the system separate from the content of the foundations [61, p. 73].

The question about the significance of each foundation has the great importance of forming a whole picture

of the foundations system. Summarizing the above we note that each foundation has an independent content within the framework of the whole system that should not duplicate other foundations. At the same time the principles determine each other and very often serve as guarantees for ensuring other foundations. Each foundation is in close contact, interacts with other foundations, but it retains its own value for the construction and progress of the procedure, its legal content. It is clear that foundations of the criminal procedure differ in the content and scope, sometimes essentially, but the difference is rather purely quantitative rather than qualitative. Therefore, it is impossible to divide the foundations into main and secondary ones. The foundations transfer a part of their properties to each other being in constant interaction creating a mutually conditioned integral basis for normative regulation of all procedural legal relationships. However, this does not mean that the content of one foundation is entirely reduced to the content of another. They have at the same time an independent content being interconnected with each other. That is, the *qualitative certainty* of each of the united foundations is one of the conditions of their consistency.

The foundations of the criminal procedure are equal, united, but there is a certain hierarchy among them. The foundations are a system of one-order structures distinguishing among themselves in terms of the content and nature of legal requirements, where there are no links and relations of subordination. It may be argued that there are subordinate links in the general system of foundations in the legal field, which is based on their differentiation into general legal, interbranch and branch ones. The given classification is based on the difference of the areas governing the foundations of law and reflects the connection between general and specific. So O.V. Smyrnov notes: "The principles of any judicial proceeding are interrelated and form a single hierarchical system, which is an integral part of a more general system of law experiencing the influence of general legal and social conditions through them" [291, p. 147]. In our opinion, the connection between general legal,



interbranch and branch foundations is the ratio of general, specific and individual. The general legal foundations of law are implemented on the basis of branch and interbranch foundations. And this is the case given that the general legal foundations themselves are the most abstract expression of branch and interbranch foundations that are no less relevant to real life than general legal ones, but in a relatively limited legal area. Therefore, branch and interbranch foundations cannot only be considered as a supplement to the general legal ones. The hierarchy of the criminal procedure foundations does not at all indicate the higher legal force of some foundations and its lower level than others. Therefore, the *equivalence* can be called one more condition for the consistency basis of criminal proceeding.

There is also a question of the equivalence of the criminal procedure foundations enshrined in the law and the Constitution of Ukraine, since some foundations have not found their consolidation in the Fundamental Law. The foundations not enshrined in the Constitution do not compete with the constitutional framework acting in a certain system, but, on the contrary, are with them in organic unity and complement them. Whatever legislative source the foundations were enshrined in, they flow from the essence and content of the Fundamental Law, from the general legal foundations formed in it. In this respect, it would be necessary to note that the legislators wanted to emphasize the procedural importance of the separate constitutional foundations of the criminal procedure by proclaiming them in the Constitution. In our opinion, the principles, which have been consolidated in the Fundamental Law, serve as starting points on the basis of which the basis of the branch foundations should form reflecting the specifics of a particular type of procedural activity. But this does not mean that the role of other foundations is less significant. There can be no difference in the power of the imperative between the foundations contained in the Constitution and other laws, since other normative legal acts specify the Fundamental Law. After all, laws are passed in accordance with the Constitution of Ukraine and cannot contradict it.

It should also be noted that the interrelation between the foundations of criminal proceeding, as a condition for their consistency, must be determined by certain criteria. The first one is *the objective of the criminal procedure* as an idea of the state which the given system seeks and what exists for. If we proceed from the fact that the foundations are the output main provisions of the procedure, then it is quite obvious that the given properties are characteristic not only for the whole system, but also for each of its constituent, the foundation. Every foundation has a great significance, that is the precise reason its violation in the course of the procedure inevitably calls into question the possibility of solving the problems that it faces. Objects can be combined into a system under the following conditions: interconnectivity with the purpose common to all and the absence of internal contradictions both within the elements and among the elements themselves. A system of interconnected foundations can only guarantee the achievement of the objectives of the criminal procedure. It is in this that it is its peculiarity, which is not inherent in any single foundation.

The second criterion for the interrelation of the foundation system is *the criminal procedural form*, which is a set of legal procedures, conditions and guarantees that are enshrined in the criminal procedural law and ensure the solving of the objectives of criminal procedure. The foundations of criminal proceeding are the guidelines determining the construction of all its stages, forms and institutions and ensuring the implementation of its assignment. It is the foundations that permeate the entire process and determine its form, control its institutions. Moral norms define the legal content of many foundations of criminal proceeding, which, in turn, establish the basis of the criminal procedural form at all stages of criminal proceeding. Therefore, the violation of the foundations always causes their non-compliance with the basics of the criminal procedural form. It is in their interrelation that the system determines the structure of the criminal procedure, the content of the mechanism of procedural activity, procedural guarantees for the protection of universal values in the given area.

We pointed out that the foundations under consideration, which operate only in the system, must necessarily exist in an interrelation provided by the objectives and form of criminal proceeding. However, as you can see, such a connection should have a certain purpose. We believe that *legitimacy* is such a postulate. There are many approaches to the interpretation of the notion of "legitimacy" in the modern science. It is understood as a social phenomenon, the element of superstructure, as well as a political and legal phenomenon, a legal regime, a method of state regulation, etc. M.S. Strohovych rightly believes that legitimacy is not a principle of the criminal procedure, but functions as a universal legal provision applying in all the branches of law [151, p. 49]. We will substantiate the given statement further.

The criminal procedure is inseparable from legitimacy. Their connection is manifested in the fact that the procedure is one of the most important guarantees of legitimacy protecting the social and state system, the rights and legitimate interests of citizens, institutions, enterprises, organizations from criminal offence; carrying out a quick and complete solution of crimes, exposure of guilty persons and just punishment; educating citizens in the spirit of steady observance of laws. The Criminal Procedure Code and the Constitution of Ukraine declare legitimacy a mandatory condition, a requirement imposed by law on actions and decisions of officials, subjects of the criminal procedure, which must fully comply with the requirements imposed by the Fundamental Law on them. The requirement of legitimacy covers the whole criminal procedural law with its content. It obliges the court, investigating judge, prosecutor, head of the prejudicial inquiry, investigation officer, other public authorities: a) to strictly observe the requirements of the Constitution of Ukraine, the Criminal Procedure Code, international treaties, taking into account the practice of the European Court of Human Rights; b) to thoroughly, fully and impartially investigate the circumstances of the criminal procedure; c) to unconditionally adhere to the rules established by law at all stages of the procedure; d) to carry out



procedural actions on legal grounds and in procedural forms provided by law; e) make decisions in accordance with the norms of material and procedural law; f) to not depart from the requirements of the law when applying means of procedural coercion to persons; g) strictly adhere to the rules of collection and preservation of evidence, since it is not allowed to use evidence obtained in violation of the requirements of the law during the course of justice.

Finally, non-compliance with the requirements of legitimacy surely entails a violation of the foundations of the criminal procedure, and deviation from the requirements of any of them leads to a violation of legitimacy. In our opinion, it would be more correct to define legitimacy as an integrative quality of the system of the criminal procedure foundations, which is ensured as a result of the interrelation of the latter, since it permeates all criminal procedural activities and finds reflection in the content of each foundation. Violation of the criminal procedure foundations committed during the pre-trial investigation and trial leads to violation of other legal norms, and, therefore, the requirements of legitimacy.

**Summary.** The given study gives us the opportunity to conclude that the effectiveness of the criminal proceeding foundations can be realized on the conditions of their consistency. They will only be of practical value when operating in the system.

The main features of the system of the criminal proceeding foundations can include: adequacy, integrity, completeness, noncontradiction and independence. Interrelation, qualitative certainty and equivalence should be considered as the conditions of the consistency of the criminal procedure foundations. In turn, the interrelation of the system of the criminal proceeding foundations is determined by certain criteria. In our opinion, the first one is the objective of the criminal procedure. The second one is the criminal procedural form. In our opinion, it is necessary to determine legitimacy as an integrative quality of the system of the criminal procedure foundations, which is ensured as a result of the interrelation of the latter, since it permeates all criminal procedural activ-

ities and finds reflection in the content of each foundation.

Thus, it can be argued that the system of general foundations of criminal proceedings is a set of basic normative prescriptions which are interrelated and create integral unity with integrative quality – legitimacy.

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