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RESPECT FOR A HUMAN DIGNITY AS A FUNDAMENTAL PRINCIPLE OF A LEGAL STATE

Actuality of the issue. A question of principles (principles) of the criminal legal proceeding without exaggerating is one of the major and the most difficult. T.M. Dobrovolska noticed justly, that legal norms, which determine the essence and the direction of activity of organs which carry out investigation and consideration of criminal cases, are predefined first of all by the nature of the state they operate in though, differences are certain in methods and forms of legal regulation of concrete sides of their organization and activity possible in the socially the alike states. Considering the correlation of these objective and subjective beginnings in the legal adjusting of public relations is extraordinarily important. It is needed at the defining the concept of principles or bases of criminal process, maintenance of which not arbitrarily, but appropriately is conditioned by the features of public and state line-up.

Thus, from the concept of the term «principle», or «basis», swims out, that by principle of criminal process it can be acknowledged not any position, which characterizes organization and activity of organs of inquest, investigation, office of public prosecutor and court in one or another measure. That to be principle, the proper position must determine in organization and activity of these organs main, initial moments from which positions of more second-rate character ensue in same queue [1, p. 7-8].

Consideration of some principles of criminal process will be **the purpose** of this article. In science until now it is not mined-out the unique generally accepted decision of concept of principles, as well as there is not the unique idea about their system. Most research workers attribute to the criteria the decision of concept of principles of criminal process the followings properties:

- 1) it is most, initial generals, ideas which have a fundamental value for a criminal process determine his orientation, construction on the whole, manner and matter of his stages and institutes;
- 2) dominating express in the state political and legal ideas which touch tasks and method of realization of the legal proceeding in criminal cases;
- 3) governed, that got fixing in a law;
- 4) principles must operate in all or some stages of criminal process and main – in the stage of judicial trial;
- 5) have obligatory character for all of participants of process;
- 6) governed, that provided facilities of state compulsion and have a legal

mechanism of realization;

7) violation of any principle means violation of legality [2, p. 35].

In the aggregate all of principles of criminal process form the slender system of not contradictory each other principles of determining character, in which every principle organically and indissolubly related both to all of the system and with other principles.

In opinion of M.M. Mikheenko, it follows to distinguish principles:

a) *especially organizational*, for example, appointing of investigators and public prosecutors, centralization and undivided authority in the system of organs of office of public prosecutor, electiveness and appointing judges, special order of attracting of them to criminal and disciplinary responsibility (for activity in relation to violation, investigation, judicial trial and decision of criminal cases they do not have a direct value);

б) *organizationally functional*, for example, oneness and collective nature at consideration of businesses in courts, supervision of courts above after judicial activity of subordinate, publicity (they determine both organization and activity of criminal-procedural organs and are principles of judicial system and criminal process or organic part last);

в) *especially criminal-procedural, functional*, for example, presumption of unguiltiness, providing a defendant, to suspected, defendant rights of defence, contentionness, establishment of truth, publicness, verbalness (they determine criminal-procedural activity).

As it follows also to examine principles of criminal process some general law principles (for example, legality) and constitutional guarantees (inviolability of person, habitation, respect to dignity of person, non-interference in its personal and domestic life, privacy of correspondence, public-call talks, telegraph and other correspondence and others like that) which have an of principle, determining value for criminal-procedural activity and specific reflection in a criminal process [2, 35-36].

A place is important in the system of principles of criminal process occupy constitutional principles, as have the special political and legal weight. Fixing of certain principles of the legal proceeding in Constitution talks about their value in the field of defence of the personal rights and freedoms, for organization and adjusting of activity of law enforcement authorities, in particular organs of justice.

The analysis of current legislation enables to draw a conclusion, that the followings belong to the system of constitutional principles of criminal process of Ukraine:

1) to legality (article 8 of the Constitution; to the article 2, 5 and others CPC);

2) official language of the legal proceeding (p.1 article 10 of the Constitution of Ukraine; article 19 of CPC);

3) to equality of all of participants of trial before a law and court (p. 1 article 21, article 24, p. 1 article 26 of the Constitution; article 261 of CPC);

4) rights are on freedom and bodily security (article 29 of the Constitution; p. 2 article 14 of CPC);

5) inviolabilities of habitation (article 30 of the Constitution; p. 1 article 14-1 of CPC);

6) privacies of correspondence, public-call talks, telegraph and other correspondence (article 31 of the Constitution; article 14-1 of CPC);

7) providing to suspected, to the defendant, to the defendant rights of defence (p. 2 article 52, p. 2 article 63, p.6 p. 3 article 129 of the Constitution; article 21 of CPC);

8) presumption of unguiltiness (article 62 of the Constitutions; to the article 5, 15, 22, 53-1, 73, 74, 327 of CPC);

9) freedoms from self-accusation, exposure of family or near relation members (p. 1 article 63 of the Constitutions);

10) realization of justice exceptionally by courts (p. 4 article 124, p. 1 article 127 of the Constitution; article 15 of CPC);

11) to participating of people in realization of justice (p. 4 article 124, p. 1 article 127 of the Constitution; article 17 of CPC);

12) independences and inviolabilities of judges (to the article 126, 127, p. 1 article 129 of the Constitution; article 18 of CPC);

13) contentions and non-mandatoryness (p. of 4 p. 2 article 129 of the Constitution; article 16-1 of CPC);

14) to publicity of judicial trial (p.7 of p.2 article 129 of the Constitution; article 20 of CPC);

15) providing of statutory and appeal appeal of decret (p. 4 article 125 of the Constitution; chapters 29-32 of CPC);

16) to obligatoryness of decreets (p. 5 article is 124 of the Constitutions; article 403 of CPC) [3].

It is needed to add, that fixing of one principle is in Constitution of Ukraine, and in the Criminal-procedural code does not diminish other scales. The constitutional personal rights must be examined as an element of the system of basic rights and duties. At the same time these rights have line in relation to an independent subsystem, which consists of elements of lower order – separate constitutional rights. Every separate constitutional personal right is specified in of (criminal-procedural, civil, administrative and others) a particular branch equitable rights. To the group of the constitutional personal rights inherent signs of community and integrity. Essence and setting of the separate constitutional personal rights consist in that from different sides, in different aspects to provide the citizens of blessing of the personal freedom. The last is underlaid the personal rights, each of which is directly related to other [5, p. 56].

As positive it should be noted that the authors of project of CPC of Ukraine № 9700 from 13.01.2012, considered in the second reading in Verkhovna Rada, in an item 7 the catalogue of general principles of criminal realization, maintenance of which opens up in the next articles of chapter second, is resulted.

In a number of other principles in item 11 principle of «respect is fastened to human dignity»: «1. During criminal realization must be respect is well-to-do to human dignity, rights and freedoms of every person.

2. Forbidden during criminal realization to add a person torture, to cruel, superhuman or to such which humiliates its dignity, conduct or punishment, to come running to the threats of application of such conduct, retain a person in humiliating terms, to force to the actions which humiliate its dignity.

3. Everybody has a right to protect all of facilities which are not forbidden a

law the human dignity, rights, freedoms and interests, broken during realization of criminal realization» [5].

Dignity of man which is acknowledged the «greatest social value» by Constitution of Ukraine [3, p. 3], also found the embodiment in the basic laws of other states, for example, in Constitutions of Italy (yet for a year to acceptance of General declaration of human rights), German federal REPUBLIC, Poland, Byelorussia, Bulgaria, Estonia, Lithuania, Macedonia, Moldova, Russia, Czech, Uzbekistan etc.

P.M. Rabinovich noticed that it was the certificate of unchange, conformity to the law of modern humanism tendency in development of institution of human rights and growth of its value [6, p. 9]. It is impossible to disagree with such assertion.

In this direction of M.I. Khavronyuk, probing maintenance of this principle, specified that right on respect to human dignity – it legislatively set and assured the state aggregate of norms which give everybody a confidence in the public value, possibility to realize itself as personality, to respect own moral principles and ethics norms, insist on respect to itself other people, public organs and them public and official servants, and also to require, that any doubts in relation to their moral qualities and ethics principles were properly grounded [6, p. 152]. Obviously, that above all things respect to human dignity must be present during pre-trial investigation and judicial trial of criminal cases.

To this time in operating CPC of Ukraine of this constitutional principle fastened it was not. Only in some articles it is possible it was to trace its expression: in particular, exactly to dignity possibility of leadthrough of the closed judicial trial is related in cases about sexual crimes, and also in other cases with the purpose of prevention of nondisclosure of information about the intimate sides of life of persons which take part in business (item 20 CPC); necessity of the personal search of a person and examining by the person of the same sex (to the article 84, 93 CPC) [7, p. 16, 92, 96].

In German Federal Republic, for example, the important element of criminal-procedural guarantees also are principles of the criminal legal proceeding, which not less attention, than in domestic, is spared in legal literature. They are understood, as well as in the theory of criminal process of Ukraine, as leading state political ideas which are fastened in a law and which determine the construction (organization) of the criminal legal proceeding.

As early as the end of XVIII century in Germany aloud the political-law requirements of liberal forces began to sound to democratization of society, in that number in relation to cancellation of «inquisition process» which resulted in omnipotentness of state power and weakness of defendant [8, p. 18]. A turning point in relation to practical realization of these requirements in Germany was become by bourgeois-democratic revolution in 1848 Such principles were then proclaimed exactly, as independence of judges; distributing of functions of prosecution and decision of businesses; creation of independent office of public prosecutor; publicity and verbalness of judicial trial; participating in criminal justice of folk representatives (sheffens and jurors); prohibition of «turn is to worse» (reformatio in pejus); free estimation of proofs; protecting of rights and freedoms is from abuses and self-will in the criminal legal proceeding [9, p. 112].

By foundation which legitimacy of all of the criminal-procedural adjustings is

based on, O. Ranft (O. Ranft) names Basic Law of German federal Republic [10, p. 15], basic rights and freedoms of man and citizen are declared in which. However in textbooks from a criminal process these principles usually in detail are not analysed and in the Criminal-procedural code not duplicated, but perceived the German legislators as the greatest constitutional norms, which all of spheres of public life, including criminal legal proceeding must conform to. In Constabulary to the professional reference book in subsection the «Criminal-procedural Lawt and Basic Law» is in this relation marked, that the criminal legal proceeding is in intercommunication between interests of the state in effective criminal pursuit and opening of crimes and interests of separate citizen in defence of his rights, assured Constitution. It means that a criminal-procedural right is in a line and актуальний dependence on the constitutional mode. The table of contents and limits of criminal-procedural law is determined, thus, by the norms of constitutional right [11, p. 3].

In item 1 of Basic Law of German Federal Republic basic, fundamental principle of existence of the German state is declared – *respect for human dignity*:

1. Dignity of man is inviolable. To respect and protect it is a duty of all of public authorities.

2. The German people that is why consider inviolable and inalienable human rights basis of any human society, world and justice on earth [12, p. 25-26].

Professor Bayroytsk University, marking the exceptional value of the resulted article, Konrad Lev (Konrad Low), said that it was the norm of norms, grounds of other legal principles. By it and freedom is guaranteed, and equality is provided, if a man has a right on respect and defence of the dignity [13, p. 82].

Yakovyuk, analysing opinions of the German legists in relation to the action of principle of human dignity in German federal Republic, justly names him the head stone of the social legal state system, as he makes basis of the constitutionally organized society and forms the multidimensional protected space which guards him constitutionally legal properties [14, p. 27].

By another fundamental principle which has an exceptional value for the criminal legal proceeding is *principle of the legal state*, fastened in article 20 paragraph 3 of article 28 paragraph 1 of Basic Law of German federal Republic. Privat-docent of University after Gumbold Yorg Arnold (Jorg Arnold), commenting him, marks that in obedience to a dominating idea, this principle includes for itself formal and financial parts, in other words, consists of two components – «state of legality» (Gesetzstaat) and «state of justice» (Gerechtigkeitsstaat). By basic maintenance of it sufficiently wide and unclear concept there are guarantees of basic rights and freedoms, self-restraint of the state by basic rights and aggregate of norms of law and order, which are determine stability and reliability of the legal system, in particular, providing of checking feature after self-restraint of the state through independent courts. One of elements of principle of the legal state there is a guarantee of the fair judicial hearing, which includes for itself principle of conduct of realization with the observance of judicial norms in relation to all of sides, which take part in business. This principle foresees a right for certain personality to accept active voice in a judicial trial, that in violation of him human dignity to be not understated to the level of object of criminal-law investigation. The state must guarantee comprehensive research of materials of business and establishment of truth, and also achievement of justice in relation to a side, what victim from a criminal act.

Consideration of business, carried out in obedience to principle of the legal state, must provide balance of rights and duties of sides, pulled in a conflict [15, p. 22].

In Ukraine in quality especially criminal-procedural principle this constitutional ambush was not examined, but perceived a legislator as general-lawful. Presently and it found the reflection in the project of CPC [5].

In this context of A.M. Collodiy and A.Yu. Oliynik mark that the theory of the legal state, as well as any other idea or conception, can be examined through its principles. Principles of the legal state are the most important, most general conformities to the law of this theory. Thus a task is, to discover and consider actual principles of the legal state, not equating them with signs, lines, tasks, mechanisms of the legal state. To this the most important, most general postulate of the legal state they take principles of supremacy of right; to distributing of power; realities of rights, freedoms, duties and legal interests of man and citizen, which are declared the row of the articles of Constitution of Ukraine (in particular, by the articles 6, 8, 21-23, 56-64) [16, p. 111-126].

Conclusion. To the number of such «the most important, most general postulates of the legal state» should be ascribed the principle of respect for human dignity, defence of which in accordance with the Constitution of Ukraine must become the major duty of the state. It can be observed presently in countries with permanent legal traditions and developed democracies. However, declaration of certain norms in Basic Law, and also in other laws or under lawful acts, is only the beginning of becoming indeed a real legal state. For this purpose it is needed to take same more efforts. One of methods of providing democratic achievements must become a new Criminal-procedural Code of Ukraine, where they have found their reflection.

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