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Application of constitutional principles in criminal legislation of Ukraine

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ABSTRACT

The article examines the importance of constitutional principles for the development of criminal law. The main directions of application of the principles of criminal law in the criminal legislation of Ukraine are investigated. It is determined that the principles of the Criminal Law of Ukraine include the main provisions established by law or derived directly from it, provide a clear description of the content of this branch of law and are used in the legislative and law enforcement activities of the state bodies. Using dialectical and historical methods, the general law principles of Criminal Law are analyzed. The contradiction problems of some criminal law institutes with the constitutional principles are revealed using the comparative method and the methods of analysis and synthesis. The conclusion focuses on the need to define the criminal procedural principles as a fundamental rule of conduct of the criminal process and the court, which permeates all stages of the process, based on the procedural coercion of the State, and which aims to guarantee obtaining suitable and admissible evidence and the performance of the functions of criminal proceedings in general.

KEYWORDS: Constitutional Law, Criminal Law, legislation, Rule of law.

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Aplicación de los principios constitucionales en la legislación penal de Ucrania

RESUMEN

El artículo examina la importancia de los principios constitucionales para el desarrollo del Derecho penal. Se investigan las principales direcciones de aplicación de los principios del Derecho penal en la legislación penal de Ucrania. Se determina que los principios del Derecho penal de Ucrania incluyen las principales disposiciones establecidas por la ley o derivadas directamente de ella, proporcionan una descripción clara del contenido de esta rama del Derecho y se utilizan en las actividades legislativas y de aplicación de la ley de los órganos estatales. Utilizando métodos dialécticos e históricos, se analizan los principios de derecho general del Derecho Penal. Los problemas de contradicción de algunos institutos del Derecho penal con los principios constitucionales se revelan utilizando el método comparativo y los métodos de análisis y síntesis. La conclusión se enfoca en la necesidad de definir los principios procesales penales como regla fundamental de conducta del proceso penal y del tribunal, que impregna todas las etapas del proceso, sustentada en la coacción procesal del Estado, y que tiene por objeto garantizar la obtención de pruebas idóneas y admisibles y el desempeño de las funciones propias del proceso penal en general.

PALABRAS CLAVE: Derecho constitucional, Derecho penal, legislación, Estado de derecho.

Introduction

The processes of globalization that are taking place today create favorable conditions for a fruitful interstate exchange of best practices in various areas. Thus, the national system of principles of criminal procedure is undergoing qualitatively new changes as a result of borrowing the positive achievements of the international community in the field of human rights.

In the context of the program of global raising of legal standards of humanistic principle in all spheres of our life, criminal justice is the object of meticulous attention of human rights activists from all over the world, as almost every action or procedure brings it closer to the privacy of citizens. That is why the improvement of criminal justice is a very complex task, in the context of which a whole program of consistent and mutually agreed actions must be implemented. Such actions should be aimed at creating such a procedure that would guarantee the right to judicial protection, equality of citizens before the law, would create conditions for real competition and the implementation of the presumption of

innocence. It is necessary to introduce judicial system and proceedings, which guarantees the right of a citizen to prompt consideration and legal resolution of the case by a competent court. It is important to ensure compliance of regulations on the activities of courts and judicial bodies with the requirements of international agreements. The substantive and procedural legislation needs to be further reformed in order to fill it with humanistic content. The task is to form an independent forensic examination, strengthen the role of the bar, etc.

The improvement of almost every institution of criminal justice concerns the program of bringing national standards in the field of human rights in line with international experience and practice. Constitutional principles also play an important role, as Article 3 of the Constitution of Ukraine states that a person, his or her life and health, honor and dignity, inviolability and security are recognized as the highest social value, and the establishment and protection of one's rights and freedoms are the main obligations of the state. In view of the above, all norms of criminal law must be checked for compliance with the norms of international agreements in order to ensure common world approaches to human rights and freedoms, as well as for constitutional principles aimed at protecting people from unlawful encroachments (Kyrychenko et al., 2021). Thus, the **main objective** of this paper is the study of the peculiarities of the application of constitutional principles in criminal law, defining principles of criminal proceedings and adjusting their classification.

1. The main directions of application of the principles of criminal law in the criminal legislation of Ukraine

Criminal law principles are of great importance in practice, because any legal theory that is progressive in nature for a particular social situation, is fully enshrined in the normative document that reflects the objective process of development of society and the legal system. In addition, the legal awareness of citizens is influenced not only by specific legal norms, but also by the most general ideas and provisions, because it is well known that citizens know the principles better than the norms of criminal law.

The Constitution of Ukraine enshrines the basic ideas of political, socio-economic and other spheres of public life, and determines the starting points for building a modern legal system. Thus, today there is a need for deep theoretical development of the system of principles of criminal law and its implementation in the process of reforming the current criminal legislation (Alexandrov, 2003).

One of the scholars in the field of criminal law G. Krieger identifies general, intersectoral and sectoral principles. Among the last principles the author names responsibility for the guilty act provided by the law, personal character of responsibility, individualization of responsibility and punishment, economy of criminal repression. The purpose of this approach is that such principles as the principle of humanism, legality, democracy and some other, of course, are inherent in the branches of criminal law, but at the same time they are to some extent inherent in administrative, civil, labor and other branches of law. Therefore, they are recognized as principles of the entire national legal system, or general legal principles (Alpert, 1995).

P. Fefelov offers his own system of principles of criminal law. Inevitability and individualization of punishment should be considered as basic principles, because they clearly reflect the relationship between the basic concepts of criminal law - crime and punishment - and characterize the subject and method of regulation of criminal law, defining the specifics of this area. The principles of saving coercive measures and the appropriateness of punishment for the gravity of the crime also refers to specific principles and characterize the whole branch of criminal law in general, but differ from the main primarily in their purpose: perform only a regulatory function in implementing basic principles (Fefelov, 1970).

The opinion of M. Korzhansky on the separation of criminal law principles is different. The scholar defines the following specific principles of criminal law as the principle of legislative definition of crime, the principle of personal guilt, subjective and full sanity, the principle of mitigation, greater punishment of a group crime, appropriate punishment for the gravity of the crime and the principle of saving criminal repression (Korzhansky, 1998).

Criminal law theory has not defined a single approach to the systematization of criminal law principles. General principles are inherent not only in criminal law science, but also in other branches of law. These are, in particular, legality, equality of citizens before the law, the principle of justice, humanism and democracy, and others. Special principles are inherent only in criminal law.

The basic principles of criminal law include liability only for the commission of a socially dangerous act, which is provided by law as a crime; personal nature of responsibility; liability only in the presence of guilt; the inevitability of criminal liability; individualization of criminal responsibility and punishment; expediency of criminal liability, etc.

The principles of law are the basis for any branch of law. Their role is extremely important for the proper internal construction of the industry, proper rule-making and law enforcement.

Ignoring the principles in the formation of a particular branch of law leads to legal nihilism, the existence of such phenomena as the conflict of legal norms, the adoption of so-called "dead norms", violation of the Constitution, and violation of human and civil rights and freedoms.

The Constitutions, as a rule, define such general principles of criminal law as: legality; personal nature of criminal liability; adequacy of punishment; humanity; individualization of punishment, as well as the following three principles of criminal law: ultra activity and retroactivity and the principle of ne bis in idem ("one act is not punished twice") (Ashirova, 2007).

The principles of criminal law are defined more thoroughly and fully in the Criminal Codes, of course, the enshrinement of the principles of criminal law in the codes is due to the importance of these legal phenomena, which are the foundation of any branch of law, including criminal.

R. Galiakbarov argues that the principles of criminal law are determined by criminal policy, and that the principles of criminal law policy, being enshrined in law, become the principles of criminal law (Galiakbarov, 1999).

The principles of criminal law as a branch of law are a system of stable and permanent ideas that have an objective-subjective, fundamental nature, which reflect the essence of criminal law. When deciding on the relationship between the principles of law and the principles of criminal law, it is necessary to proceed from the fact that they relate as a whole and a share.

There are general, intersectoral and sectoral principles of law, and each lower level of principles of law is based on the higher. At the same time, the principles of different branches of law have their own special characteristics, which are a "refraction" of general legal principles through the prism of a particular branch or their groups.

The principles of a higher level are manifested at their level and at lower levels of the principles of law. At these levels there are principles that are not a concretization of general legal principles, but are specific only to this level.

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Lower-level principles cannot manifest themselves at a higher level due to their specificity and belonging to a narrower group of norms.

Thus, the principles of criminal law of Ukraine include the main provisions that are established by law or directly derived from it and provide a clear description of the content of the considered branch of law and are used in law-making and law enforcement activities of state bodies. The principles of criminal law play a significant role in the implementation of criminal law in the state.

2. General legal principles of criminal law and their characteristics

Separating from all the analyzed concepts of definitions of the principles of criminal law, which offer us scholars in the field of criminal law, we support the opinion of V. Filimonov, who proposes the following definition of the principles of criminal law: provisions that determine the content of all or a significant set of legal norms and integrate them into a single system of criminal law (Filimonov, 2002).

The principles of criminal law determine the basic principles of criminal legislation, established by law or arising from it and which have a direct effect, a direct regulatory function. Thus, all the principles of criminal law can be divided into the following groups: general, intersectoral, sectoral.

The specificity of the general principles is that they are inherent not only in criminal law but also in other branches of law. In particular, these are such principles as: the rule of law, legality, equality of citizens before the law, the inevitability of responsibility, the principles of justice, humanism and democracy.

The principle of the rule of law is the subordination of the state, its institutions to human rights, the recognition of the priority of law over other social norms. According to Article 8 of the Constitution of Ukraine, the principle of the rule of law is recognized and operates in Ukraine. Since the Constitution of Ukraine, as the basic law, has the highest legal force, accordingly, laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it. The norms of the Constitution of Ukraine are the norms of direct action. The possibility to protect human constitutional rights and freedoms directly on the basis of the Constitution of Ukraine is guaranteed. The principle of the rule of law presupposes that the law has the highest legal force in relation to all normative and non-normative legal acts (Gromov, 1997).

The principle of legality follows from the provisions of the Universal Declaration of Human Rights, which states: "No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed." In addition, the principle of legality is manifested in the fact that a person can be convicted only for an act committed by him, which contains a crime under the Criminal Code of Ukraine. In Art. 2 "Grounds of criminal liability" of the Criminal Code of Ukraine, the legislator determines that the basis for criminal prosecution of a person is the commission of a guilty, socially dangerous act, which is expressly provided by criminal law as a crime. It follows from this provision that the concept of crime should be determined exclusively by law.

This is indicated by paragraph 22 of Art. 92 of the Constitution of Ukraine, which states that "only the laws of Ukraine determine the acts that are crimes and responsibility for them." According to the requirements of the Constitution of Ukraine, the general definition of a crime is given by Art. 11 "The concept of a crime" of the Criminal Code of Ukraine (a crime is a socially dangerous criminal act (action or omission) provided by the Criminal Code of Ukraine, committed by the subject of the crime). Thus, the constitutional principle of legality in the field of criminal law primarily means that all the provisions underlying the prosecution of a person for the offense, sentencing, release or other legal consequences of the crime must be formulated exclusively in law, the content of which must be interpreted in exact accordance with its text (Petrukhin, 1981).

The principle of legality in general form is enshrined in the Constitution of Ukraine as follows: "No one may be held liable for acts which at the time of the commission were not recognized by law as an offense" (Part 2 of Article 58). The content of this principle is also disclosed in Art. 6 of the Criminal Code, according to which the criminality and punishment of an act are determined by the law in force at the time of the commission of this crime. This provision, firstly, obliges public authorities and officials to strictly adhere to the rules of criminal law in bringing a person to criminal responsibility, as well as the application of punishment to him and, secondly, excludes the application of criminal law by analogy with actions that not provided by the norms of the General and Special Parts of the Criminal Code.

The principle of equality of citizens before the law is one of the generally accepted principles applicable not only in criminal law but also in others, and the existence of this

principle precludes any discrimination against a person guilty of a crime. The person who committed the crime must be held criminally liable, regardless of gender, race, nationality, language, origin, status and position, and so on. At the general legal level, this status is enshrined in Art. 24 of the Constitution of Ukraine: "Citizens have equal constitutional rights and freedoms and are equal before the law."

In national criminal law, the equality of citizens before the law is ensured primarily by recognizing the existence in the act of a person of a crime under the law, the only basis for bringing him to justice. The set of features that are clearly defined in the law and characterize the act as a crime, is the clear and obvious "single scale", which ensures the implementation of an equal obligation for all to bear responsibility for the crime (Nazarenko, 2003).

The equality of all people guaranteed by the Constitution of Ukraine in their rights and freedoms means the need to provide them with equal legal opportunities, both material and procedural, for the realization of the same content and scope of rights and freedoms. In a state governed by the rule of law, recourse to the courts is a universal mechanism for protecting the rights, freedoms and legitimate interests of individuals and legal entities (Ismailova, 2006).

The principle of democracy, although not in full, is manifested in criminal law in various forms of participation of representatives of public associations and individuals in sentencing, its execution.

The principle of democracy is characterized by the participation of various social groups in the fight against crime. For example, Art. 47 "Exemption from criminal liability in connection with the transfer of a person on bail" of the Criminal Code of Ukraine provides for the possibility of releasing a person from criminal liability in connection with the transfer of the perpetrator to the re-education of the team.

The essence of the principle of humanism is to recognize the value of human (not only the person who committed the crime, but above all, the victim). In particular, it is expressed in the fact that the punishment, which provides for a significant restriction of the legal status of the convict, pursues one goal - to protect the interests of other, law-abiding citizens from criminal encroachment.

The modern view of the principle of humanism of criminal law is to include in the latter the following provisions: ensuring human rights by criminal law; humanization of the

criminal law policy of the state, namely: reduction of the number of persons subject to criminal liability (at the expense of the insane, persons who have not reached the age of criminal liability, etc.) (Pogrebnyak, 2007).

The principle of inevitability of criminal liability is that the person who committed the crime must be punished by criminal law. The latter should be understood as the timely prosecution of the offender, and the fact that no one should have privileges before the criminal law. It should be noted that in Ukrainian criminal law there is a principle of inevitability of responsibility, the essence of which is that the person who committed the crime should be prosecuted or otherwise, which would be associated with the application of such a person to criminal measures. However, the analysis of the rules of Art. 51 "Types of punishment" of the Criminal Code of Ukraine, as well as the characteristics of special types of exemption from criminal liability gives grounds to speak of further waiver of this principle and the development of more flexible forms of implementation of the state for the crime.

The principle of justice means that the criminal punishment or other measure of criminal law influence applied to the offender must correspond to the degree of public danger of the crime, as well as to the person of the offender.

The same principle, in particular, means that no one can be prosecuted twice for the same crime. In the scientific legal literature, justice is considered mainly in two aspects: comparative and distributive value. In particular, comparative justice provided for answering equals for equals, which was later reflected in the principle of talion ("an eye for an eye, a tooth for a tooth"). In the modern period of history, the principle of talion is partially manifested in the principle of equality of citizens before the law (Kozynets, 2004).

In determining the range of crimes, i.e. in the criminalization (decriminalization) of socially dangerous acts, it is necessary, along with other requirements of criminalization (decriminalization), which are quite carefully developed by the science of criminal law, also took into account the requirements of social justice as an element of public consciousness. Ignoring this circumstance leads to the fact that the criminal law prohibition does not receive the support and approval of the population, as a result of which it is not observed by both citizens and government officials.

3. Problems of contradiction of some institutions of criminal law with constitutional principles

The connection between criminal law and constitutional law, being hierarchical, differs from other types of intersectoral relations. Given the priority role of constitutional norms in the regulation of public relations, criminal law should be formed on the basis of the Constitution of Ukraine, other constitutional laws, the main provisions of which should be specified and developed in the Criminal Code of Ukraine (hereinafter - CC). The content of the connection between constitutional and criminal law is multifaceted.

Thus, the recently established in the criminal law doctrine rule of qualification, according to which all doubts must be interpreted in favor of the person whose action are being qualified on its basis, in addition to the relevant legal position of the European Court of Human Rights (hereinafter - ECtHR), has a component of the presumption of innocence enshrined in Art. 63 of the Constitution of Ukraine. There is, however, a point of view, according to which the constitutional imperative that all doubts about the proof of a person that cannot be eliminated must be interpreted in his or her favor is procedural, and therefore operates only in the evidentiary sphere and concerns issues fact, not law (Klepitsky, 2005). There are indisputable theses that: the right to certainty of legal norms is one of the most inalienable rights of the human person; without such certainty there can be no question of any right at all; the provisions of the law on criminal liability should define a criminally punishable act in clear and unambiguous terms (Havronyuk, 2004). However, so far the formal definition of all criminal legal provisions is only an ideal that the legislator should strive for. In addition, the question arises how to deal with the evaluative concepts that, providing flexibility of criminal law regulation, are necessary to reflect in the criminal law the diversity of objects, phenomena and processes of social life. In this regard, it is desirable to include in the Criminal Code of Ukraine a rule similar to Part 3 of Art. 63 of the Constitution of Ukraine, which would allow to take into account the specifics of resolving issues of substantive law in cases of ambiguity of provisions not only of the Criminal Code, but also regulatory legislation, to the norms of which refer blanket provisions of articles of the Criminal Code. In our opinion, the proposed novella should be a manifestation of one of the legal principles (justice), which should eventually be reflected in the text of the Criminal Code of Ukraine.

Exemption from criminal liability is the embodiment of a number of legal principles - a form of response of the modern state to the commission of crimes, an alternative to

punishment and release from punishment and its serving. At the same time, discussions on the constitutionality of this criminal law institution have not abated, and recent changes in Ukrainian criminal law can only exacerbate them.

The permanent updating of anti-corruption legislation has also affected the institution of exemption from criminal liability. This means supplementing Articles 45-48 of the Criminal Code of Ukraine on the basis of the Law of October 14, 2014 "On the National Anti-Corruption Bureau of Ukraine" with the words "except for corruption crimes". It is clear that the restriction of the scope of the Criminal Code of Ukraine on general types of exemption from criminal liability is caused by a noble goal and is designed to ensure the inevitability of criminal liability for criminal violations of anti-corruption legislation. At the same time, such a novel ignores the division of criminal law into General and Special parts (and it is considered a significant achievement of legislative technique), breaks the established approach to classifying exemptions from criminal liability into general and special types, is a typical example of fragmentary amendments to the Criminal Code of Ukraine. These changes can hardly be assessed other than as a manifestation of the state's distrust in the face of parliament to the judiciary, which is not able to apply the norms of the Criminal Code on general types of exemption from criminal liability for violators of anti-corruption legislation. As rightly noted in the literature, the strengthening of the severity of criminal law should not be due to fleeting, opportunistic considerations, unwillingness to show special zeal in the fight against certain crimes (in particular, under pressure from social and political forces, impatient with a certain category of crimes), and a real necessity of life (Elinsky, 2012).

It is obvious that the analyzed changes to Articles 45-48 of the Criminal Code of Ukraine are clearly casuistic in nature, having nothing to do with the idea of the systemic nature of criminal law. There is no doubt that the provisions of the General Part of the Criminal Code of Ukraine on exemption from criminal liability need to be improved (giving the types of exemption from criminal liability conditional, exclusion from the Criminal Code and the Criminal Procedural Code as archaic provisions on exemption from criminal liability in connection with bail, unification norms on conciliation provided by the Criminal Code and the Criminal Procedural Code, expansion of the subjective composition of criminal conciliation and its legal consequences through release from punishment and its serving,

inclusion of a rule designed to address competition issues of legal provisions on various types of exemption from criminal liability, etc.), however, this should be done without linking to specific types of crimes such as corruption. Otherwise, there will be a "blurring" of the General Part of the Criminal Code of Ukraine, which is a set of legally defined concepts and institutions necessary for all or the vast majority of provisions of the Special Part of the Criminal Code of Ukraine.

At the same time, the discussed topic encourages us to look at these legislative changes, which put violators of anti-corruption legislation in an unfavorable legal position, from a different angle. Enshrined in Art. 24 of the Constitution of Ukraine, the principle of general legal equality before the law provides for its specification in sectoral legislation, including criminal. In criminal law, equality before the law, obviously, should mean not only the obligation of individuals to bear equal criminal responsibility for committing crimes of the same nature and degree of public danger, but also equality in the implementation of another criminal law response (influence) on such crimes. As rightly noted by Yu. Baulin, exemption from criminal liability is subject to a number of legal principles, including justice and equality of citizens before the law (Baulin, 2013). If we proceed from the established position that it is in the sanctions of criminal law in a concentrated form reflects the social danger of the crime, and the sanction is a legislative assessment of the level of public danger of a crime of a certain type, there is no sufficient reason to talk about any fundamental difference public danger of crimes classified by the legislator as corruption (note to Article 45 of the Criminal Code of Ukraine), from the public danger of other criminally punishable encroachments.

It should be borne in mind that equality before the law should be viewed through the prism of the principle of justice, and criminal law - a branch of law in which the maximum individual approach is used in the implementation of legal liability. According to the distributive side of justice, each person is subject to his or her responsibility, which is personified taking into account the social danger of the act and the individual characteristics of the person who committed it. That is, equality before the criminal law does not exclude, but, on the contrary, provides for the individualization of criminal liability, other criminal-legal response to the crime, committed, however, at the stage of law enforcement. Legislative restriction of the scope of the Criminal Code of Ukraine on exemption from criminal liability

for corruption crimes (and similar changes have been made to the Criminal Code of Ukraine on exemption from punishment and its serving) is unfair in the sense that it makes this individualization impossible.

Given the above and the fact that Part 3 of Art. 22 of the Constitution of Ukraine prohibits the adoption of new laws or amendments to existing laws to narrow the content and scope of existing rights and freedoms, it is possible to predict consideration by the Constitutional Court of Ukraine (hereinafter - CCU) the constitutionality of these provisions of the Law. The fact that such a variant of ensuring the supremacy of the Constitution of Ukraine with regard to the content of the criminal law is not excluded is evidenced, among other things, by the reasoning given in the CCU decision in the case of a milder sentence. It is worth mentioning that the unconstitutionality of Art. 69 of the Criminal Code in terms of impossibility to apply its provisions to persons who have committed minor crimes, the CCU justified the inconsistency of this criminal law to one of the principles of the rule of law - the principle of justice, and limiting the principles of legal equality before the law. We should mention that CCU decisions are widely criticized by Ukrainian scholars (Nekit, 2021).

In this regard, we can refer to the opinion of I. Mikhailovsky, that it is the court that checks the constitutionality of the law, becomes a true guardian of the Constitution, defender of individual rights, even against the legislature, if it is obsessed with temporary currents contrary to the spirit of the Constitution (Dudorov, 2010).

The above allows us to critically evaluate the proposal of O. Busol to include in Art. 44 of the Criminal Code of Ukraine part 3, according to which the exemption from criminal liability will not apply in the case of a subject of a criminal offense, which contains signs of corruption and corruption offense (Busol, 2015). In addition to the fact that the proposed novella does not differ in the best way from the considered inclusion in Articles 45-48 of the Criminal Code of Ukraine of the phrase "except for corruption crimes", it will obviously prevent the application of a special incentive provision (Part 5 of Article 354 of the Criminal Code), according to which the person who offered, promised or provided an illegal benefit, under certain conditions is released from criminal liability for crimes under Articles 354, 368-3, 368-4, 369, 369-2 of the Criminal Code of Ukraine. One can, of course, assess the quality of the current version of the incentive regulation in different ways, but it is hardly worth

ignoring the obvious fact that the offenses covered by corruption are covert and conciliatory, and the disclosure of criminal corruption is possible in most cases if only one of the parties of a crime gets into an agreement with law enforcement agencies.

In the legal literature of Ukraine, there is a widespread view that such a legislative step as the assignment of exemption from criminal liability to the jurisdiction of the court (Part 2 of Article 44 of the Criminal Code of Ukraine, Part 1 of Article 286 of the Criminal Procedural Code of Ukraine) is not able to solve the problem inconsistency of the substantive legal institution of exemption from criminal liability and the procedural form of its implementation with the constitutional principle of the presumption of innocence. The essence of this position, to sum it up, is that the closure of criminal proceedings by a court decision without a conviction, which can only establish the guilt of a person in a crime, is not consistent with the constitutional principle of presumption of innocence. Until the court has established in the conviction the fact that a person has committed a crime, he or she cannot be released from criminal liability; if there is a corpus delicti in the act, then, accordingly, a person can be released not from responsibility, but only from punishment and its serving. The constitutional presumption of innocence in acquittal remains undisputed.

Adhering to a different point of view on this issue, we should note that the literal interpretation of Part 1 of Art. 62 of the Constitution of Ukraine allows to state the following: establishment of guilt of the person in commission of a crime by the guilty verdict of court is required only in the event that the person is exposed to punishment.

The Constitution of Ukraine does not provide a clear answer to the question of the procedure for establishing the guilt of a person in committing a crime, if no punishment is imposed on that person.

The same position is taken by Yu. Baulin, in whose view Part 1 of Art. 62 of the Constitution of Ukraine does not exclude the fact that the court may recognize a person released from criminal liability as a perpetrator of a crime in a procedural manner different from the passing of a conviction. The scientist argues that none of the components of the presumption of innocence in the release from criminal liability suffers (the person is not obliged to prove his or her innocence, all doubts about the guilt of the person are interpreted in his or her favor, etc.) (Baulin, 2004).

From the point of view of observance of European standards and priority of content over form, it is of fundamental importance that the procedure for exemption from criminal liability enshrined in § 2 of Chapter 24 of the current Criminal Procedural Code of Ukraine does not mean restriction of human rights (the right of a person to object to the closure of criminal proceedings on this ground, consideration of the relevant petition by the court in the presence of the parties to the criminal proceedings and the victim, the possibility of appealing the decision to close criminal proceedings on appeal, etc.). It turns out that in the case of closing criminal proceedings on a non-rehabilitative basis, the rights of the accused, who agrees to such closure, are not violated (not limited). The constitutional principle of the presumption of innocence is designed to ensure the rights of a particular person in the field of criminal justice, to prevent his or her unjustified conviction. According to V. Kuts, the solution to the problem of the constitutionality of the analyzed institution is to clarify the name of the latter. Scientists note that the provisions of Part 2, Part 3 of Art. 285, part 2 of Art. 286 of the Criminal Procedural Code of Ukraine significantly guarantee the rights and legitimate interests of a person subject to exemption from criminal liability (Kuts, 2013). In addition, since the violator of the criminal law prohibition must clearly understand the fact of committing the act provided by the Criminal Code, feel his guilt in this regard and draw a conclusion about the prevention of such misconduct in the future, the judicial procedure for exemption from criminal liability has obvious advantages.

The reference to the international legal documents allows to offer a variant of the decision of a problem of constitutionality of institute of release from criminal liability, connected with statement in new edition of Art. 62 of the Constitution of Ukraine. After all, it can be interpreted differently. For example, K. Zadoya, referring to the decision of the CCU in the case of consideration by the court of certain decisions of the investigator and prosecutor, states that the innocence of a person and the impossibility of punishing him are completely separate, independent consequences of the absence of a conviction against a person (Zadoya, 2013).

Thus, the institution of exemption from criminal liability regulated by the Criminal Code of Ukraine and the Criminal Procedural Code of Ukraine hardly contradicts the presumption of innocence in the form in which this procedural principle is enshrined in Part 1 of Art. 62 of the Constitution of Ukraine. At the same time, in order to remove the ground

for the discussion mentioned above and to prevent the CCU from declaring the institute of exemption from criminal liability unconstitutional (and such a destructive scenario for the Ukrainian legal system is obviously not excluded), it is desirable to improve the legal description of this constitutional principle. international legal acts on human rights (removing from this constitutional norm an instruction to establish the guilt of a person exclusively by a court conviction and the imposition of a criminal sentence on a person). This option of improving the legislation seems more acceptable than abandoning the institution of exemption from criminal liability, which, despite some criticism, generally meets world standards of crime practice, is consistent with humanistic trends in criminal law, widely used in practice and more.

Conclusions

1. It is obvious that criminal law since its inception has come a long way to establishing a strong and developed system. During this period, a large number of different opinions arose not only about the very definition of the principles of criminal law, but also about the importance of corresponding of the criminal legal provisions to constitutional principles.

2. The principles of criminal law of Ukraine include the main provisions that are established by law or directly derived from it and provide a clear description of the content of the considered branch of law and are used in law-making and law enforcement activities of state bodies. The principles of criminal law play a significant role in the implementation of criminal legislation in the state. Speaking about the relationship between the principles of criminal law and the principles of criminal legislation, we must mention the fact that both are enshrined in positive criminal law. However, due to the small range of sources of criminal law, these groups of principles are quite close. At the same time, their identification is not entirely correct in essence.

3. The general principles of criminal law include the following: the rule of law, legality, equality of citizens before the law, the inevitability of responsibility, the principles of justice, humanism and democracy. Thus, distinguishing the general legal principles of criminal law, first, we can conclude that these principles are present not only in criminal law but also in a number of other rights. Also, a number of legally enshrined concepts and characteristics of these principles can be traced, starting from the Universal Declaration of Human Rights to the Constitution of Ukraine.

4. General (constitutional) principles are a guarantee of fair trial in all types of proceedings. In addition, each type of process has its own types of principles that take into account the specifics of certain social relations. Despite the crucial importance of the principles of fairness of criminal proceedings and their compliance with international standards of justice, scholars have not yet reached unanimity in defining the concept of principles of criminal proceedings.

Having analyzed the approaches to the definition, we propose to define the principles of criminal proceedings as a fundamental rule of conduct of criminal proceedings and the court, which permeates all stages of the process, supported by procedural coercion of the state, and which aims to ensure obtaining appropriate and admissible evidence and performing the tasks of criminal proceedings in general.

There is no unanimity among scientists on the classification of principles. We believe that the criterion of classification should be the source of the principle (the Constitution of Ukraine or the Criminal Procedural Code of Ukraine) and the stages to which the principle applies. In accordance with this approach, we propose to identify the following types of principles of criminal proceedings:

a) Constitutional principles of criminal proceedings (originate from Article 129 of the Constitution of Ukraine):

- general constitutional principles (apply to all stages of criminal proceedings);

- certain constitutional principles (apply to specific stages of criminal proceedings, including pre-trial investigation, trial and review of criminal proceedings);

b) Special principles of criminal proceedings (contained in Part 1 of Article 7 of the Criminal Procedural Code of Ukraine, except for those related to the constitutional):

- general criminal procedural principles (apply to all stages of the proceedings);

- certain criminal procedural principles (apply to certain stages of criminal proceedings).

5. Regarding the constitutional principles of criminal proceedings, we believe that the principle of equality before the law and the court needs to be clarified in terms of regulating additional guarantees of the rights of juvenile victims or witnesses in criminal proceedings related to domestic violence, in particular, the requirement to minimize the participation of

such persons in procedural actions and the support of all procedural actions by a professional psychologist.

6. The institution of exemption from criminal liability enshrined in the criminal legislation of Ukraine does not contradict the presumption of innocence in the form in which this procedural principle is enshrined in Part 1 of Art. 62 of the Constitution of Ukraine. At the same time, in order to remove the ground for the discussion and to prevent declaring the institute of exemption from criminal liability unconstitutional, it is desirable to improve the legal description of this constitutional principle by harmonizing it with international legal acts on human rights (removing from this constitutional norm an instruction to establish the guilt of a person exclusively by a court conviction and the imposition of a criminal sentence on a person).

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