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CRIMINAL PROCEDURE LAW OF UKRAINE IN THE CONTEXT OF EUROPEAN INTEGRATION: PROBLEMATIC ECONOMIC AND LEGAL ISSUES, WAYS OF REFORMING

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Abstract. The *subject* of the study is the coverage of problematic issues and ways of reforming the criminal procedure legislation of Ukraine in the context of European integration. *Methodology*. The methodological basis of the study is a dialectical method of scientific knowledge, through the application of this method the legal, functional, organizational and procedural aspects of methodological approaches to the understanding of problematic issues are considered and the ways of reforming the criminal procedure legislation of Ukraine in the context of European integration are considered. The *results* of the article analyze the current criminal procedure legislation of Ukraine and the legislation of the countries of the European Union. When analyzing the French criminal procedure, two main features can be identified, which distinguish it from the Anglo-Saxon legal system and are criticized by experts from Great Britain and the United States. In France judges are vested with considerable powers. The first feature of French criminal procedure is the institution of preliminary interrogation of the accused by the presiding judge. The judge verifies the sufficiency of the evidence for a conviction. *Conclusion*. So, based on the above, it is possible to conclude that the Criminal Procedure Code of Ukraine was created in the spirit of democratic values, but some of its norms need to be reformed in order to improve the mechanism of protection of the rights, freedoms and legitimate interests of an individual. The practical experience of France, the Federal Republic of Germany and Great Britain is relevant. The shortcomings of the Criminal Procedure Code of Ukraine are highlighted. The prospects for their reform are outlined and amendments to the current legislation in the context of European integration are proposed. Prospects for further research: a) the study of the experience of individual foreign countries in the context of the improvement of criminal procedural norms; b) analysis of the possibility of harmonization of criminal procedural legislation of Ukraine with the norms of the European Union; c) development of an effective mechanism of relations between the subjects of criminal proceedings. The issue of the relevance and admissibility of evidence is also important. Articles 87-89 of the CPC of Ukraine establish the grounds and procedure for declaring evidence inadmissible. However, judicial practice shows a large number of criminal proceedings against public persons, which the court had to terminate due to the lack of evidence, due to the inadmissibility or improper nature of the evidence. The authors believe that the legislative regulation of the process of collecting evidence in the UK is a positive experience for Ukraine.

Key words: court, judicial proceedings, criminal procedural legislation, criminal process, European integration, economic and legal issues.

JEL Classification: B22, E22, E24, J24, O15

1. Introduction

Today Ukraine is on the way to cardinal changes in the process of European integration. However, rapprochement with the countries of the European Union creates the need for harmonization of Ukrainian legislation with the legislation of the European Union member states, implementation in practice effective protection of the rights and interests of individuals and society as a whole in order to establish a confident position of Ukraine on the world stage as a democratic

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and lawful state. Judicial practice around the world forms an impression of the level of democratic government in a country and shapes the level of public confidence in it. That is why the quality of criminal proceedings and judicial decisions is of exceptional importance. Every person in Ukraine has the right to legal, fair, impartial justice, appeal against illegal actions or omissions of state authorities.

In Article 3 of the Constitution of Ukraine, the legislator proclaims the status of Ukraine as a social state, where the person, his life, health, honor, dignity, inviolability and safety are the highest social value, and therefore the public authorities must provide an effective mechanism for the protection of violated and (or) unrecognized rights and legitimate interests of the individual. Criminal offenses constitute a significant public danger (Law of Ukraine, 1996). It is the norms of criminal procedural legislation that are of particular importance in the process of realization of the human right to a legal, fair, impartial, objective and transparent justice. The European integration vector of Ukraine's development determines the need for harmonization of Ukrainian criminal procedural legislation with the legislation of the European Union.

The purpose of the article is to highlight the problematic issues and ways of reforming the criminal procedure legislation of Ukraine in the context of European integration.

During the Soviet period the closest approach to this topic was represented in the fundamental work by L.B. Aleksieeva devoted to issues of the effectiveness of the criminal procedural law (Aleksieeva, 1979). Among modern works, the collective monograph "Theoretical foundations of ensuring quality of criminal legislation and law enforcement activities in the sphere of fighting crime in Ukraine" should be highlighted (Zelenetskyi, 2011). Despite the lack of comprehensive developments, almost all works of modern proceduralists devoted to the study of aspects of criminal proceedings also analyze the relevant regulatory framework of their regulation and, consequently, explore certain issues concerning the quality of criminal procedural legislation.

In terms of research, the definition of the concept of quality of criminal procedural legislation is a necessary primary theoretical task on the way to the development of the scientific concept of standards of quality of criminal procedural legislation with the prospect of its practical implementation. The authors of the article aim to formulate the main theoretical tasks.

However, despite the in-depth research of the above scholars, to date, there is a problem of reforming the norms of the current criminal procedure legislation of Ukraine in the context of European integration processes through the positive experience of countries belonging to the European Union.

In terms of research, the definition of the concept of quality of criminal procedural legislation is a necessary first theoretical task on the way to the development of the scientific concept of quality standards of criminal procedural legislation (CPL) with the prospect of its practical implementation. The authors of the article pursue to formulate the main theoretical provisions related to the definition of the category "quality of criminal procedural legislation," and these provisions will be the methodological basis for further scientific research and formulation of standards of quality of modern criminal procedural legislation in the light of updated national legal doctrine, taking into account European standards in terms of the perception of the fundamental requirement of the rule of law. The high quality of criminal procedural law is a fundamental condition for the effective implementation of the purpose of criminal proceedings. Only a high-quality criminal procedure law can organize the activities in criminal cases in such a way that its system is simple, understandable for all subjects of legal proceedings, and that those of them who apply the law can do so quickly and to a high standard.

L. Loboiko notes that ensuring the effectiveness of criminal procedural activity is one of the elements of the functional purpose of quality of the criminal procedural law (Loboiko, 2017).

According to O.G. Yanovska, the right to appeal the decisions of a judge, an investigating judge, the investigator, the prosecutor is one of the most important guarantees of protection of rights and legitimate interests of a person (Yanovska, 2013). The relevance of this topic is the need to form an effective mechanism to protect the rights, freedoms and interests of the individual in criminal proceedings by reforming the norms of existing criminal procedural legislation.

2. Criminal and procedural legislation of Ukraine in the context of European integration

Today Ukraine is going through a difficult path of European integration, which makes it necessary to study a number of acts of international legislation in order to adapt Ukrainian legislation to the legislation of the European Union. If to consider the criminal and criminal procedure law of the European Union (hereinafter – EU), it should be noted that there is no single normative act that would regulate criminal and criminal procedure relations of the EU member states. Scholars note the heterogeneity of EU criminal law and divide it into the following categories:

1) EU administrative and criminal law (norms containing the main EU prohibitions and some

procedural norms, which for formal and political reasons belong to the administrative law norms);
2) Rules of EU law defining the specifics of criminal law and criminal procedure, which require EU member states to take certain measures in a certain way;
3) Criminal Procedure Law of the European Union, which contains certain standards of criminal procedure, as well as peculiarities of international cooperation, extradition, etc;
4) Draft norms of the unified criminal law (Pashkovskyi, 2017).

Despite this, the countries of the European Union have experience in effective criminal proceedings, which can serve Ukraine in the process of reforming the norms of existing criminal procedure legislation.

Despite the democratization of the norms of the Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine), practice shows that there are significant shortcomings in the process of implementation of the norms of criminal procedural legislation (Law of Ukraine, 2013). Article 214 of the CPC of Ukraine provides for the procedure for filing and registration of a criminal complaint. The legislator has determined that a criminal complaint must be filed by an investigator or prosecutor no later than 24 hours to the Unified Register of Pre-Trial Investigations. However, such a norm does not eliminate the problem of untimely submission of information about a criminal offense, since investigators and prosecutors have a habit of "sorting" such statements, which leads to a violation of the right of a person to a timely response of state authorities to the committed criminal offense.

Also, Article 284 of the CPC of Ukraine provides that one of the grounds for termination of criminal proceedings is a verdict in the criminal proceedings. In the previous Criminal Procedure Code of Ukraine (Law of Ukraine, 2013), the legislator provided that the refusal to initiate criminal proceedings or termination of criminal proceedings in the absence of the elements essential for the corpus delicti (corpus delicti) makes it impossible to initiate similar criminal proceedings. Currently, the procedure under the current CPC of Ukraine poses the problem of initiating criminal proceedings on the same fact. At the same time, it is enough to submit an application to the Register of Pre-Trial Investigations. This practice shows that even in the case of termination of criminal proceedings, it is not excluded to conduct repeated investigative actions in full.

Scientists note that one of the innovations in the current CPC of Ukraine is to strengthen judicial control over the observance of the rights, freedoms and interests of citizens. This control consists in the application by the investigating judge of measures to ensure criminal proceedings. Statistical data show that the most frequent applications for securing the rights, freedoms and interests of citizens are in the form of petitions for temporary access to things and documents. Such motions are usually filed by persons acting for and on behalf of the accused. Access is granted only on the basis of the decision of the investigating judge. To date, in our opinion, the legal gap of the legislator is the lack of an exhaustive list of documents that must be attached to the above petition. This problem is the reason for a large number of court decisions to deny access to these things and documents. Sometimes judges themselves are negligent about attaching the necessary documents to the relevant application, which may be of great importance in the

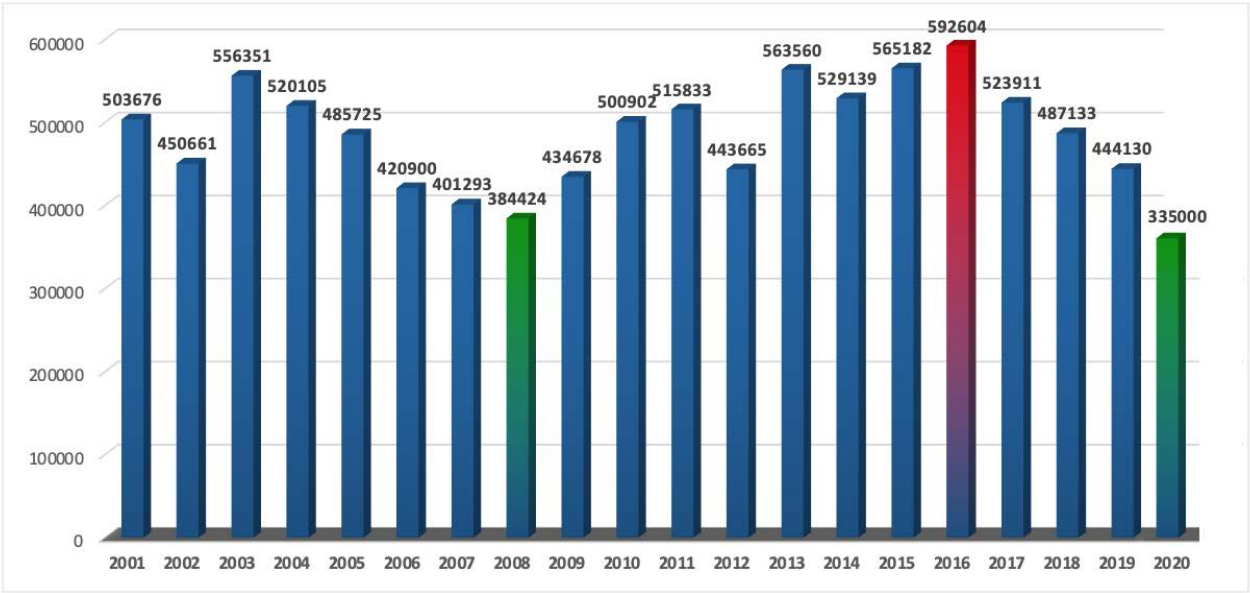

Figure 1. The number of crimes committed on the territory of Ukraine (from 2001 to 2020)

consideration of a criminal case. There is also no clear mechanism for proving the need to seize documents and/or things due to the threat of their destruction. Therefore, the authors believe that it is necessary to define in the CPC of Ukraine a rule on the procedure and grounds for the seizure of things and documents (Leheza et al., 2022).

3. Foreign experience criminal and procedural legislation of Ukraine in the conditions of euro-integration

In the opinion of the authors, one of the shortcomings of the CPC of Ukraine is the possibility to protect the rights, freedoms and interests of an individual exclusively by lawyers. The experience of foreign countries (in particular, Germany) provides for the possibility to perform this function not only by a lawyer, but also by other specialists in the field of law. According to Paragraph 138 of the CPC of the FRG, teachers of law in higher education institutions in Germany also have the right to defend the rights, freedoms and interests of individuals. In our opinion, this practice makes sense in the criminal procedural legislation of Ukraine, because teachers in the field of jurisprudence constantly improve their scientific level in the process of teaching and can effectively protect the rights and interests of individuals in court (Holovnenkov, 2012).

Lawyers note the shortcomings of Articles 220-221 of the CPC of Ukraine. Article 220 of the CPC of Ukraine defines the procedure for consideration of applications for any procedural actions. Petitions by the defense, the victim and his or her representative or legal representative, or a representative of a legal entity with respect to which proceedings are being conducted, must be considered within no more than three days from the time of filing and, if there are appropriate grounds, the petition must be granted. The results of the consideration of the respective petition shall be communicated to the person who submitted the petition. If there are grounds provided for by applicable law, a reasoned ruling is issued, a copy of which is served to the person from whom the petition was filed, or, if service is impossible due to objective reasons, is sent to that person. Article 221 of the CPC of Ukraine stipulates the procedure for familiarization with the materials of the pre-trial investigation before its completion. The investigator and (or) the prosecutor shall be obliged, at the request of the defense, the victim, the representative of the legal entity in respect of which the proceedings are conducted, to provide them for familiarization with the pre-trial investigation materials, except for materials on the application of security measures to persons involved in the relevant criminal proceedings, and also except for materials which, if provided for familiarization at an appropriate stage of the criminal proceedings, may harm the pre-trial investigation. Refusal to provide for familiarization a publicly available document, the original of which is in the materials of the pre-trial investigation, shall not be allowed. During familiarization with the materials of the respective pre-trial investigation, the person in respect of whom this pre-trial investigation is conducted, has the right to make the necessary extracts and copies. Lawyers emphasize a gap in the legislation in terms of the lack of deadlines for notifying the person of the results of the consideration of his/her application (Tymoshyn, 2016).

Article 303 of the CPC of Ukraine significantly narrows the range of persons who have the right to appeal the decisions, actions or inactions of the investigator or prosecutor during the pre-trial investigation, as well as the grounds for such an appeal (Law of Ukraine, 2013). In particular, there is no norm that would regulate the possibility of appealing the failure to comply with the reasonable time of the investigation, as well as the procedure for filing complaints by persons who do not have the status of a suspect or a victim (Leheza et al., 2022).

Conciliation agreements are also of academic interest. Lawyer Kyrylo Nominas analyzes the expansion of possibilities for conciliation agreements. He notes that such broad possibilities contribute to the spread of corruption offenses and, as a consequence, the failure to fulfill the objectives of criminal proceedings. At the same time, he emphasizes that, despite these circumstances, such situations can be avoided if the court carefully examines the materials of the criminal case (Leheza et al., 2020).

When analyzing the criminal procedure in France, one can single out two main features that distinguish it from the Anglo-Saxon legal system and are subject to criticism by experts from Great Britain and the United States of America (Arkusha et al., 2020). In France judges are vested with considerable powers. The first feature of French criminal procedure is the institution of a preliminary examination of the accused by the presiding judge. The judge verifies the sufficiency of the evidence for a conviction. However, if the judge doubts the decision in a criminal case, the judge has the right to conduct an investigation himself, to visit the scene of the crime (Leheza et al., 2022).

4. Conclusions

So, based on the above, it is possible to conclude that the Criminal Procedure Code of Ukraine was created in the spirit of democratic values, but some of its norms need to be reformed in order to improve the mechanism of protection of the rights, freedoms and legitimate interests of an individual. The practical experience of France, the Federal Republic of Germany and Great Britain is relevant.

According to the authors, such practice is appropriate for Ukraine as well. An important issue is the relevance and admissibility of evidence. Articles 87-89 of the CPC of Ukraine establish the grounds and procedure for declaring evidence inadmissible. However, judicial practice shows a large number of criminal proceedings against public persons, which the court had to terminate due to lack of evidence, on the grounds of inadmissibility or improper nature of the evidence. The authors believe that the legislative regulation of the process of evidence collection in Great Britain is a positive experience for Ukraine. Under UK criminal procedure law, every private person, including lawyers, has the right to conduct their own investigation and has the right to collect evidence, and this evidence will be taken into account by the court if the court deems it appropriate, even if it was collected in criminal proceedings and would have been declared inadmissible in Ukraine (Berladin, 2012).

Prospects for further research are as follows:

1) studying the experience of individual foreign countries in the context of the improvement of criminal procedural norms;

2) analyzing possibilities to harmonize the Ukrainian criminal procedural legislation with the norms of the law of the European Union;

3) developing an effective mechanism of mutual relations between criminal procedure entities.

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