ppi 201502ZU4645
Publicación científica en formato digital
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185
Depósito legal pp 197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.40 *Nº 75*
2022

Cuestiones Políticas Vol. 40, Nº 75 (2022), 114-123
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Ways of reforming the criminal and criminal procedural legislation of Ukraine in the context of European integration

DOI: https://doi.org/10.46398/cuestpol.4075.07

Oleh Kyrychenko *
Vadym Nehodchenko **
Vadym Davydiuk ***
Viacheslav Kuzyk ****
Oleksandr Mishchanynets *****

Abstract

The purpose of the research is to highlight problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration. Main content. The article analyzes the current criminal procedural legislation of Ukraine and that of European Union countries. Methodology: The methodological basis of the research is the dialectical method of scientific knowledge, through the application of this method considered were legal, functional, organizational and procedural aspects of methodological approaches to understanding of problematic issues and ways of reforming criminal procedural legislation of Ukraine in the context of European integration were considered. Conclusions. Shortcomings of the Criminal Procedure Code of Ukraine have been highlighted. Prospects of their reforming were outlined and changes to the current legislation in the context of European integration were proposed.

Keywords: judicial procedure; criminal procedural law; criminal procedure; European integration; legislative reforms.

* Professor, Doctor of Law Sciences, Rector of Dnipro Humanitarian University (Professor of the Department of Law, Dnipro Humanitarian University, Ukraine. ORCID ID: https://orcid.org/0000-0002-2046-9522

** Professor, Doctor of Law Sciences, Professor of the Department of Law of Dnipro Humanitarian University, Ukraine. ORCID ID: https://orcid.org/0000-0001-6643-2322

*** Doctor of Law Sciences, Honored Lawyer of Ukraine, Professor of the Department of Law of Dnipro Humanitarian University, Ukraine. ORCID ID: https://orcid.org/0000-0001-8998-1981

**** Candidate of Law Sciences, Senior research officer at the State Research Institute of the Ministry of Internal Affairs of Ukraine, Ukraine. ORCID ID: https://orcid.org/0000-0001-5110-8220

***** Candidate of Law Sciences, Detective of National Anti-Corruption Bureau of Ukraine, Ukraine. ORCID ID: https://orcid.org/0000-0003-4473-9432

Recibido el 23/09/22 Aceptado el 25/11/22

Formas de reformar la legislación penal y procesal penal de Ucrania en el contexto de la integración europea

Resumen

El propósito de la investigación es resaltar cuestiones problemáticas y formas de reformar la legislación procesal penal de Ucrania en el contexto de la integración europea. Contenido principal. El artículo analiza la legislación procesal penal vigente en Ucrania y en los países de la Unión Europea. Metodología: La base metodológica de la investigación es el método dialéctico del conocimiento científico, a través de la aplicación de este método se consideraron los aspectos: legales, funcionales, organizativos y procesales de los enfoques metodológicos para la comprensión de cuestiones problemáticas y formas de reformar la legislación procesal penal de Ucrania en se consideró el contexto de la integración europea. Conclusiones. Se han destacado las deficiencias del Código de Procedimiento Penal de Ucrania. Se esbozaron las perspectivas de su reforma y se propusieron cambios a la legislación vigente en el contexto de la integración europea.

Palabras clave: procedimiento judicial; legislación procesal penal; proceso penal; integración europea; reformas legislativas.

Introduction

Today Ukraine is on the way to fundamental changes in the process of European integration. However, rapprochement with countries of the European Union creates the need to harmonize Ukrainian legislation with the legislation of the member states of the European Union, to implement in practice effective protection of rights and interests of an individual and the society in general with the aim of establishing a confident position of Ukraine on the global stage as a democratic and legal state.

Judicial practice throughout the world forms an impression of the level of democracy of state power in a country and forms the level of public trust in it. That is why quality of the criminal process and adopted court decisions are of exceptional importance. Every person in Ukraine has the right to legal, fair, impartial justice, appeal against illegal actions or inaction of state authorities.

In Article 3 of the Constitution of Ukraine the Legislator declares the status of Ukraine as a social state, where a person, his/her life, health, honor, dignity, inviolability and security are the highest social value, and therefore state authorities must provide an effective mechanism for protection of violated and (or) unrecognized rights and legitimate interests of a person.

Criminal offenses constitute a significant public danger (The Law of Ukraine, 1996). It is the norms of criminal procedural legislation that are of particular importance in the process of realization of a person's right to legal, fair, impartial, objective and transparent justice. The European integration vector of Ukraine's development necessitates harmonization of Ukrainian criminal procedural legislation with the legislation of the European Union.

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

1. Literature review

During the Soviet period the closest approach to this topic was represented in the fundamental work by 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 complex developments, in almost all works of modern processualists devoted to the study of aspects of criminal proceedings, the corresponding normative basis of their regulation is also analyzed and, therefore, certain issues concerning quality of criminal procedural legislation are investigated.

In the research plan, defining the concept of quality of criminal procedural legislation is a necessary primary theoretical task on the way to the development of a scientific concept of quality standards of criminal procedural legislation with the prospect of its practical implementation. The author of the article sets a goal to formulate basic theoretical tasks.

However, despite the deep research of the above-mentioned scientists, today there is a problem of reforming the norms of the current criminal procedural legislation of Ukraine in the context of European integration processes through the positive experience of countries included to the European Union.

In the research plan, defining the concept of quality of criminal procedural legislation is a necessary primary theoretical task on the way to the development of a scientific concept of quality standards of criminal procedural legislation (CPL) with the prospect of its practical implementation. The author of the article sets the goal to formulate 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 quality standards of modern criminal procedural legislation in the light of the updated national legal doctrine taking into account European standards regarding perception of the fundamental requirement of supremacy of law.

High quality of criminal-procedural legislation is a fundamental condition for effective implementation of the purpose of criminal proceedings. Only a high-quality criminal procedural law is able to organize activities in criminal cases in a way that its system could be simple, understandable for all subjects of the proceedings, and to ensure that those of them who apply the law could do this quickly and at a high level.

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 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 urgency of the above topics lies in the need to form an effective mechanism for protection of rights, freedoms and interests of a person in the criminal process by means of reforming standards of the criminal procedural legislation in force.*

2. Materials and methods

The research is based on work of foreign and Ukrainian researchers on methodological approaches to understanding of problematic issues and ways of reforming the criminal-procedural legislation of Ukraine in the context of European integration.

Using the gnoseological method, the essence of methodological approaches to understanding problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration was clarified, thanks to the logical-semantic method, the conceptual apparatus was deepened, the essence of the concepts of problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration.

By means of using the system-structural method, components of methodological approaches to understanding problematic issues and ways of reforming the criminal-procedural legislation of Ukraine in the context of European integration were studied. The structural-logical method was used to define main problematic issues and ways of reforming the criminal procedural legislation of Ukraine in the context of European integration.

3. Results and discussion

Today Ukraine is going through a difficult road 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 we examine the criminal and criminal procedural law of the European Union (hereinafter – the EU), we should note that there is no single normative act that would regulate criminal and criminal procedural relations of the EU member states. Scientists note the inhomogeneity of the EU criminal law and divide it into the following categories:

1. EU administrative and criminal law (the rules which contain the basic EU bans and certain procedural rules which, due to formal and political reasons, refer to administrative and legal rules).
2. Norms of EU law, which determine the specifics of criminal law and criminal process, which requires EU member states to take certain measures in a certain way.
3. Criminal procedural law of the European Union, which contains certain standards of performing criminal procedural activity as well as peculiarities of international cooperation, extradition, etc.
4. Draft norms of the unified criminal law (Pashkovskyi, 2017).

In spite of this, countries of the European Union have experience of effective criminal proceedings, which can serve Ukraine in the process of reforming the norms of its criminal procedural legislation in force.

Despite the democratization of the norms of the Criminal Procedural Code of Ukraine (hereinafter referred to as the CPC of Ukraine), practice shows that there are significant shortcomings in the process of implementing norms of criminal procedural legislation (Law of Ukraine, 2013). Article 214 of the CPC of Ukraine provides for the procedure of filing and registration of a criminal offense statement.

The legislator determined that a criminal offense statement must be submitted by an investigator or prosecutor no later than 24 hours to the Unified Register of Pretrial Investigations. However, such a norm does not exclude the problem of late filing of information about a criminal offense, as investigators and prosecutors have a habit of "sorting" such statements, which leads to a violation of a person's right to timely response of state authorities to a committed criminal offense.

Also, Article 284 of the CPC of Ukraine provides that one of the grounds for termination of criminal proceedings is the verdict on such criminal proceedings. In the previous Criminal Procedure Code of Ukraine (Law of Ukraine, 2013) the legislator envisaged that refusal to initiate a criminal

case or terminate a criminal case in the absence of elements essential to the offense (corpus delicti) made it impossible to initiate a similar criminal case.

At present, the procedure provided for by the current CPC of Ukraine causes the problem of initiation of criminal proceedings based on one and the same fact. At the same time, it is sufficient only to submit a statement to the Register of Pretrial Investigations. This practice shows that even if criminal proceedings are terminated, conduct of repeated investigative actions in full is not excluded.

Scientists note that in the current Criminal Procedural Code of Ukraine one of the novelties consists in increase of court control over the observance of the rights, freedoms and interests of citizens. This control involves the use by the investigating judge of measures to ensure criminal proceedings. Statistical data show that the most common petitions for ensuring rights, freedoms and interests of citizens are presented as petitions for temporary access to things and documents. Such petitions are usually filed by persons acting for and on behalf of the accused person.

Access is granted only on the basis of the decision of the investigating judge. Today, in our opinion, the legislator's legal gap consists in the lack of an exhaustive list of documents that must be attached to an above-mentioned petition. This problem causes a large number of court decisions on refusal to grant access to specified things and documents. Sometimes judges themselves are careless about the issue of attaching necessary documents to the respective petition, which could be of great importance during consideration of the criminal proceedings.

There is also no clear mechanism for proving the need to withdraw documents and/or things in connection with the threat of their destruction. Therefore, we believe that there is a need to define the norm in the Criminal Procedural Code of Ukraine concerning the procedure and grounds for withdrawal of things and documents (Leheza, 2022).

In our opinion, 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. Experience of foreign countries (in particular that of Germany) provides the possibility to perform the above function not only by a lawyer, but also by other specialists in the sphere of law (Kyrychenko *et al.*, 2021). According to paragraph 138 of the CPC of the Federal Republic of Germany, law teachers in German higher education institutions also have the right to protect rights, freedoms and interests of individuals. In our opinion, this practice makes sense in the criminal procedural legislation of Ukraine, because teachers in the sphere of jurisprudence constantly improve their scientific level in the process of teaching and can effectively protect rights and interests of individuals in court (Holovnenkov, 2012).

Lawyers note shortcomings of Articles 220-221 of the CPC Code of Ukraine. According to Article 220 the CPC of Ukraine specified is the procedure for consideration of petitions for the performance of any procedural actions. Petitions filed by the defense party, the victim and his/her representative or legal representative, representative of the legal entity in respect of which the proceedings are being conducted, must be considered within a period of not more than three days from the moment of submission and the above-mentioned request must be satisfied if there are relevant grounds.

Results of consideration of the respective petition are informed to the person this petition was filed by. If there are grounds provided for by the current legislation, a reasoned resolution is issued, a copy of this resolution is delivered to the person the petition was filed by, and in the event that delivery is impossible for objective reasons, it should be sent to this person. Article 221 of the Criminal Procedure Code of Ukraine, the legislator envisaged the procedure for familiarization with materials of the pre-trial investigation before its completion.

The investigator and/or the prosecutor is obliged, at the petition of the defense party, the victim, the representative of the legal entity in respect of which the proceedings are being conducted, to provide them with the materials of the pre-trial investigation for review, except for materials on application of security measures to persons participating in the respective criminal proceedings, as well as except for materials which when provided for familiarization at the respective stage of the criminal proceedings may harm the pre-trial investigation.

Refusal to provide for familiarization of a generally available document, the original of which is in the materials of the pre-trial investigation, is not allowed. When reviewing materials of the respective pre-trial investigation, the person this pre-trial investigation is conducted by has the right to make necessary extracts and copies. Lawyers emphasize the legislative gap regarding lack of time limits for notifying a person of the results of consideration of his/her petition (Tymoshyn, 2016).

Article 303 the CPC of Ukraine considerably narrows the number of persons who have the right to appeal the decisions, actions or inaction of the investigator or prosecutor during the pre-trial investigation, as well as grounds for such an appeal (Law of Ukraine, 2013). In particular, there is no rule that would regulate the possibility to appeal against failure to with reasonable investigation deadlines, as well as the procedure of filing complaints by persons who do not have the status of suspects or victims (Leheza *et al.*, 2022).

Reconciliation agreements are also of scientific interest. Lawyer Kyrylo Nominas analyzes expansion of opportunities for conclusion

of reconciliation agreements. He notes that such broad opportunities contribute to spread of corruption offenses and, subsequently, to failure to fulfill tasks of criminal proceedings. At the same time, he emphasizes that despite these circumstances, if a court carefully examines materials of criminal proceedings such situations can be avoided (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. In France, judges are entitled with considerable powers (Kyrychenko *et al.*, 2021). The first feature of the French criminal procedure consists in the institution of preliminary examination of accused persons, which is conducted by the respective presiding judge. The judge examines sufficiency of the evidence to issue a guilty verdict. However, if the judge has doubts about the decision on criminal proceedings, he has the right to conduct the investigation himself, to visit the place of crime (Leheza *et al.*, 2022).

In our opinion, this practice is also reasonable for Ukraine. The issue of appropriateness and admissibility of evidence is also important. Articles 87-89 the CPC of Ukraine has established the grounds and the procedure of declaring evidence to be inadmissible. However, judicial practice shows a large number of criminal proceedings against public persons, which the court has been forced to terminate because of the lack of evidence, because of inadmissibility or inappropriateness of evidence.

We believe that the legislative regulation of the evidence-gathering process in the UK is a positive experience for Ukraine. According to the UK's criminal procedure legislation, every private individual, including lawyers, has the right to conduct his/her own investigation and has the right to collect evidence, and this evidence will be taken into account by the court if the court considers it appropriate, even if it was collected from the criminal procedural form and would be recognized as inadmissible in Ukraine (Berladyn, 2012*)*.

Conclusions

So, on the basis of the above, it can be concluded 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 rights, freedoms and legitimate interests of individuals. Today Ukraine is on the way to fundamental changes in the process of European integration.

However, rapprochement with countries of the European Union creates the need to harmonize Ukrainian legislation with the legislation of the member states of the European Union, to implement in practice effective protection of rights and interests of an individual and the society in general with the aim of establishing a confident position of Ukraine on the global stage as a democratic and legal state. Judicial practice throughout the world forms an impression of the level of democracy of state power in a country and forms the level of public trust in it.

That is why quality of the criminal process and adopted court decisions are of exceptional importance. Every person in Ukraine has the right to legal, fair, impartial justice, appeal against illegal actions or inaction of state authorities.

Practical experience of France, the Federal Republic of Germany and Great Britain is relevant.

Prospects for further research are as follows:

1. Studying experience of individual foreign countries in the context of improving criminal procedure 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.

Bibliographic References

ALEKSIEEVA, Liudmyula Mykhailivna. 1979. Strogovycha Soviet criminal law and problems of its effectiveness. Science. Moscow, Russian Federation.

BERLADYN, Oksana. 2012. Legal Aspects of Pre-Trial Counsel Participation in the UK Criminal Trial. Bulletin of the Academy of Advocacy of Ukraine. Kyiv, Ukraine.

HOLOVNENKOV, Pavlo. 2012. Criminal Procedure Code of the Federal Republic of Germany. Scientific and practical commentary and translation of the text of the law with the introductory article by Professor Uwe Hellmann "Introduction to Criminal Procedure Law of the Federal Republic of Germany. Berlin, Germany.

KYRYCHENKO, Oleh; KHRYSTOVA, Yuliia; SKOK, Oleksandra; SHEVCHENKO, Taisiia; LITUN, Oleh. 2021. "Criminal environmental protection: international practices and priorities for improving" In: Revista de la Universidad del Zulia. Vol. 12, No. 33, pp. 102-120.

KYRYCHENKO, Oleh; SOLDATENKO, Olena; GOROKHOVSKA, Olena; VOLOSHYNA, Maryna; MAKSYMOVA, Larysa. 2021. "Fraud in the banking system of Ukraine: ways to combat taking into account foreign experience" In: Amazonia Investiga. Vol. 45, No. 10, pp. 208-220.

LAW OF UKRAINE. 1996. Constitution of Ukraine of June 28, 1996. Official site of the Verkhovna Rada of Ukraine. Ukraine.

LAW OF UKRAINE. 2013. Criminal Procedure Code of Ukraine. Official site of the Verkhovna Rada of Ukraine. Ukraine.

LEHEZA, Yevhen. 2022. "Illegal influence on the results of sports competitions: comparison with foreign legislation" In: Ratio Juris UNAULA. Vol. 17, No. 34, pp. 53-70.

LEHEZA, Yevhen; FILIPENKO, Tatiana; SOKOLENKO, Olha; DARAHAN, Valerii; KUCHERENKO, Oleksii. 2020. "Ensuring human rights in ukraine: problematic issues and ways of their solution in the social and legal sphere" In: Cuestiones políticas. Vol. 37, No. 64, pp. 123-136.

LEHEZA, Yevhen; SHAMARA, Oleksandr; CHALAVAN, Viktor. 2022. "Principios del poder judicial administrativo en Ucrania" In: DIXI. Vol. 24, No. 1, pp. 1-11.

LEHEZA, Yevhen; YERKO, Iryna; KOLOMIICHUK, Viacheslav; LISNIAK, Mariia. 2022. "International Legal and Administrative-Criminal Regulation of Service Relations" In: Jurnal cita hukum indonesian law journal. Vol. 10, No. 1, pp. 49-60.

LOBOIKO, Leonid. 2017. The quality of the criminal procedural law - a guarantee of its effective implementation'. Actual problems of improving criminal procedural legislation: All-Ukrainian scientific and practical conference. National University of Odessa Academy of Law. Odesa, Ukraine.

PASHKOVSKYI, Maksym Ihorovych. 2017. Inadmissibility of evidence obtained as a result of a significant violation of human rights and freedoms. International criminal law. Kyiv, Ukraine.

TYMOSHYN, Vladymyr Vladymirovych. 2016. Shortcomings of the Criminal Procedure Code of Ukraine (Articles 220, 221). Kyiv, Ukraine.

YANOVSKA, Oleksandra Hryhorivna. 2013. Application of the practice of the European Court of Human Rights in the exercise of judicial control in criminal proceedings. Bulletin of the Academy of Advocacy of Ukraine. No. 2. Kyiv, Ukraine.

ZELENETSKYI, Volodymyr. 2011. Theoretical foundations of ensuring the quality of criminal legislation and law enforcement activities in the field of fighting crime in Ukraine Law. Kyiv, Ukraine.

UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.40 Nº 75

Esta revista fue editada en formato digital y publicada en diciembre de 2022, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

www.luz.edu.ve
www.serbi.luz.edu.ve
www.produccioncientificaluz.org