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THE CONCEPTS OF TRUTH AND THEIR IMPLEMENTATION IN THE CRIMINAL PROCEEDINGS OF THE COMMON LAW AND CONTINENTAL LAW SYSTEMS

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The article provides a comprehensive analysis of the concepts of truth and their legislative implementation in the criminal proceedings of the common law and continental law systems on the example of the United States of America as a basic representative of the Anglo-American (common) law system, as well as the Federal Republic of Germany, the French Republic and Ukraine as typical representatives of the Romano-Germanic (continental) law system.

The author's analysis of the legislation regulating the criminal proceedings of foreign states, including both representatives of the continental law system, characterized by a mixed type of procedure, and the common law system with its adversarial model, gives the possibility and grounds for the author to state that none of them refuses the idea of establishing truth in the criminal proceedings.

Pursuant to the results of the research conducted, it is substantiated that the dominant for the criminal proceedings in the states of the continental law system is the classical understanding of truth, objectified in the concept of substantive (objective) truth. In turn, the common legal system is characterized by the concept of formal (legal, judicial) truth, which rejects the idea of substantive truth based on the theory of correspondence.

Keywords: adversariality, proof, formal (legal) truth, substantive (objective) truth, fairness.

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Introduction Undoubtedly, the concept of truth in the criminal proceedings is one of the primary and determining factors in shaping the foundations of the criminal procedural policy in any of the modern states. Such constituent issues include, for instance, the definition of both the purpose of proof in particular and the purpose and objectives of the criminal proceedings in general, together with its principles, scope and procedural status of its participants, as well as certain aspects of a number of other procedural institutions, which in its entirety directly affect further structure and form of the criminal proceedings.

It is particularly significant to analyze the foreign experience of criminal procedural regulation of the above issues, as well as the numerous developments of foreign scientific schools, which relate to the establishment of truth in the criminal proceedings, including those states whose criminal procedural law system has a lot in common with the Ukrainian one. Such experience may be extremely valuable for the domestic legislator, who seems to have often stood at the forefront of solving a number of conceptual issues, and in some places still stands at a crossroads. At the same time, a comprehensive study of such experience will allow to identify the pitfalls of the theory and practice of proof in criminal procedure and take them into account in future.

Consequently, the purpose of this article is a comprehensive analysis of the concepts of truth and their legislative implementation in the criminal proceedings of the common

law and continental law systems on the example of the United States of America (USA) as a basic representative of the Anglo-American (common) law system, as well as the Federal Republic of Germany (Germany), the French Republic (France) and Ukraine as typical representatives of the Romano-Germanic (continental) law system.

The concepts of truth and their implementation in the criminal proceedings of the common law system (on the example of the United States of America).

In the United States, as a state with a common law system, the basic structure of the criminal proceedings is adversarial: parties with opposing procedural interests present the evidence collected by them before a «trier of fact», usually a jury. Accordingly, each party is obliged to collect and submit to the court evidence in order to prove its position. There is a formal procedural equality between the prosecution and the defense, i.e. both parties are endowed with equal procedural rights and responsibilities.

In turn, the most important task of the court is not to establish substantive (objective) truth, but to ensure due process, including resolving the issue of admissibility of evidence. Consequently, a judge, as an impartial subject of the criminal proceedings, presides over the court session, establishing the procedure and rules for considering the case, which must be followed by the parties. The court does not directly establish the facts and circumstances relevant to the criminal proceedings, as well as is not endowed with the right of its own (official) initiative, i.e. to act *ex officio* in the process of proof. As a rule, the court is not entitled to question witnesses (including asking additional and/or clarifying questions during direct or cross-examination), as this may affect the jury and interfere with the tactics of the trial. Only in certain cases, in particular – the cases of summary offences, usually in a form of so-called bench trials, the judge, examining the evidence, does play the role of the finder of fact; instead, in more serious (e.g. felony) cases, this function is performed by a jury.

Besides, in exceptional cases, after the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal (so-called «directed verdict») of any offense for which the evidence is insufficient to sustain a conviction; the court may on its own consider whether the evidence is insufficient to sustain a conviction (Rule 29 (a) of the Federal Rules of Criminal Procedure). Moreover, in certain situations, under Rule 29 (c) of the Federal Rules of Criminal Procedure, if the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal; if the jury has failed to return a verdict, the court may enter a judgment of acquittal [12].

However, it should be critically questioned that an adversarial procedure is conceptually the best model for establishing truth in the criminal proceedings [17, p. 1060], as the parties' own procedural interest allegedly guarantees a more thorough and complete establishment of the circumstances of the case than the collection and presentation of evidence by one of them. Under such conditions, the court, as a silent listener, usually has the right to decide only which party was more convincing than the other, i.e. which «actor played better», even without being able to get close to truth. To conclude, in this system of the adversarial proceedings there is simply no procedural body authorized to provide a full and comprehensive investigation of all facts and circumstances relevant to the criminal proceedings.

The issue of whether criminal proceedings in the United States are inherently aimed at establishing truth as a necessary precondition for a fair trial, still seems highly debatable.

First, Rule 102 of the Federal Rules of Evidence states that «[t]hese rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and

delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination». In turn, «[t]he court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to make those procedures effective for determining the truth...» (Rule 611 of the Federal Rules of Evidence). Furthermore, under Rule 603 of the Federal Rules of Evidence, before testifying, a witness must give an oath or affirmation to testify truthfully; it must be in a form designed to impress that duty on the witness's conscience [13]. There is also a well-known oath formula that every witness shall take before being questioned in court: «I solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help me, God!»

Second, the U.S. Supreme Court has also repeatedly, directly or implicitly, pointed to the need to establish truth in the criminal proceedings. In particular, in the case of *Tehan v. United States*, 383 U.S. 406, 416 (1966), the U.S. Supreme Court noted: «The basic purpose of a trial is the determination of the truth», and in *Colorado v. Connelly*, 479 U.S. 157, 166 (1986): «[T]he central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence».

Moreover, from the very term «verdict» (from the Latin *vere dictum* – «to say the truth»), which is semantically meaningfully used in the criminal proceedings of the United States to denote the main type of court decision that addresses the guilt or innocence of the defendant, it is conceptually clear that the purpose of American criminal procedure must be the establishment of truth and a fair resolution of the case.

However, in the U.S. criminal proceedings, truth is not established epistemologically, i.e. by historical reconstruction of the event of a criminal offense. Evidence in the adversarial proceedings is based on the assumption that truth is best manifested dialectically, in the course of a dispute between the parties in court. However, there is no doubt that the parties are often, if not always, more interested in their own victory than in the impartial establishment of truth. Consequently, American concept of truth rejects the notion of substantive truth based on the theory of correspondence, and recognizes the formal «truth», which is a procedurally created construct – nothing more than fiction.

Procedural consequences of the defendant's admission of guilt, namely his/her refusal to exercise a number of rights guaranteed by the U.S. Constitution (the right to a jury trial, to confront witnesses, protection from self-incrimination, the right to be convicted upon proof beyond a reasonable doubt, etc.); partly «automated» practice of plea bargaining with possible abuses and manipulations by the prosecutors; as well as the existence of such procedural institutions as the statement *nolo contendere*, when the defendant does not challenge the charges brought against him, but accepts punishment without admitting guilt; «Alford plea», in which the defendant pleads not guilty, but simultaneously asks to be found guilty for certain reasons; jury nullification, which takes place when a jury decides a case against the body of evidence presented in a trial – all of the above proves that the main issue to be decided in the criminal proceedings of the United States is not whether the defendant is really guilty («guilty in fact»), but whether he/she can be made legally liable («legally guilty»).

Nevertheless, such formal «truth», literally obtained in the course of court proceedings, which underlies the answer to the above issue of guilt or innocence, presupposes the achievement of justice in the criminal proceedings, provided that the latter complies with the requirements of due process.

In conclusion, truth in the criminal proceedings of the United States, according to the traditional understanding, does not «precede the procedure» in determining its content and direction, but arises *a posteriori*: it is not established or discovered «in

search», but is artificially created by the parties and legitimized by the court as such in the courtroom [32, s. 197]. Accordingly, the establishment of substantive (objective) truth is not the purpose of an adversarial criminal procedure in the United States. It is «replaced» by a more important value – the procedural fairness of the trial as the content and outcome of a criminal dispute resolution – which, in turn, can never guarantee that there is no risk of convicting and punishing an innocent person [5].

The concepts of truth and their implementation in the criminal proceedings of the continental law system (on the examples of the Federal Republic of Germany, the French Republic and Ukraine)

A) FEDERAL REPUBLIC OF GERMANY

The principle of a complete and comprehensive establishment and examination of all circumstances of the criminal proceedings (also known in German special literature as «inquisitorial principle», «instructional principle», «investigatory principle», or «the principle of establishing substantive truth») [27, § 15 Rn. 3; 20, Rn. 48; 11, Rn. 1] is one of the key issues in the criminal procedure of the Federal Republic of Germany. This principle is comprehensively embodied in the provisions of the Criminal Procedural Code of Germany (*Strafprozessordnung*, StPO), adopted on February 1, 1877 and valid in the edition of April 7, 1987, with subsequent amendments and additions [30], as well as it finds its further development in the case law, including decisions of the Federal Constitutional Court and the Federal Court of Justice.

Based on a comprehensive analysis of German criminal procedural laws, the following provisions may be distinguished as procedural guarantees of establishing substantive (objective) truth in the criminal proceedings:

1. The investigation as well as procedural decisions shall extend only to the offence specified, and to the persons accused, in the indictment. Within corresponding limits, the courts shall be authorized and obliged to act independently; in particular, they shall not be bound by the parties' motions when applying a penal norm (§ 155 StPO).

2. The public prosecution office shall investigate (establish) both aggravating and mitigating circumstances, as well as take measures aimed at preserving evidence that may be lost (§ 160 II StPO).

3. Before the court decides on the opening of primary court proceedings, it may order individual evidence be taken to help clear up the case (§ 202 StPO).

4. The court shall not be bound by the public prosecution office's motions when making its decision (§ 206 StPO).

5. In order to establish truth, the court shall, *proprio motu*, extend the examination of evidence to all facts and means of proof relevant to the decision in the case (§ 244 II StPO).

6. The court shall not be bound by the legal evaluation of the offence forming the basis of the order on opening the primary court proceedings (§ 264 II StPO).

Particular attention should be paid to the peculiarities of the implementation of the principle of establishing truth when entering into an agreement in the criminal proceedings as well as in the reduced court proceedings.

Under § 257c StPO, the court may, in certain cases, reach an agreement with the parties to the criminal proceedings on the further course and outcome of such proceedings. The subject matter of this agreement may only comprise the legal consequences that could be included in the content of the judgment and associated rulings, other procedural measures relating to the course of the underlying adjudication proceedings, as well as the conduct of the parties during the trial. A confession shall be an integral part of any negotiated agreement. In this case, as noted by the German

legislator, the provisions set out in § 244 II StPO, shall remain unaffected. Moreover, the Federal Court of Justice emphasizes: «The court remains committed to the establishment of truth» (BGHSt 43, 195, § 26). Accordingly, the provisions of § 257s I and § 244 II StPO do not release the court from the duty to verify the authenticity of such a confession during the trial; moreover, the court shall not be satisfied with the statement of the defendant's guilt exclusively, refraining from further evidence collecting. However, this does not mean that in such a case the court is obliged to carry out a judicial investigation in full, as it would be necessary if the defendant objected to the commission of an offence. In particular, during the trial, the basic evidence shall be examined, including the prosecution and defense witnesses being interrogated. Consequently, even if the defendant admits his/her guilt, under the principle of establishing truth, the court is obliged to establish and investigate all the circumstances of the criminal proceedings relevant to the correct resolution of the case, in a complete and comprehensive manner.

In turn, with the consent of the present trial parties (the defendant, his/her counsel and the prosecutor), the examination of evidence may be significantly simplified. For instance, § 250 StPO establishes a general requirement for a direct interrogation of persons by the court in the course of the primary proceedings, whereas, under the provisions of § 420 I, III StPO, in the case of reduced proceedings, the interrogation of a witness, expert and a defendant in the same criminal proceedings may be replaced by reading out the records of an earlier examination, as well as of the documents containing written statements originating from them. Moreover, although the scope of the examination of evidence is established at the discretion of the court, the latter, however, remains bound by the obligation to establish truth provided for in § 244 II StPO.

Establishing truth in the criminal proceedings of Germany serves as an element of the factual ground for conducting certain procedural actions and the adoption of certain procedural decisions, particularly:

1. The use of the audio-visual recording of an interrogation shall be admissible only for the purposes of the criminal prosecution and only in the scope as it is required to *establish truth* in the case (§ 58a II StPO).

2. Persons other than the defendant, who might be considered called as witnesses, may be examined without their consent only insofar as *establishing truth* involves ascertaining whether their body shows a particular trace or consequence of a criminal offence. Forensic medical examination to ascertain descent and the taking of blood samples from persons other than the defendant shall be admissible without their consent, provided that no detriment to their health is to be expected, as well as the corresponding measure is indispensable for *establishing truth* in the case (§ 81c I, II StPO).

3. The ground for taking into custody is the presence of one of the risks stipulated in § 112 II StPO, and if, therefore, the danger exists, that the *establishment of truth* in the case will be complicated (the risk of tampering with evidence).

4. A motion to examine evidence by inspection in loco may be rejected if the court, in the exercise of its duty-bound discretion, deems the inspection not to be necessary for *establishing truth* (§ 244 V StPO).

5. If an imminent risk of serious detriment to the well-being of the witness to be interrogated in the presence of those attending the main hearing exists, the court may order that the witness remain in another place during the interrogation; such an order shall also be admissible under the conditions set out in § 251 II StPO, insofar as this is necessary to *establish truth* in the case (§ 247a I StPO).

Consequently, unlike the criminal proceedings of the United States, where the court adjudicates the case solely on the evidence presented to it by the parties in a «pure»

adversariality, as the embodiment of the concept of formal truth, in the criminal proceedings of Germany the court is obliged to establish substantive truth and to investigate for this purpose all evidence that may be relevant to a decision in the case. Such a principle is implemented in the criminal proceedings, first of all, by the presiding judge, conducting the trial and determining its course and direction. Therefore, if specific facts and circumstances are relevant in the course of a sentencing, the court is obliged to examine the corresponding evidence, even if the interested parties to the proceedings do not file a motion for it or object to it, namely, *proprio motu*.

Summing all it up, the role and importance of the concept of substantive (objective) truth in the criminal proceedings of Germany is considered to be determinative. In particular, the establishment of exclusively true facts and circumstances of the case is not just a necessary basis for the adoption of a lawful, substantiated and fair court decision, but also serves as a prerequisite for the implementation of the principles of German substantive criminal law, above all – the liability principle «*nulla poena sine culpa*» [26].

B) FRENCH REPUBLIC

In the scientific literature it is traditionally recognized that the French Republic is one of those states, in which at the beginning of the 19th century originated the foundations of the so-called mixed form of criminal procedure. Its specific features are also reflected in the current Code of Criminal Procedure (*Code de procédure pénale*, CPC of France), adopted on December 23, 1958 and entered into force on March 2, 1959 [9].

However, despite the existence of a number of «adversarial» institutions and principles (such as procedural equality of the parties, particularly when presenting evidence and proving their persuasiveness before the court; publicity and openness of the trial; administration of justice in certain categories of criminal offenses by a jury); free evaluation of evidence, etc.), in French criminal proceedings, similarly to Germany, still dominate the so-called «inquisitorial» (inherent in the investigative model of the procedure) elements that determine the content and focus of the whole criminal proceedings to establish substantive (objective) truth (*vérité matérielle*).

In the pre-trial stages of the criminal proceedings, the responsibility to establish truth is assigned by the legislator, first of all, to the judicial police and the prosecutor. Thus, the judicial officer (*l'officier de police judiciaire*) is obliged to ensure the preservation of any traces that may disappear, as well as any evidence that may be useful to establish truth (Article 54 of the CPC of France). In turn, by virtue of the provisions of Article 39-3 of the CPC of France, the prosecutor (*le procureur de la République*) directs the investigation to discover truth, ensures the establishment of both the facts and circumstances that convict and acquit the suspect, as well as respect for the rights of the victim, applicant and suspect.

However, a key role in the preliminary (pre-trial) investigation and search for truth in the criminal proceedings of France is played by such a subject as the investigating judge (*juge d'instruction*). He is authorized to carry out, in accordance with the law, all investigative actions that he deems necessary to establish truth. At the same time, the investigating judge is also obliged to establish both the facts and circumstances that convict and those that acquit the suspect (Article 81 of the CPC of France).

Such investigative actions may include, but are not limited to: hearing and questioning witnesses; going to the crime scene in order to make any necessary factual observations or searches; conducting other necessary searches and seizures; involvement of experts to provide relevant expert opinions; interception of postal correspondence; wiretapping on telephone conversations, etc [28, p. 25–26]. The above-mentioned

investigative actions aimed at establishing truth may be carried out either by the investigating judge himself on his own initiative or by the judicial police on his behalf.

At the trial stage, the obligation to establish truth in French criminal proceedings rests with the court (*la cour*) and, above all, with the presiding judge (*le président*). The latter, in particular, is endowed with discretionary powers, by virtue of which he has the right, in his honor and conscience, to take any measures which, in his opinion, are necessary to establish truth. Moreover, the presiding judge has the right to summon, if necessary – with a decision to enforce compelled appearance, and to hear any person or to examine any new evidence presented to him, which during the trial he deems useful to establish truth (Article 310 of the CPC of France).

Simultaneously, even in case of the criminal proceedings under a simplified procedure, the «judicial investigation» of which is significantly reduced in its content and scope, the defendant or his defense counsel in certain situations under Article 397-1 of the CPC of France, has the right to request the court to appoint any investigative actions that they deem necessary to establish truth concerning the alleged facts and circumstances of the case or the characteristics of the person concerned in respect of which the criminal proceedings are conducted. The court is obliged to adopt a reasoned decision to deny such a request.

An important guarantee of the establishment of truth in the criminal proceedings, inherent in the French criminal procedure, is the principle of freedom of evidence and their free assessment by the court. Thus, by virtue of the provisions of Article 427 of the CPC of France, any means of proof are allowed, except where the law provides otherwise. For instance, the possible sources of evidence include, but are not limited to, physical evidence, written documents, testimony, expert opinions, on-site eyewitness accounts, etc.

There are no consolidated rules on the admissibility (inadmissibility) of evidence in the CPC of France. The above-mentioned article of the criminal procedural law only indicates that a judge makes a decision in accordance with his inner conviction. At the same time, he can substantiate his decision only with the evidence that was submitted during the trial and presented to him in the adversarial proceedings.

As it has been pointed out, the lack of an exhaustive list of sources of evidence that can be used in the process of criminal procedural proof, combined with the court's free assessment of the latter in its internal conviction (as well as by the investigator and prosecutor, respectively) is a clear indicator of the focus of the criminal proceedings on the concept of substantive (objective) truth as opposed to formal (legal, judicial) «truth», for which compliance with a strict, partly restrictive procedure on evidence is more important than their actual probative value.

The purpose of establishing truth in a criminal case is also often used by the French legislator as an element of the factual basis for certain investigative or other procedural actions, as well as the application of certain measures to ensure criminal proceedings.

Thus, for instance, pre-trial detention may be ordered or extended only if, in the light of accurate and detailed information resulting from the proceedings, it has been shown that this is the only means of achieving one or more of the objectives set out in this article, in particular the preservation of physical evidence or traces necessary to *establish truth* (Article 144 of the CPC of France); pre-trial detention may not exceed a reasonable time, taking into account the gravity of the charges against the person and the complexity of the investigation necessary to *establish truth* (Article 144-1 of the CPC of France); searches are carried out in all places where objects or electronic data can be found, the detection of which may be useful to *establish truth*, as well as the property confiscated by Article 131-21 of the French Criminal Code (Article 94 of the CPC of

France); during the criminal proceedings, measures that interfere with the privacy of a person may be taken only by decision or under the effective control of the judiciary, if they are, given the circumstances of the case, necessary to *establish truth*, as well as proportional to the criminal offense gravity (introductory article to the CPC of France).

A systematic interpretation of the provisions of the criminal procedural law, as well as analysis of the relevant doctrine allow us to conclude that for the time being, the criminal procedure in France embodies the concept of substantive (objective) truth, which involves understanding the latter as a conformity of the facts and circumstances, relevant to the criminal proceedings, concerning certain reality, to this reality. Moreover, the French criminal procedural system has implemented this concept at all stages and in a number of institutions, given that the establishment of truth in the case is its «*raison d'être*», i.e., the «meaning of existence» [4].

C) UKRAINE

In contrast to the Criminal Procedure Code of Ukraine of 1960 [3], the current procedural law, namely the Criminal Procedure Code of Ukraine of 2012 (CPC of Ukraine) [2] does not operate with the term «truth» or its derivatives. However, for instance, it is used in the criminal procedural context by the Fundamental Law [1], Article 31 of which guarantees the privacy of mail, telephone conversations, telegraph and other correspondence, exceptions to which can be established only by court in the cases provided by law, with the purpose of preventing crime or *establishing truth* in the course of a criminal case investigation, if it is not possible to obtain information by other means. Moreover, even the Civil Code of Ukraine [2] speaks of the "truth" in the criminal proceedings by determining the grounds for indemnification for damage caused by illegal decisions, actions or omissions of the body conducting operational search activities, pre-trial investigation, prosecution or court. In particular, under the provisions of Part 4 of Article 1176 of the above-mentioned law, an individual who in the course of pre-trial investigation or court proceedings prevented the *establishment of truth* by self-incrimination and thus contributed to illegal conviction, illegal prosecution, illegal application of preventive measures, illegal detention, illegal imposition of arrest or correctional labour as administrative penalties, is not entitled to indemnification. Consequently, the current state of criminal procedural regulation in Ukraine quite often becomes the ground for a number of «eternal» discussions of both theoretical and practical legal nature, whether truth shall be established in the criminal proceedings at all, and if so – what exactly.

Pursuant to the provisions of Article 2 of the CPC of Ukraine, the objectives of the criminal proceedings are the protection of individuals, society and the state from criminal offenses, the protection of rights, freedoms and legitimate interests of participants in the criminal proceedings, as well as the provision of a prompt, complete and impartial investigation and trial in order that anyone who commits a criminal offense be prosecuted to the extent of their guilt, no innocent person be accused or convicted, no person be subject to unreasonable procedural compulsion, as well as every participant in the criminal proceedings be subject to due process of law. In our opinion, without establishing substantive (objective) truth in the case, none of the above objectives, set before each criminal proceedings any without exceptions, cannot be achieved.

In turn, an integral prerequisite for achieving these objectives is provided for in Part 2 of Article 9 of the CPC of Ukraine, namely the obligation of the prosecutor, the head of the pre-trial investigation agency and the investigator to establish the circumstances of the criminal proceedings comprehensively, completely and impartially, to identify both incriminating and exculpatory, as well as mitigating and aggravating circumstances,

provide them with a proper legal assessment as well as to ensure the rendering of lawful and impartial procedural decisions. In our deep conviction, it is the comprehensiveness, completeness and impartiality of the establishment of all facts and circumstances covered by the subject matter of proof (Articles 91, 485, 505 of the CPC of Ukraine) that is the first and basic procedural means of establishing substantive (objective) truth, and its procedural guarantee is considered to be the corresponding obligation of the subjects conducting criminal proceedings. However, the above-cited provision of the CPC of Ukraine does not seem to be completely accurate. Firstly, we consider its attribution to the principle of legality to be absolutely unsystematic in terms of the legislative technique, as it reflects the content of a completely different, separate principle of the criminal proceedings – the principle of establishing substantive (objective) truth, making only an indirect connection with legality itself. Secondly, in the analysed norm, the legislator unjustifiably overlooked the inquirer, who, without any doubt, shall similarly bear the corresponding obligation, as well as the court.

The requirement of comprehensiveness, completeness and impartiality in establishing all the facts and circumstances, important for the proper resolution of the criminal proceedings, is a common thread in a number of other procedural law provisions. First and foremost, under Part 1 of Article 94 of the CPC of Ukraine, the investigator, prosecutor, investigating judge and court, according to their inner conviction, based on a comprehensive, complete and impartial investigation of all circumstances of the criminal proceedings, guided by law, evaluate each piece of evidence in terms of its relevance, admissibility, reliability, as well as the set of evidence collected – in terms of their sufficiency and interrelation for rendering the corresponding procedural decision.

In addition, the procedural guarantees of comprehensiveness, completeness and impartiality as a means of establishing substantive (objective) truth in the criminal proceedings are considered the following legal provisions:

1. The prosecutor as well as the investigator shall within their competence take all statutory measures to establish the event of criminal offense as well as the perpetrator thereof (Article 25 of the CPC of Ukraine).

2. The prosecutor, supervising the observance of laws in the course of the pre-trial investigation in the form of procedural guidance, shall verify the completeness and legality of the procedural actions, as well as the completeness, comprehensiveness and objectivity of the investigation in the referred criminal proceedings (para 17, Part 2 of Article 36 of the CPC of Ukraine).

3. Materials of the criminal proceedings on a criminal misdemeanour and on a crime shall not be joined in one proceeding, except in cases when this may adversely affect the completeness of the pre-trial investigation and trial (Part 2 of Article 217, Part 1 of Article 334 of the CPC of Ukraine).

4. Materials of the criminal proceedings shall not be disjoined, if it may adversely affect the completeness of the pre-trial investigation and trial (Part 4 of Article 217, Part 1 of Article 334 of the CPC of Ukraine).

5. Carrying out a special pre-trial investigation of other crimes than those provided for in Part 2 of Article 297-1 of the CPC of Ukraine, is not allowed, except if they, in particular, are investigated in the same criminal proceedings with the crimes specified in this part, and the allocation of materials on them may adversely affect the completeness of pre-trial investigation and trial (Part 2 of Article 297-1 of the CPC of Ukraine).

Moreover, the legislator foresees the incompleteness of the trial as an independent ground for revocation or change of the court decision by the appellate court, if, in particular, the circumstances, establishment of which may be essential for rendering a

lawful, reasonable and fair court decision, were not investigated during such trial (para 1, Part 1 of Article 409, Article 410 of the CPC of Ukraine).

Simultaneously, Part 1 of Article 21 of the CPC of Ukraine guarantees everyone the right to a fair trial and resolution of the case within a reasonable time by an independent and impartial court established on the basis of law. It should be emphasized that an important prerequisite for fairness in its substantive aspect, according to which only the person who committed a criminal offense can be prosecuted, and to the extent of his/her guilt, is the establishment of all relevant facts and circumstances in each case as they were in reality– namely, substantive (objective) truth.

Therefore, the criminal procedural law imposes an obligation on the presiding judge to direct the trial to ensure that all the circumstances of the criminal proceedings are established, removing from the trial everything irrelevant to the corresponding proceedings (Article 321 of the CPC of Ukraine). To implement such an obligation, the court is authorized, in particular, on its own initiative:

1) in certain cases, provided by law, to instruct an expert institution, expert or experts to conduct an examination, regardless of the parties' request (Part 2 of Article 332 of the CPC of Ukraine);

2) during the interrogation of the accused, to question them in order to clarify and supplement their answers (Part 1 of Article 351 of the CPC of Ukraine);

3) to re-interrogate the witness or the victim in the same or the next court session, if during the trial it became clear that the witness (victim) may testify about the circumstances in respect of which he/she was not questioned (Part 13 of Article 352, Part 2 of Article 353 of the CPC of Ukraine);

4) to question the witnesses during the examination of other evidence (Part 13 of Article 352 of the CPC of Ukraine);

5) to appoint a simultaneous interrogation of two or more already questioned participants in the criminal proceedings (witnesses, victims, accused) in order to establish the reasons for the discrepancy in their testimony (Part 14 of Article 352 of the CPC of Ukraine);

6) to summon an expert for interrogation in order to clarify his/her findings as well as to question such an expert (Parts 1, 2 of Article 356 of the CPC of Ukraine);

7) to appoint a simultaneous interrogation of two or more experts in order to establish the reasons for the discrepancy in their findings concerning the same subject or issue of research (Part 4 of Article 356 of the CPC of Ukraine);

8) to examine physical evidence as well as documents (Articles 357, 358 of the CPC of Ukraine);

9) to summon a specialist in order him/her to provide oral consultations or written explanations as well as to question him/her at any time during the examination of evidence (Parts 1, 2 of Article 360 of the CPC of Ukraine);

10) to inspect a certain place in exceptional cases (Part 1 of Article 361 of the CPC of Ukraine), etc.

Consequently, Articles 337, 370 and 410 of the CPC of Ukraine require the court to render a lawful, reasonable, reasoned and fair court decision, which is a decision made by a competent court in accordance with substantive law and in compliance with the requirements of the criminal proceedings under the CPC of Ukraine, on the basis of objectively established circumstances, confirmed by the evidence examined during the trial and assessed by the court pursuant to Article 94 of the CPC of Ukraine, providing the appropriate and sufficient reasons as well as grounds for its adoption.

Despite the fact that the current criminal procedural law of Ukraine does not provide a separate, independent principle of substantive (objective) truth among the general principles of the criminal proceedings, the necessity to establish it is indirectly enshrined in a number of provisions of the CPC of Ukraine. Therefore, it may be concluded that the legislator did not abandon this principle as such, merely bypassing its direct formal consolidation. Instead, the concept of substantive (objective) truth determines the entire content and direction of the procedural activities of the subjects conducting criminal proceedings (primarily, pre-trial investigation agencies, prosecutor and court), requiring the latter to establish comprehensively, completely and impartially all the facts and circumstances important for the proper resolution of the case; to provide them with a proper legal assessment by their own inner convictions, based on their comprehensive, complete and impartial examination; as well as to render on that basis a lawful, reasonable, reasoned and fair procedural decision [25].

Conclusions.

A comprehensive analysis of the legislation regulating the criminal proceedings of foreign states, including both representatives of the continental law system, characterized by a mixed type of procedure, and the common law system with its adversarial model, gives grounds for the conclusions that none of them refuses the idea of establishing truth in the criminal proceedings.

At the same time, the dominant for the criminal proceedings in the states of the continental (Romano-Germanic) law system is the classical understanding of truth, objectified in the concept of substantive (objective) truth. The latter provides for the exact correspondence of the conclusions of the pre-trial investigation bodies, as well as the court on the facts and circumstances of the criminal proceedings, which they came to on the basis of assessment of the evidence collected, to its actual facts and circumstances, which are the result of a comprehensive, complete and impartial (objective) clarification of the circumstances specified by the law, relevant to the criminal proceedings, by the procedural methods and means provided by it. In particular, the recognition of substantive (objective) truth as the purpose of proof in the criminal proceedings is peculiar for such representatives of the above law system as the French Republic and the Federal Republic of Germany, which is directly enshrined in the provisions of their procedural laws.

In turn, Ukraine, both in law and in the practice of its implementation (criminal procedural, in particular) also belongs to the continental law family. And despite the fact that the current CPC of Ukraine does not directly enshrine among the principles of criminal procedure the principle of establishing substantive (objective) truth concerning its facts and circumstances, but the idea of the need to establish it still finds its indirect consolidation in the entire system of its norms and underlies the activities of the pre-trial investigation agencies, prosecutor and the court, obliging them to comprehensively, completely and impartially investigate the circumstances of the criminal proceedings, provide them with a proper legal assessment and ensure lawful, impartial and fair procedural decisions.

Instead, the common law system is characterized by the concept of formal (legal, judicial) truth, which rejects the idea of substantive truth based on the theory of correspondence. Consequently, the criminal procedural law of the representatives of this law system, including the United States of America, recognizes formal «truth», which is a procedurally created construct by the parties in the adversarial proceedings, formally approved by the court as its fair resolution.

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КОНЦЕПТИ ІСТИНИ ТА ЇХ РЕАЛІЗАЦІЯ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ В АНГЛО-АМЕРИКАНСЬКІЙ ТА РОМАНО-ГЕРМАНСЬКІЙ ПРАВОВІЙ СИСТЕМАХ

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Проведено комплексний аналіз концептів істини та їх законодавчої реалізації у кримінальному провадженні в англо-американській та романо-германській правовій системах на прикладі, відповідно, Сполучених Штатів Америки як базового представника англо-американської (загальної) правової системи, а також Федеративної Республіки Німеччини, Французької Республіки та України як типових представників романо-германської (континентальної) правової системи.

Виконаний автором аналіз законодавства, яке регламентує кримінальне провадження інших держав, при цьому як представників романо-германської (континентальної) правової системи, для якої характерним є змішаний тип процесу, так і англо-американської (загальної) правової системи, зі змагальною моделлю останнього, дає можливість та підстави авторові ствердити, що жодне із них не відмовляється від встановлення істини у кримінальному провадженні.

За результатами проведеного дослідження сформульовано обґрунтовані висновки про те, що панівним для кримінального провадження держав континентальної (романо-германської) правової системи є класичне розуміння істини, об'єктивоване в концепті матеріальної (об'єктивної) істини. Останній передбачає встановлення точної відповідності висновків органів досудового розслідування, а також суду про факти й обставини кримінального провадження, до яких вони дійшли на підставі оцінювання зібраних доказів, дійсним його фактам та обставинам, що є результатом всебічного, повного і неупередженого (об'єктивного) з'ясування визначених законом обставин, що мають значення для кримінального провадження, передбаченими ним процесуальними способами і засобами.

Окрім цього, у статті зроблено наголос на тому, що як у законодавстві, так і в практиці його реалізації (кримінального процесуального, зокрема), Україна належить до романо-германської правової сім'ї. І незважаючи на те, що чинний КПК України прямо не закріпив серед засад кримінального провадження принципу встановлення матеріальної (об'єктивної) істини щодо його фактів й обставин, проте ідея необхідності її встановлення

все ж знаходить своє опосередковане закріплення у цілій системі його норм та лежить в основі діяльності органів досудового розслідування, прокуратури та суду, зобов'язуючи їх всебічно, повно і неупереджено дослідити обставини кримінального провадження, надати їм належну правову оцінку та забезпечити прийняття законних, неупереджених та справедливих процесуальних рішень.

Своєю чергою, автор також обґрунтував положення, що характерним для англо-американської (загальної) правової системи є концепт істини формальної (правової, судової), який відкидає уявлення про матеріальну істину, що ґрунтується на теорії кореспонденції. Відтак, кримінальне процесуальне законодавство держав-представників цієї правової системи, зокрема й Сполучених Штатів Америки, визнає «істину» формальну, яка є процесуально створеною сторонами в умовах змагальності під час судового розгляду конструктом, що формально затверджується судом як справедливий його результат.

Ключові слова: змагальність, доказування, формальна (правова) істина, матеріальна (об'єктивна) істина, справедливість.

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