

## THE DEVELOPMENT OF SOME BASIC PRINCIPLES OF ANTI-CRIMINAL PROCEEDINGS OF UKRAINE

*The article presents the development of a new doctrine of the person concerned and a neutral sentence. Particular attention is paid to the possibilities of improving the professionalism of the new doctrine of the anticriminal and other types of antidelictual proceedings. Considered in detail are the provisions of the new doctrine of establishing objective truth in an antidelictual case.*

**Key words:** *the person concerned, a neutral judgment, the principle of the professionalism in proceedings, the principle of the establishment of the objective truth.*

### **Ю. О. Ланцедова**

*Розвиток деяких базисних принципів антикримінального судочинства України*

*У статті представлено розвиток нової доктрини причетної особи і нейтрального вироку. Особливу увагу приділено можливостям вдосконалення нової доктрини професіоналізму здійснення антикримінального та інших видів антиделіктного судочинства. Детально розглянуто положення нової доктрини встановлення об'єктивної істини по антиделіктній справі.*

**Ключові слова:** *причетна особа, нейтральний вирок, принцип професіоналізму судочинства, принцип встановлення об'єктивної істини.*

### **Ю. А. Ланцедова**

*Развитие некоторых базисных принципов антикриминального судопроизводства Украины*

*В статье представлено развитие новой доктрины причастного лица и нейтрального приговора. Особое внимание уделено возможностям совершенствования новой доктрины профессионализма осуществления антикриминального и иных видов антиделіктного судопроизводства. Детально рассмотрены положения новой доктрины установления объективной истины по антиделіктному делу.*

**Ключевые слова:** *причастное лицо, нейтральный приговор, принцип профессионализма судопроизводства, принцип установления объективной истины.*

**Problem definition.** In the new edition of the Criminal Procedure Code of Ukraine, the legal regulation of the principles of the legal proceedings is discussed in a separate chapter, which reveals the essence of nominally 22 principles [6]. The part 3 of item 129 of the Constitution of Ukraine called the 9 basic principles of legal proceedings [4] This situation shows that the principles of legal proceedings in the Criminal Procedure Code of Ukraine quite rightly paid attention. In view of the above the development of appropriate judicial principles of the system to date does not lose its relevance.

**Analysis of the latest researches and publications.** In this regard, even in the thesis of S. Kirichenko a new procedural status of the person concerned was proposed [3, p. 183]. In the thesis of A. Tuntula were made quite successful attempts to

revise or radically improve the principles of competitiveness and of professionalism of anti-criminal proceedings and to establish the objective truth in this proceedings [12, p. 17-20, 53-54, 155-156, 160-161]. These innovative approaches authors have further developed and presented as interrelated doctrines of judicial principles such as the doctrine of the person concerned and a neutral judgment [2, p. 64; 7; 8, p. 67-68; 10, p. 147-148, etc.], the doctrine of the professionalism of the anti-criminal and other types of anti-delictual proceedings [2, p. 53-54; 7; 8, p. 109-110; 10, p. 148, etc.] and the doctrine of establishing objective truth in the anti-delictual case [2, p. 54-55; 7; 8, p. 119-120; 9, p. 81-84; 10, p. 148-150, etc.].

Designed by S. Kirichenko [3, p. 183] and by A. Tuntula [12, p. 160-161] and basically devel-

oped by the author **the doctrine of the person concerned and a neutral judgment** [2, p. 64; 7; 8, p. 67-68; 10, p. 147-148, etc.] is based on the fact that the concept of legal certainty applies to all subjects of the anti-criminal proceedings and, above all, to the persecuted and to the victim (the plaintiff). Any, and especially the final procedural decision on the anti-criminal proceedings shall be made in a coherent and sufficient weight of evidence that each individual evidence must also have the unity of the main basis of legal properties (their relevance, legitimacy, acceptability, purity, authenticity). And as a result of a proper assessment of coherent and sufficient set of this kind of evidence the judge will develop the inner conviction of the guilt of a person – the indictment shall be passed, and if the innocence of the person – the acquittal shall be passed [2, p. 64; 7; 10, p. 147, etc.].

If the existing body of evidence is not sufficient for the formation of internal belief judge both about the guilt and the innocence of the defendant, the acquittal should not be passed, as is required in violation of the part 3 of article 62 of the Constitution of Ukraine (where in the context of the presumption of innocence of talking only about, it is only the fact that the doubt in favor of the accused, that makes it impossible for the imposition in such a situation only the indictment, but does not specify the need for decisions in this situation the acquittal) [4], and the requirements of the part 4 of article 327 «Types of sentences» the Code of Criminal Procedure of Ukraine in 1960 [5] and item 2 part 1 of article 373 «Types of sentences» the Code of Criminal Procedure of Ukraine in 2012 [6]. Carrying out the final procedural decision on insufficient weight of evidence is equivalent to the decision of the judgment on assumptions, that is expressly prohibited the by epy part 3 of article 62 of the Constitution of Ukraine [4].

In this case, to a well-known doctrine of «objective imputation of guilt» should be added the concept of «subjective imputation of innocence», when an innocent person – appears not on the basis of sufficient and consistent body of evidence, but on assumptions [1, p. 245; 2, p. 66; 7; 10, p. 148].

Therefore, in the case of an absence of evidence as the guilt and the innocence of a persecuted person (which is often the result of intentional acts of the prosecuted person and their lawyer by «break-down» of anti-criminal cases) not an insufficient

actually takes place (undefined) body of evidence, which can determine the appearance of a certain legal status the subjects of anti-criminal proceedings. In accordance with the anti-delictual situation an indefinite procedural decision must be taken – recognition of the persecuted person being involved and the neutral judgment shall be passed, that should not provide a persecuted person the right to sue the state (in fact - to the law-abiding taxpayers) for compensation for material and moral damages in connection with his involvement in the anti-criminal liability and other related limitations, for pecuniary and non-pecuniary damage in connection with the involving of their responsibility for anti-crime and other related limitations. No other limitations of the legal status of the person concerned, including a criminal record, shall occur [1, p. 245-246; 2, p. 66; 7; 10, p. 148].

**The new doctrine of the principle of professionalism of the anti-criminal and other types of anti-delictual proceedings** A. Tuntula justifies [12, p. 17-20], and the author develops [2, p. 53-54; 7; 8, p. 109-110; 10, p. 148, etc.] in this way. Like any other type of anti-delictual proceedings the anti-criminal proceedings should be carried out only on a professional basis, that is only by professionals, who have mastered by stationary high school training centuries of experience, knowledge and skills to carry out such acts, and the appropriate level of analytical thinking, and are required to provide a direct, objective, comprehensive and complete investigation of all the circumstances of the case, on this basis to establish the objective truth and to resolve correctly anti-criminal or otherwise anti-delictual case [2, p. 53; 7; 10, p. 148].

The participation of other persons (other than the investigator, the prosecutor, the court, in certain cases, an expert, an ordist) in the direct taking of evidence as well as judges or a jury in anti-criminal or other anti-delictual proving to the status of judges violates the fundamental principle of any legal proceedings – the principle of professionalism obtaining evidence and solving the problem at the guilt or innocence of the person pursued or responder [1, p. 213; 2, p. 53; 7; 10, p. 148].

Provision of lawyer, which by tradition and by law has a significant motivation and opportunities to «help» the defendant to avoid the anti-criminal liability, significant rights under the direct obtaining of evidence without their responsibilities for ob-

jective, comprehensive and complete investigation of all the circumstances of the case violates a fundamental principle of jurisprudence - about the relationship and the proportionality rights, freedoms and interests and responsibilities of all participants in proceedings [1, p. 213-214; 2, p. 53-54; 7; 10, p. 148].

Designed by A. Tuntula [12, p. 155-156] and developed by the author [2, p. 54-55; 7; 8, p. 119-120; 9, p. 81-84; 10, p. 148-150, etc.] **the new doctrine of the principle of establishing objective truth in the anti-delictual case** most relevant for anti-criminal, but equally for any of the other types of anti-delictual proceedings or proving [1, p. 207-208; 7; 12, p. 19-20, 155-156; 10, p. 148-149, etc.].

The establishment of objective truth in anti-criminal proving contrary to the so-called principle of «competitiveness», provided item 4 part 3 of article 129 of the Constitution of Ukraine [4], and article 22 «equality of arms and the freedom in the presentation of their evidence to the court and in proving their credibility before the courts» the Code of Criminal Procedure of Ukraine [6].

Anti-criminal, as well as any other species, proceedings or proving – this is not a sporting event. There can be no losers and winners. Such an approach in any case be linked to a fundamental breach of human rights, freedoms, duties and/or interests of the subjects of the proceedings or proving, firstly, the victim and persecuted persons [1, p. 214; 2, p. 54; 7; 10, p. 149].

Each anti-delictual proceedings or proving, and especially anti-criminal, must pursue a single objective – to establish the objective truth by anti criminal proceedings and on this basis to allow the case correctly. Only this task, may secure the appointment of a persecuted person most just punishment, that is such, that's deserves according to the commission of the act and its behavior in the process of committing a socially dangerous act, pre-trial investigation and judicial investigation.

Some authors believe, that to establish the objective truth of each anti criminal or other anti-delictual case is not possible. According to these authors, among the evidence, by which such must be installed such the truth, and there always have personal evidence, that is such information, which are derived from personal sources, and are therefore always subjective in nature, that supposedly makes it impossible to establish the objective truth by anti-

criminal or other anti-delictual case, which in this case will always be subjective [2, p. 55; 10, p. 149].

This discussion is not new. The difference between the activities of judges and activity of every other truth-seeker, has emphasized in 1860 V. Spasovich, is not the goal of action – they have one goal: the revelation of truth; and not in the way of action – one way of their actions: they operate on a logical, necessary, immutable laws of thought of any person; the only difference in the results of court convictions in the legal consequences arising from it [11, p. 5-6].

In this case, have focused on the fact, that regardless of the source from which obtained the evidence - personal or real, to establish the objective truth of the case may be, using the immutable laws of thought, in this case - the summative evaluation of all available on the evidence of the case, the totality of which it must be sufficient and consistent to adopt the intermediate, much less a final, procedural decision. Otherwise it is necessary to recognize the existence and situations to resolve anti-delictual, especially anti-criminal, the case for an inner conviction, which is formed in a sufficient and consistent body of evidence, or on assumptions [1, p. 214-215; 2, p. 55; 7; 10, p. 149].

In view of the **under establishment of objective truth in certain anti criminal or other anti-delictual case** should be understood establishment of such information, which not only have the totality of the main basis of legal properties (relevance, legality, validity, goodness, credibility), but also constitute a sufficient and consistent set of to generate at antideliktolog inner conviction (hat is, one that has developed without any external influence, such as telephone law, etc.) about, that a certain intermediate, much less a final, procedural decision may be taken [2, p. 57; 10, p. 150].

In this case, any subjective information, hat is, those derived from personal sources, «objectivize» this kind of conviction of antideliktolog, which to be sure that by the subjective information in conjunction with other information the objective set itself truth, and only on this basis is allowed a certain anti-delictual case. **Otherwise you must expressly recognize the existence of situations of resolving certain anti-delictual cases not on evidence but on assumptions** [2, p. 57; 7; 10, p. 150].

In this regard, the emphasis attention of seems unreasonable in part 1 of article 62 of the Constitu-

tion of Ukraine on the fact, that «the accusation can not be based on evidence obtained by illegal means, as well as on assumptions» [4], when the alleged person justification can be based on evidence, obtained by illegal means, and on assumptions [2, p. 58; 7; 10, p. 150].

All subjects of anti-criminal, as well as any other of kind anti-delictual, proving should seek to establish the objective truth of the case and, consequently, have in this respect the same rights, freedoms, interests and incur the equal responsibilities. This is contrary to the existing and different amounts of duties, such as personal sources of anti-criminal information, first of all, witnesses, victims and the persecuted person, give evidence and give testimony is credibility evidence and so on [1, p. 215; 2, p. 58; 7; 10, p. 150].

**Conclusions.** The proposed new of doctrines variation of principles of anti-criminal proceedings (the person concerned and the neutral judgment, the professionalism proceedings, the establishment of objective truth) are not meant to be the final resolution of the issues and create a sound basis for their development in the broader correctable scientific discussion.

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