

MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE
NATIONAL UNIVERSITY 'ODESSA LAW ACADEMY'

Department of Criminal Procedure,
Detective and Search Activities

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CRIMINAL PROCEDURE

General Part

MANUAL

for law students of National University 'Odessa Law Academy'

Odessa
Feniks
2022

*Recommended for publishing by the Education-Methodical Council
of the National University 'Odessa Law Academy'
(protocol No. 9 from 30 November, 2021).*

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Criminal Procedure. General Part : Manual [Electronic edition] / A. V. Torbas, A. S. Stepanenko, A. V. Murzanovskaya. - Odessa : Feniks, 2021. - 129 p. - Режим доступу: <https://doi.org/10.32837/11300.18759>

ISBN 978-966-928-821-9

The manual is designed for students of Criminal Procedure course for preparation to lessons and self-study. The manual consists of synopsis of the lectures course, seminar programme with questions and reading sections, questions for exam preparation and learning resources. It would be helpful for legal scholars, students, legal practitioners and anyone interested in criminal process of Ukraine.

УДК 434.1(477)

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PREFACE

Constitution of Ukraine proclaims the life and health of a person, their honour and dignity, inviolability and security of the highest social value. Human rights and freedoms are guaranteed by the content and direction of the state's activities. Therefore, the implementation of legal reform in Ukraine as one of the most important aspects of state policy should be inseparably combined with the goal of further humanization of the criminal justice system.

The criminal justice system must be effective since it ensures the protection of human rights and freedoms, democracy, legality, and justice, the construction of a rule-of-law state and civil society.

This course is built within the framework of studying the so-called 'General part' of the criminal procedure and includes the following main topics: the concept and significance of the criminal procedure; stages of criminal proceedings; the regulatory framework and principles of criminal proceedings; actors of criminal proceedings; theory of evidence and proof; procedure for applying measures to ensure criminal proceedings; compensation of damage caused in criminal proceedings; recording criminal proceedings and procedural decisions taken during criminal proceedings.

The goal of the course is to improve students' knowledge of the current criminal procedural legislation of Ukraine; familiarization with the doctrine of criminal procedural law and practice of applying the norms of criminal procedural legislation taking into account the European Court of Human Rights case law.

The **objectives** of the course are:

- to learn the current criminal procedural law;
- to get familiar with basic provisions of criminal procedural doctrine;
- to get familiar with law-enforcement practices;

In order to achieve the objectives, the following **tasks** shall be accomplished:

- study and analysis of current criminal procedural law;
- familiarization with research papers on criminal procedure;

analysis of omissions and legislative gaps of current criminal procedural
law;
addressing complex problems occurring in criminal procedure.

COURSE STRUCTURE

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| <p>Theme 1. The concept, objectives, principal institutes of criminal procedure and system of criminal proceedings of Ukraine</p> | <ul style="list-style-type: none"> - The concept of criminal procedure, its relation to criminal justice and operative and detective activity. - Objectives of criminal proceedings - Historical types and forms of criminal procedure; the form of Ukrainian criminal procedure. The concept of criminal procedural forms and their differentiation. - Criminal procedure functions - Criminal procedure guarantees - The notion of a stage of criminal proceedings. System of stages of criminal proceedings. |
| <p>Theme 2. Criminal procedural law of Ukraine. Criminal procedural legislation</p> | <ul style="list-style-type: none"> - Criminal procedural law of Ukraine. Subject and method of legal regulation of criminal proceedings. - Rules of criminal procedural law, their structure. - Concept, types of sources of criminal procedural law. - Operation criminal procedural legislation in time, space and in respect of individuals. |
| <p>Theme 3. Principles of criminal proceedings</p> | <ul style="list-style-type: none"> - The concept of criminal procedure principles. The importance of laying down principles to ensure correct and accurate application of procedural law. - The system of principles of criminal procedure. - General-law principles in criminal proceedings. - Inter-branch principles of criminal proceedings. - Principles of criminal procedure (pre-trial and court proceedings principles). |
| <p>Theme 4. Actors of criminal proceedings</p> | <ul style="list-style-type: none"> - Concept, classification of actors of criminal proceedings. - Court as a body of justice in criminal proceedings. Composition of the court in criminal proceedings. - Investigating judge as an actor of criminal proceedings - General characteristics of actors relating to the prosecution. - Prosecutor in criminal proceedings, his tasks and authorities. - Pre-trial investigation agency. Investigator (inquirer) of the pre-trial investigation agency, his authorities. Head of pre-trial investigation agency, his authorities. Operational units, their tasks and powers. - The victim, his rights and duties. Representative of the victim. Legal representative of the victim. - The criminal procedural status of the suspect, accused (defendant), acquitted, convicted. The legal representative of the suspect, accused, his criminal procedural status. - Defence counsel in criminal proceedings. Mandatory participation of the defence counsel. Rights and duties of the defence counsel. - Engagement of the defence counsel. Waiver or replacement of the defence counsel. - Other participants in criminal proceedings. Recusals in criminal proceedings. |

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| <p>Theme 5. Evidence and proving in criminal proceedings</p> | <ul style="list-style-type: none"> - Theory of knowledge as a basis of evidence law and theory. Characteristics of criminal procedural knowledge. - Objective of proving in criminal proceedings. Truth as a prospective objective within criminal procedure. - Circumstances to be proved in criminal proceedings, their structure. - The notion of evidence in criminal proceedings. - Attributes of evidence. Relevance. Admissibility. Admissibility criteria. - The concept of proving, its elements. The means of collecting and examining evidence. The concept and means of evaluating evidence. - Burden of proof and standard of proof. The scope of proving and sufficiency of evidence. - The notion of evidence sources (evidence types). - Testimonies. Hearsay evidence. - Physical evidence. - Documents. - Expert's findings (testimony). |
| <p>Theme 6. Measures to ensure criminal proceedings</p> | <ul style="list-style-type: none"> - Notion and types of measures to ensure criminal proceedings. - General rules for application of measures to ensure criminal proceedings. - Summons by investigator, prosecutor. Court summons. - Compelled appearance. - Imposition of pecuniary penalty. - Temporary restriction on a specialright. - Suspension from position. Temporal removal of a judge from the administration of justice. - Provisional access to objects and documents. - Provisional seizure of property. Attachment of property. - Concept and importance of measures of restraint (preventive measures). - System and types of measures of restraint. - Purpose and grounds for the application of measures of restraint and circumstances taken into account in the selection of measures of restraint. - Request of the investigator, prosecutor about the application of preventive measures. Consideration of a request for the application of a preventive measure. - Personal commitment. Personal warranty. - Bail. - House arrest. - Keeping in custody. - Apprehension of a person. |
| <p>Theme 7. Compensation of damage in criminal proceedings</p> | <ul style="list-style-type: none"> - Types of repair (compensation) of damage in criminal proceedings. - Definition, subject matter, grounds, and importance of civil action in criminal proceedings. - Civil plaintiff, his/her criminal procedural status. Civil defendant, his/her criminal procedural status. |

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| | <ul style="list-style-type: none"> - Representative of civil plaintiff, his criminal procedural status. Legal representative of plaintiff, his criminal procedural status. - General characteristics of proceedings under civil action (pretrial and trial proceedings). |
| <p>Theme 8. Recording Criminal Proceedings. Procedural Decisions.</p> | <ul style="list-style-type: none"> - Recording of criminal proceedings: the forms and importance. - Reports and annexes to reports. - Use of technical means for recording criminal proceedings. - Journal of court session. - Procedural decisions: notion and types. - Notice in criminal proceedings. |

SYNOPSIS OF THE LECTURE COURSE

THEME 1. THE CONCEPT, OBJECTIVES, PRINCIPAL INSTITUTES OF CRIMINAL PROCEDURE AND SYSTEM OF CRIMINAL PROCEEDINGS OF UKRAINE

LEARNING OUTCOMES

The objective is to provide students with the general overview of the notion, objectives, main institutes of criminal procedure as well as demonstrate the operation of criminal proceedings in Ukraine and what stages it should go through.

QUESTIONS COVERED

1. The concept of criminal procedure, its relation to criminal justice and operative and detective activity.
2. Objectives of criminal proceedings.
3. Types and forms of criminal procedure. The form of Ukrainian criminal procedure. The concept of criminal procedural forms and their differentiation.
4. Criminal procedure functions: the concept, forms and the system.
5. The concept and system of stages of criminal proceedings of Ukraine.

LEARNING MATERIALS

1. The concept of criminal procedure, its relation to criminal justice and operative and detective activity.

The term '*criminal procedure*' is used in several ways: 1) as a specific type of state activity; and 2) as a legal science that consists of a system of concepts, ideas, and principles that reveal the essence of criminal procedure and mechanism of its development.

Criminal procedure - is an activity regulated by criminal procedural norms of operational units, investigators', prosecutors', investigating judge, judges', and courts'

to investigate, try, and resolve criminal proceedings as well as activity of other participants of criminal proceedings (suspects', the accused, victims', their defence counsels and legal representatives, etc.) in order to protect their constitutional rights, freedoms, and interests, as well as compliance with obligations imposed on them¹.

2. Objectives of criminal proceedings.

As any other activity, criminal procedure is exercised in order to achieve specific objectives or goals.

According to the Art. 2 of the Code of Criminal Procedure of Ukraine (hereafter - the CCP) **objectives of criminal procedure** are:

- a) protection of individuals, society and the state from criminal offence:
- b) protection of rights, freedoms and legitimate interests of participants in criminal proceedings;
- c) ensuring the quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence were prosecuted in proportion to his guilt, no one innocent was accused or convicted, and no one were subjected to ungrounded procedural compulsion and that an appropriate legal procedure (*due process*) applied to each party to criminal proceedings.

3. Types and forms of criminal procedure. The form of Ukrainian criminal procedure. The concept of criminal procedural forms and their differentiation.

Throughout the history of criminal procedure, in different countries, it acquired specific characteristics, features that serve as a basis for defining types and forms of criminal procedure.

It is generally accepted to distinguish three forms of criminal procedure:

¹ See рішення КСУ у справі щодо конституційності статті 248-3 ЦПК України від 23.05.2001 № 6-пп/2001. URL: <http://zakon0.rada.gov.ua/laws/show/v006p710-01>

Adversarial (accusatorial)

- realization of justice, prosecution and defence functions is carried out by different actors;
- existence of parties;
- existence of criminal procedural dispute;
- conducted orally;
- accused is an actor of proceedings;

Inquisition (investigative)

- realization of justice, prosecution and defence functions is carried out by a single actor;
- absence of parties;
- secretiveness;
- conducted in writing;
- accused is a subject of proceedings (trial)

Composite (hybrid) form is a synthesis of the first two and provides the existence of two sub-forms - with the adversary elements at pre-trial proceedings or without them, whereas the trial stage is adversarial.

The Ukrainian criminal procedure system is composite (hybrid) and has been constructed with the adversary elements during pre-trial proceedings, which is manifested through the existence of investigating judge who is charged with carrying out judicial supervision function.

4. Criminal procedure functions: the concept, forms and the system.

Criminal procedure functions are main directions of criminal procedure activity determined by the law.

Primary (principal) criminal procedure functions are:

- 1) prosecution;
- 2) defence;
- 3) resolution of criminal proceedings (justice).

It should also be noted that there are other criminal procedure functions, such as: judicial supervision, prosecutor's supervision, departmental supervision, investigation function, criminal prosecution etc.

5. The concept and system of stages of criminal proceedings of Ukraine.

The criminal procedural activity consists of specific set of actions that could

be systemized in particular sequence that is carried out to attain the objectives of criminal proceedings. The system is conditionally comprised of certain parts or *stages* that are relatively independent but linked among themselves with every stage being characterized by particular features.

Some of these features are: direct objectives; a wide range of actors; procedure (procedural course of action); time-limits and concluding (final) decisions.

The criminal proceedings are carried out one by one going through the stages of criminal process. These stages are: 1) pre-trial investigation; 2) preparatory proceedings; 3) trial; 4) appeal; 5) execution of court decisions; 6) cassation; and 7) criminal proceedings upon discovery of new circumstances or exceptional circumstances.

Pre-trial investigation is a stage of criminal proceedings, which begins from the moment when the information on a criminal offence is entered in the Integrated Register of Pre-trial Investigations (hereafter - the IRPI) and ends with closure of the criminal proceedings or with submission of an indictment to court, a motion on enforcement of compulsory medical or educational measures, a motion on relief of the person from criminal liability. (Art. 3 § 1 (5) of the CCP).

Preparatory proceedings is the first part of court proceedings in the first instance, in which a court shall examine the existence of legal and factual grounds to assign trial and take relevant preparatory measures (schedule the date and place for trial, decide on the form of court session, dispose the issue of court composition etc.) and under certain conditions resolve the case.

Trial is the central stage of criminal proceedings. At this stage, the court in trial with the participation of parties and other participants of criminal proceedings examines the case and makes a decision on guiltiness of an accused.

Appeal is the stage of criminal proceedings, in which a court of appellate instance examines the appellate complaint of participants of criminal proceedings on the judgments and rulings of the first instance court and/or the investigating judge as well as relevant circumstances of criminal offence, and makes a decision based on the results.

Execution of court decisions - is a stage of criminal proceedings in which a

court resolves a set of procedural issues that emerge following the court's judgement or ruling entering into legal force and their enforcement as well as during or after execution of sentence.

Cassation is the stage of criminal proceedings in which a court of cassation instance reviews the cassation complaint of participants of criminal proceedings on the court's judgment or ruling.

Criminal proceedings upon discovery of new circumstances or exceptional circumstances is the stage of criminal proceedings in which courts' decisions that have entered into legal force are reviewed on legality, validity and reasonableness solely upon discovery of specific new circumstances or exceptional circumstances stated in the law (Art. 459 of the CCP).

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THEME 2. CRIMINAL PROCEDURAL LAW OF UKRAINE. CRIMINAL PROCEDURAL LEGISLATION

LEARNING OUTCOMES

The objective is to provide students with the knowledge on criminal procedural law (rules and their structure), sources that constitute the criminal legislation of Ukraine.

QUESTIONS COVERED

1. Criminal procedural law of Ukraine. Subject and method of legal regulation of criminal proceedings.
2. Rules of criminal procedural law, their structure.
3. Concept, types of sources of criminal procedural law.
4. Operation of criminal procedural legislation in time, space and in respect of individuals.

Learning materials

1. Criminal procedural law of Ukraine. Subject and method of legal regulation of criminal proceedings.

Criminal procedural law is a system of criminal procedural rules (branch of law) regulating the procedure in respect of the activities of pre-trial investigation bodies, prosecutor's office and the court for investigation, consideration and resolution of criminal proceedings, as well as the activities of other participants in the criminal process - suspect, accused, victim, civil plaintiff and civil defendant, their representatives and other persons with the aim of protecting their constitutional rights, freedoms and legal interests, and compliance with obligations imposed on them as well as legal relations between the indicated persons.

Subject of criminal procedural regulation is a set of social relations and the actual behaviour of actors of criminal proceedings.

Public relations are regulated by various methods: imperative and dispositive, method of rewards and punishments, alternative and recommendatory.

2. Rules of criminal procedural law, their structure.

Criminal procedural rules are mandatory rules of the criminal process and of the conduct of actors established by the state, the execution of which is ensured by measures of state coercion.

Like all legal rules, criminal procedural rules consist of hypotheses, dispositions and sanctions. The *hypothesis* indicates when and under what factual circumstances and conditions it is necessary to be guided by this rule. The *disposition* determines who is a participant in the specific legal relationships regulated by the rule, and which behaviour is allowed, mandatory or prohibited by this rule, with the determination of rights of one party and duties of another. The *sanction* indicates what legal consequences will emerge in case of disobedience of this legal rule. Criminal procedural sanction is not an obligatory part of a rule of the criminal procedural law, since one article may contain a sanction for violation of several criminal procedural rules. Criminal procedural sanctions can be classified into two types: 1) *restoration of rights* - related to the elimination of violations of law and the resumption of legality by abolishing the illegal procedural decision; and 2) *punitive* - related to the onset of a certain negative consequences for a particular person.

3. Concept, types of sources of criminal procedural law.

Under Art. 1 of the CCP the rules of criminal proceedings in the territory of Ukraine are defined solely by the criminal procedural law of Ukraine, which, in turn, consists of relevant provisions of the Constitution of Ukraine, international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by, the present Code and other laws of Ukraine.

The primary source of criminal procedural law is the Constitution of Ukraine. It reflects the basic principles of criminal justice: the independence of judges and their submission to the law, openness of judicial proceedings, presumption of innocence, ensuring the right to defence and others. The Constitution establishes safeguards against arbitrary unjustified use of state coercion. Constitutional rules

have the supremacy over all legislative systems and have direct effect. Therefore, if any rule contradicts the Constitution of Ukraine, the Constitution governs. As it is stated in Art. 8 of the Constitution of Ukraine, the Constitution has the highest legal force. Laws and other legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it. Appeals to the court in defence of the constitutional rights and freedoms of the individual and citizen directly on the grounds of the Constitution of Ukraine are guaranteed.

The *most 'important source' of criminal procedural law* is Code of Criminal Procedure of Ukraine, which was adopted on 13 of April 2012. The CCP is divided into 12 sections (including final and transitional provisions), consists of 46 chapters.

4. Operation of criminal procedural legislation in time, space and in respect of individuals.

According to Art. 9 of the Constitution of Ukraine, international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. That is why law enforcement and judicial authorities can directly apply the norms contained in the international treaties ratified by Ukraine.

Criminal proceedings in the territory of Ukraine shall be conducted based on the grounds and in accordance with the procedure specified in the Code whatever the place where a criminal offence has been committed (Art. 4 of the CCP).

Procedural action shall be conducted and procedural decision shall be taken in accordance with the provisions of the CCP, which are applicable at the time when such an action has begun or such decision has been taken.

Admissibility of evidence shall be determined in accordance with the provisions of the Code, which are applicable at the time when such information has been received (Art. 5 of the CCP)

Criminal proceedings in accordance with the rules of the CCP shall be conducted in respect of any individual, except otherwise is provided under the second paragraph below.

Criminal proceedings in respect of the individual who enjoys diplomatic

immunity may be conducted in accordance with the CCP only upon the consent of such an individual or of the competent authority of the State (international organization) such individual represents, in accordance with the procedure established by Ukrainian law and international treaties of Ukraine (Art. 6 of the CCP).

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THEME 3: PRINCIPLES OF CRIMINAL PROCEEDINGS

LEARNING OUTCOMES

The objective is to provide students with the knowledge on the system of principles which are utilized in criminal proceedings and which are designed in accordance with these principles.

QUESTIONS COVERED

1. The concept of criminal procedure principles. The importance of laying down principles to ensure correct and accurate application of criminal procedural law. The system of principles of criminal procedure.

2. General-law principles in criminal proceedings.
3. Inter-branch principles of criminal proceedings.
4. Principles of criminal procedure (pre-trial and court proceedings principles).

LEARNING MATERIALS

1. The concept of criminal procedure principles. The importance of laying down principles to ensure correct and accurate application of criminal procedural law. The system of principles of criminal procedure.

The principles of criminal proceedings are initial, fundamental ideas and rules, which serve as a basis for criminal procedure and represent its essence and features.

Principles of criminal procedure are not merely a sum (the list of which is laid down in the Art. 7 § 1 of the CCP) but form a self-consistent system. That system includes four groups of principles of different level of generalization, which are:

1) *general legal principles* are the principles that are realized in every law branch (the rule of law; legitimacy; equality before law and court; respect for human dignity; ensuring the right to liberty and security of a person; inviolability of home or any other possession of a person; confidentiality of communication; noninterference in private life; security of the ownership right; access to justice and the binding nature of court rulings).

2) *inner-branch principles* are the principles that are realized in several law branches (adversarial nature of parties, freedom to present their evidence to the court and prove the preponderance of this evidence before the court; directness of examination of testimonies, objects and documents; publicity; publicity and openness of judicial proceedings and their full recording using technical means of court hearing and procedural actions; reasonable time; language of the criminal proceedings).

3) *branch principles* are the principles that operate within specific law branch, in this instance it is criminal procedure (presumption of innocence and conclusive proof of guilt; freedom from self-incrimination and the right to not testify against

one's close relatives and family members; prohibition of double jeopardy; ensuring the right to defence etc.).

Moreover, branch principles can be divided into *three groups*: 1) criminal procedural principles realized on all stages: 2) criminal procedural principles realized at pre-trial investigation; 3) criminal procedural principles realized in court proceedings.

2. General-law principles in criminal proceedings.

General legal principles are set forth in the CCP among which are:

Rule of law (Art. 8 of the CCP). Criminal proceedings shall be conducted in accordance with the principle of the rule of law, under which a human being, his rights and freedoms are the highest values, which define content and areas of State activities.

The rule of law can be described as one of the fundamental principles of democratic society. European Commission 'For Democracy Through Law' (Venice Commission) in its report (§ 37) has stated 8 'ingredients' of the rule of law: 1) Accessibility of the law (it shall be intelligible, clear and predictable); 2) Questions of legal right should be normally decided by law and not discretion; 3) Equality before the law; 4) Power must be exercised lawfully, fairly and reasonably; 5) Human rights must be protected; 6) Means must be provided to resolve disputes without undue cost or delay; 7) Trials must be fair, and 8) Compliance by the state with its obligations in international law as well as in national law².

Legality (Art. 9 of the CCP). According to the principle, during criminal proceedings, a court, investigating judge, prosecutor, chief of pre-trial investigation agency, investigator, other officials of state authorities shall be required to steadfastly comply with the requirements of the Constitution of Ukraine, the CCP, and the international treaties the Verkhovna Rada of Ukraine has given its consent to be

² Report on the rule of law - Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011), CDL-AD(2011)003rev-e.

URL: [http://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-e#](http://venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e#)

bound by, and requirements of other laws with due consideration of the practices of the European Court of Human Rights (hereafter - ECHR).

Equality before the law and the court (Art. 10 of the CCP). This principle provides that nobody may be given privilege or restricted in procedural rights as set forth in the CCP on the grounds of race, skin colour, political, religious, or any other beliefs, sex, ethnic or social origin, property status, place of residence, nationality, education, occupation, as well as linguistic or any other grounds whatsoever. Meanwhile, in cases and according to the procedure stipulated by the CCP, certain categories of individuals (underage individuals, foreigners, mentally and physically disabled people, etc) shall have additional rights and guarantees

Respect for human dignity (Art. 11 of the CCP). In the course of criminal proceedings, respect for human dignity, rights, and freedoms of every person must be ensured. In the course of criminal proceedings, it shall be prohibited to subject an individual to torture or to inhuman or degrading treatment or punishment, or to threaten or use such treatment, or to keep an individual in humiliating conditions, or to force to actions which humiliate dignity.

Right to liberty and personal inviolability (Art. 12 of the CCP). According to the principle 1) In the course of criminal proceedings, no one shall be kept into custody, be detained or otherwise restrained in their right to freedom of movement upon criminal suspicion or charge other than on grounds and according to the procedure specified in the CCP; 2) everyone who has been taken into custody or apprehended upon suspicion or charge of having committed a criminal offence or otherwise deprived of liberty shall as soon as practicable be brought before an investigating judge to decide on the lawfulness and reasonableness of their detention, other deprivation of liberty and continued custody. The detained person shall be promptly released from custody if within 72 hours from the moment of his detention he is not served a reasoned court decision on keeping in custody.

3. Inter-branch principles of criminal proceedings.

Inter-branch principles - principles realized in several law branches with certain distinctions that are typical of criminal procedure.

This group of principles includes:

Adversariality and parties' freedom to present evidence to the court and to convincingly prove evidence (Art. 22 of the CCP). According to the principle: 1) criminal proceedings shall be conducted on the basis of adversarial approach envisaging independent assertion by the side of accusation and the side of legal protection of their legal positions, rights, freedoms and legitimate interests by means set forth in the CCP; 2) parties to criminal proceedings shall have equal rights with regard to collecting and producing items, documents, other evidence, motions, complaints, as well as to enjoy other procedural rights provided by the CCP; 3) in the course of criminal proceedings, functions of public prosecution, defence, and trial may not be entrusted to the same agency or official.

Publicity (Art. 25 of the CCP). The principles states that prosecutor, investigator shall be required, within the scope of their respective competencies, to initiate pre-trial investigation in every instance when elements of a criminal offence have been directly revealed (save for the cases where criminal proceedings may be instituted upon a victim's request) or based on the report (information) on a criminal offence and take all statutory measures to establish the occurrence of crime and perpetrator thereof.

Optionality (Art. 26 of the CCP). According to the principle: 1) parties to criminal proceedings shall be free to use their rights within the limits and in the way specified by the CCP; 2) refusal of prosecutor from public prosecution shall be the ground for closing criminal proceedings except cases specified in the CCP; 3) in criminal proceedings, investigating judge, court shall address only those matters that the parties have submitted for their consideration and that fall within their competence under the CCP; 4) criminal proceedings in the form of publicprivate prosecution shall be initiated only upon request of the individual concerned, and dropping charges by the victim, his representative in cases specified in the CCP is the unconditional ground for closing criminal proceedings.

4. Principles of criminal procedure (pre-trial and court proceedings)

principles).

Branch principles or criminal procedure principles operate exclusively within the framework of criminal proceedings. This group of principles contains:

Presumption of innocence and conclusive proof of guilt (Art. 17 of the CCP). The principle is the fundamental one and is enshrined in the Art. 62 of the Constitution of Ukraine and Art. 17 of the CCP. Presumption of innocence of a person charged with a criminal offence is also guaranteed by Art. 6 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter - Convention) and constitute the right to a fair trial.

According to these acts, principle of presumption of innocence and conclusive proof of guilt imply that:

a) an individual shall be considered innocent of the commission of a criminal offence and may not be imposed a criminal penalty unless their guilt is proved in accordance with the procedure prescribed by the law and is established in the court judgment of conviction, which entered into legal force;

b) no one shall be required to prove their innocence of having committed a criminal offence and shall be acquitted unless the prosecution proves their guilt beyond a reasonable doubt;

c) suspicion, charges may not be based on evidence obtained illegally;

d) any doubt as to the proof of the guilt of an individual shall be interpreted in this person's favour;

e) a person whose criminal guilt has not been found in a valid judgement of conviction shall be treated as an innocent one.

Freedom from self-incrimination and right to not testify against close relatives and family members (Art. 18 of the CCP). According to the principle no one shall be compelled to admit their guilt of a criminal offence or to give explanations, testimonies, which may serve a ground for suspecting them or charging with a commission of a criminal offence as well as to give any explanations or testimonies, which may serve a ground for suspecting his close relatives or family members of, or charging them with, commission of a criminal offence. Moreover, the

principles implies that everyone shall have the right to keep silence about suspicion, a charge against him or waive answering questions at any time, and, also, to be promptly informed of such right.

Prohibition of double jeopardy (Art. 19 of the CCP). Following this principle no one may be charged with, or punished twice for, a criminal offence, for which he was acquitted or convicted by a valid judgment, also any criminal proceedings shall be subject to immediate termination when it becomes known of a valid judgment delivered on the same charge.

Right to defence (Art. 20 of the CCP). Right to defence is among fundamental principles of modern criminal procedure and enshrined on national (Art. 129 § 3 (6) of the Constitution of Ukraine) as well as international levels (Art. 16 of the International Covenant on Civil and Political Rights and Art. 5, 6 of the Convention). Right to defence provides series of procedural rights of a suspect and an accused, for instance:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Though the right to defence is not limited to the aforementioned list, these are the most basic, fundamental elements thereof.

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THEME 4: ACTORS OF CRIMINAL PROCEEDINGS

LEARNING OUTCOMES

The objective is to provide students with the notion of an actor and a participant of criminal proceedings, give an overview of the system of actors of criminal proceedings as well as describe each group constituting it.

QUESTIONS COVERED

1. Concept, classification of actors of criminal proceedings.
2. Court as a body of justice in criminal proceedings. Composition of the court in criminal proceedings. Investigating judge as an actor of criminal proceedings.
3. General characteristics of actors relating to the prosecution.
4. Prosecutor in criminal proceedings, his tasks and authorities.
5. Pre-trial investigation agency. Investigator of the pre-trial investigation agency, his authorities. Head of pre-trial investigation agency, his authorities. Operational units, their tasks and powers.
6. The victim, his rights and duties. Representative of the victim. Legal representative of the victim.
7. The criminal procedural status of the suspect, accused (defendant), acquitted, convicted. The legal representative of the suspect, accused, his criminal procedural status.
8. Defence counsel in criminal proceedings. Mandatory participation of the defence counsel. Rights and duties of the defence counsel. Engagement of the defence counsel. Waiver or replacement of the defence counsel.
9. Other participants in criminal proceedings.

LEARNING MATERIALS

1. *Concept, classification of actors of criminal proceedings.*

Actors of the criminal proceedings are state bodies, officials, citizens who conduct the criminal process or have been involved to it and have legal rights and legal obligations in it. Article 3 of the CCP provides the definition of parties to criminal proceedings, participants in criminal proceedings and the participants in court.

The relevant literature provides different classifications of actors of criminal proceedings, although the most successful appears the classification, on the basis of the purpose, the nature of procedural activities and the peculiarities of the procedural position, as well as the degree of interest in the case, dividing all actors of criminal proceedings into the following groups:

The first group is state and judicial authorities, court, judges, investigating judges, prosecutors, investigators, the head of the pre-trial investigation agency, and operative units. Their duty is to conduct criminal procedural actions to investigate and resolve the case (criminal proceedings).

The second group consists of participants who are interested in a certain outcome of the criminal proceedings, since they protect their personal rights or represent the rights and legitimate interests of others. In this regard, some of them (for example, the victim) seek to restore violated rights and freedoms and punish the perpetrators. Others (for example, the accused) want to avoid prosecution or mitigate the punishment.

The third group consists of persons who are involved in the criminal process to facilitate the implementation of criminal justice. This group includes a witness, an expert, a specialist, a translator, a secretary of a court session, a bailiff etc.

The general theory of law determines the legal capacity as an ability to possess rights and to bear legal responsibilities and dispositive capability as an ability to independently acquire and exercise rights, to create obligations for themselves and to fulfil them.

2. Court as a body of justice in criminal proceedings. Composition of the court in criminal proceedings. Investigating judge as an actor of criminal proceedings.

According to Art. 127 of the Constitution of Ukraine, justice is administered by professional judges and, in cases determined by law, jurors. Only court shall administer justice in criminal proceedings in accordance with rules prescribed in the CCP. Refusal to administer justice shall not be permitted.

Under to Art. 31 of the CCP, in the court of the first instance, criminal proceedings shall be conducted by a professional judge alone, with the exception of cases provided in the CCP. Criminal proceedings in a court of the first instance in respect of crimes for the commission of which punishment is envisaged in the form of imprisonment for a term of over ten years shall be conducted by a panel of three professional judges. Criminal proceedings in a court of the first instance in respect of crimes for the commission of which punishment of life imprisonment is envisaged shall be conducted by a panel of three professional judges, and upon the motion of the accused, by jury consisting of two professional judges and three jurors. Criminal proceedings in respect of several accused shall be conducted in respect of all accused if at least one of them requested such trial.

Investigating judge is a new entity in the CCP, which has the function of judicial control at the stage of pre-trial investigation. Investigating judge is a judge of a court of first instance charged with carrying out, in accordance with the procedure established by the CCP, court supervision over the observance of rights, freedoms and interests of persons involved in criminal proceedings, and, in the case specified in the CCP, the chairperson or, upon the chairperson's determination, another judge of the Court of Appeals of the Autonomous Republic of Crimea, oblast and the cities of Kyiv and Sevastopol Appeals Courts. Investigating judges in a court of first instance shall be elected by a meeting of judges from the composition of judges of the court concerned. Investigating judge has vast authority. For example, precautionary measures, including detention, are applied: during a pre-trial investigation, by the investigating judge upon the motion of the investigator, agreed with the prosecutor, or at the request of the prosecutor; and during the trial this measure is taken by the court at the request of the prosecutor. In addition, entering home or any other possession of a person is possible based on an investigating

judge's decision. This also applies to such investigative (search) actions as: search, inspection, investigative experiment conducted in a home or any other possession of a person etc.

3. General characteristics of actors relating to the prosecution.

Prosecution party is represented by: prosecutor, investigator, inquirer, head of pre-trial investigation agency, as well as the victim, his representative and legal representative in cases specified by the CCP; and **defence party** by: suspect, accused (defendant), convicted, acquitted, as well as the person in whose respect it is provided to apply compulsory medical or educational measures or the issue of applying such measures was considered, their defence counsels and legal representatives.

4. Prosecutor in criminal proceedings, his tasks and authorities.

Prosecutor in the course of performing his duties in compliance with the requirements of the CCP is independent in his procedural activities, and any interference therein on the part of persons who have no legitimate authority, shall be forbidden. State authorities, local government authorities, enterprises, institutions and organizations, officials and other natural persons shall be required to execute legitimate demands and procedural decisions of a prosecutor.

Prosecutor, while supervising the compliance with law during pre-trial investigation in the form of providing procedural guidance in a pre-trial investigation, shall have the right to: start pre-trial investigation if grounds specified in the CCP are available; have full access to materials, documents, and other details related to pre-trial investigation; assign pre-trial investigation agency to conduct pre-trial investigation; assign the conduct of investigatory (search) actions, covert investigatory (search) actions to the relevant operational units etc.

5. Pre-trial investigation agency. Investigator of the pre-trial investigation agency, his authorities. Head of pre-trial investigation agency, his authorities. Operational units, their tasks and powers.

Pre-trial investigation agencies (inquiry and pre-trial investigation agencies) shall be investigation units of the bodies of National police, the security agencies, the agencies supervising compliance with the tax legislation, units of the State Bureau of

Investigation, units of State Penitentiary Service of Ukraine, detectives of National Anti-Corruption Bureau of Ukraine.

Pre-trial investigation shall be conducted by investigators of pre-trial investigation agency, individually or by investigation group. Pre-trial investigation agency shall be required to take all legal measures to ensure the effective pre-trial investigation.

Investigator (inquirer) is responsible for the legality and timeliness of the conduct of procedural actions. Investigator shall have the right to initiate pre-trial investigation if grounds specified in the CCP are present; conduct investigatory (search) actions and covert investigatory (search) actions specified in the CCP; assign the conduct of investigatory (search) actions and covert investigatory (search) actions to the relevant operation units; appoint audits and examinations in accordance with the procedure established by law; submit upon the approval of prosecutor, proposals to investigating judge in respect of application of measures to ensure conducting criminal proceedings, investigatory (search) actions and covert investigatory (search) actions; notify a person of a suspicion under accord of the prosecutor; draw up indictment based on the results of investigation, proposals in respect of application of compulsory educational measures, or in respect of application of compulsory medical or educational measures, and submit them to prosecutor for approval; make procedural decisions in cases specified by the CCP including in respect of termination of criminal proceedings if grounds specified in Art. 280 of the CCP are present; exercise other powers specified by the Code.

Investigator in the course of performing his duties in compliance with the requirements of the CCP is independent in his procedural activities, and any interference therein on the part of persons who have no legitimate authority, shall be forbidden. State authorities, local government authorities, enterprises, institutions and organizations, officials and other natural persons shall be required to execute legitimate demands and procedural decisions of investigator.

Head of the pre-trial investigation agency shall organize pre-trial

investigation. Head of the pre-trial investigation agency shall have the right to appoint investigator (investigators) to conduct pre-trial investigation, and where pre-trial investigation is conducted by an investigation group, to appoint the senior member of the investigation group who leads the actions of other investigators; suspend an investigator from the conduct of pre-trial investigation by a substantiated resolution, on the initiative of a prosecutor, or at his discretion followed by notification of a prosecutor, and appoint another investigator where there are grounds specified by the CCP for challenging the investigator concerned or in the case of ineffective pre-trial investigation; review records of pre-trial proceedings, instruct the investigator in written form without prejudice to decisions and instructions by the prosecutor; take measures to eliminate violations of legislation requirements on the part of investigators; to approve the conduct of investigative (search) actions and to extend the time limit for their conduct, in cases specified by the CCP; conduct investigatory (search) actions exercising investigator's powers; exercise other powers specified by the CCP. Head of the pretrial investigation agency is required to follow assignments and instructions of the prosecutor given in written form. Non-fulfilment by Head of the pre-trial investigation agency of legitimate instructions and assignments of the prosecutor given in accordance with the procedure specified by the CCP shall entail liability established by law.

Operational units of the bodies of National police, security agencies, National anti-corruption bureau of Ukraine, State Bureau of Investigation, agencies supervising compliance with the tax and custom legislation, and those of the State Penitentiary Service of Ukraine, State Border Guard Service of Ukraine shall conduct investigative (search) actions and covert investigative (search) actions in criminal proceedings upon written assignment of the investigator, prosecutor. Assignments of investigator, prosecutor in respect of conducting investigative (detective) actions and covert investigative (detective) actions shall be binding on operational unit.

6. The victim, his rights and duties. Representative of the victim. Legal representative of the victim.

A **victim** in criminal proceedings may be a natural person, who has sustained

moral, physical or material damage as a result of a criminal offence, as well as a legal person, that has sustained a material damage. The rights and duties of a victim shall accrue at the time of filing an application that a criminal offence has been committed against him or an application for bringing into proceedings as a victim.

A victim shall be delivered a leaflet advising on his procedural rights and duties by the person who accepted the application that a criminal offence has been committed. A victim shall also be the person, who has not filed the application but who suffered damage as a result of criminal offence and who consequently, after criminal proceedings have been instituted, lodged the application for being involved in criminal proceedings as victim. A person, who sustained moral damage as a representative of a legal entity or certain part of the society, may not be a victim.

An authorized representative may represent the victim in criminal proceedings if he/she has the right to be a defence counsel in criminal proceedings. If legal person is a victim, its head, other person authorized by law or founding documents, an employee of the legal person by proxy, as well as a person who has the right to be defence counsel in criminal proceedings may represent it.

If the victim is a natural person who has not attained the full age or who according to the law lacks legal capacity participates in a procedural action, his legal representative shall be involved in such procedural action. Matters of participation of victim's legal representative in criminal proceedings shall be regulated by provisions of Art. 44 of the CCP.

7. The criminal procedural status of the suspect, accused (defendant), acquitted, convicted. The legal representative of the suspect, accused, his criminal procedural status.

Suspect shall be the person who has been notified of suspicion as prescribed in Art. 276 to 279 of the CCP, or the person who has been apprehended on suspicion of having committed a criminal offence or a person against whom a suspicion has been made, but the person was not notified as a result of not identifying a person's location. **Accused (defendant)** shall be the person an indictment in whose respect has been referred to court as prescribed in Art. 291 of the CCP.

The suspect, accused shall have the right to: know of which criminal offence he has been suspected, accused; be informed, expressly and promptly, of his rights as laid down in the CCP and, where need be, have such rights explained; keep silence about suspicion, a charge against him or waive answering questions at any time; give explanations, testimony with regard to the suspicion, and a charge against him or waive giving explanations, testimony at any time; demand that validity of the detention be verified and others.

In criminal proceedings, an **acquitted** individual shall be the defendant in whose respect the judgment of acquittal has taken legal effect. If conviction of a court has become legally valid, accused person become convicted.

Where the suspect, accused is an underage individual or a person recognized in accordance with the procedure established by law, as legally incapable or partially legally capable, his legal representative shall be engaged to participate in a procedural action together with the individual concerned. Engaged as legal representatives may be parents (adopters), and in their absence, custodians or caregivers of the individual, other adult close relatives or family members, as well as representatives of custody or trusteeship agencies, institutions and organizations under whose tutorship or custody the underage, legally incapable or partially legally capable individual is. Prosecutor shall issue a ruling, and investigating judge or court shall adopt a determination on engaging a legal representative, the copy of which shall be handed to the legal representative.

8. Defence counsel in criminal proceedings. Mandatory participation of the defence counsel. Rights and duties of the defence counsel. Engagement of the defence counsel. Waiver or replacement of the defence counsel.

Defence counsel is a lawyer who provides defence of the suspect, accused, convicted or acquitted person as well as of the person who is going to be subjected to compulsory medical or educational measures or against whom the issue of applying such measures was considered, and also of the person considered to be surrendered (extradited) to a foreign state. A lawyer, whose information is not available in the Integrated Register of lawyers of Ukraine, or the Integrated Register of lawyers of

Ukraine contains information concerning the termination or suspension of the right of lawyer to practice, may not engage in defence counselling.

A defence counsel has no right to take over defence of another person or provide such person with legal aid if this contradicts interests of the person he provides or provided before with legal aid.

Failure of the defence counsel to appear and take part in a procedural action, if defence counsel was informed in advance thereon, and the suspect, the accused does not challenge the conduct of the procedural action in the presence of the defence counsel, may not be a ground for finding such action illegal, unless defence counsel's participation is mandatory.

Where the suspect, the accused challenges the conduct of the procedural action in the presence of the defence counsel, the conduct of the procedural action shall be postponed, or the defence counsel shall be engaged in the conduct thereof in accordance with the procedure specified in Art. 53 of the CCP.

In a trial, there shall be not more than five defence counsels appearing for the same defendant.

A defence counsel shall have all procedural rights of the suspect, accused whom he defends, with the exception of such procedural rights that are realized directly by the suspect, accused and cannot be assigned to the defence counsel, from the moment of submitting the documents specified in Art. 50 of the CCP to investigator, prosecutor, investigating judge, and court.

Participation of a defence counsel shall be mandatory in criminal proceedings in respect of crimes of especially grave severity. In such cases, participation of a defence counsel is ensured from the time when a person achieves the status of a suspect. Other cases of mandatory participation of a defence counsel listed in Art. 52 § 2 of the CCP.

Defence counsel is obliged to use legal remedies determined in the CCP and other laws of Ukraine, in order to ensure that the rights, freedoms and legitimate interests of the suspect, defendant are respected, and establish circumstances that dispel the suspicion or charges, mitigate criminal punishment, or exclude criminal

liability of the suspect, the accused.

Defence counsel is obliged to appear to participate in procedural actions conducted with the involvement of the suspect, accused. If defence counsel is unable to appear on time fixed, he is obliged to inform in advance the investigator, prosecutor and the court of such non-appearance and the reasons, and when he is appointed by a body (institution) authorized to provide legal aid at no cost, he\she shall also notify this body (institution).

Without consent of the suspect, accused, the defence counsel may not disclose information of which he took knowledge in connection with participation in criminal proceedings and which constitutes privileged information or any other secret protected by law.

After having been admitted to the case, defence counsel may refuse performing his/ her duties only in the following cases: if there are circumstances that, under the CCP, exclude his participation in the case; disagreement with the suspect, the accused concerning the defence method he has chosen, except for cases when participation of the defence counsel is mandatory; if the suspect, the accused intentionally fails to follow the agreement he concluded with the defence counsel, such failure consisting, in particular, in systematic disregard of lawful advices of the defence counsel, provisions of the CCP, etc.; where he justifies his refusal by the lack of appropriate skills in rendering legal aid in a specific proceeding, which is particularly complex.

The suspect, accused, their legal representatives, as well as other persons upon request or consent of the suspect, accused may engage a defence counsel to participate in criminal proceedings at any time. Investigator, prosecutor, court are required to provide the apprehended person or the person who is kept in custody assistance in establishing liaison with a defence counsel or with persons able to engage a defence counsel, and to make possible using communications means to engage a defence counsel. The investigator, prosecutor and the court shall be obliged to refrain from recommending any specific defence counsel for retaining.

Defence counsel is engaged by the investigator, prosecutor, investigating

judge or court to carry out specific defence in the cases and in accordance with the procedure as prescribed in Art. 49 and 53 of the CCP.

9. Other participants in criminal proceedings.

Applicant shall be a natural or legal person that filed an application or report on criminal offence with a state agency authorized to commence pre-trial investigation, and is not the victim.

A civil plaintiff shall be a natural person to whom a criminal offence or any other socially dangerous act has caused property and/or moral damage, and, also, a legal person to whom a criminal offence or any other socially dangerous act has caused property damage and who enters a civil action in accordance with the rules of the CCP.

A civil defendant in criminal proceedings shall be a natural or legal person civilly liable *ex lege* for the harm caused through the criminal acts (omission) committed by the suspect or the accused or through a socially dangerous act committed by a mentally incompetent person against whom a claim is made in accordance with the procedure established by the CCP.

Witness shall be a natural person who knows or may know circumstances to be proved in the course of criminal proceedings and is summoned to give evidence.

Other participants in the criminal process also include: representative of the legal entity in respect of which the proceedings are being conducted, expert, specialist, secretary of court session, bailiff, third person in respect of which the issue of arrest is being resolved, probation department representative and others.

Where an investigating judge or judge (who considers the case alone) is challenged, the motion shall be considered by another judge of the court who is assigned under the rules of the third paragraph of Art. 35 of the CCP. Where one or more or all judges of a panel conducting court proceedings are challenged, the motion shall be considered by the same composition of the court.

All other challenges filed during pre-trial investigation shall be considered by the investigating judge or, if filed during court proceedings, the court proceeding in the case.

While considering a challenge, the court shall hear the individual who has been challenged if the latter wishes to provide explanations, as well as opinion of individuals who participate in criminal proceedings.

The matter of challenging shall be decided by reasoned ruling of the investigating judge, judge or court in the deliberation room. A challenge considered by a panel of judges jointly shall be decided by simple majority.

Where a repeat challenge has any signs of abuse of the right to challenge in view of delaying criminal proceedings, the court which considers the case may take no action on such challenge.

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THEME 5. EVIDENCE AND PROVING IN CRIMINAL PROCEEDINGS

LEARNING OUTCOMES

The objective is to get students acquainted with the philosophical background of knowledge and how it has been utilized in criminal procedure. The other objective is to familiarize students with the rules regulating the process of factfinding (proving), the concept of evidence its attributes and sources.

QUESTIONS COVERED

1. Theory of knowledge as a basis of evidence law and theory. Characteristics of criminal procedural knowledge.
2. Objective of proving in criminal proceedings. Truth as a prospective objective within criminal procedure.
3. Circumstances to be proved in criminal proceedings, their structure.
4. The notion of evidence in criminal proceedings. Attributes of evidence. Relevance. Admissibility. Admissibility criteria.
5. The concept of proving, its elements. The means of collecting and examining evidence. The concept and means of evaluating evidence.
6. Burden of proof and standard of proof. The scope of proving and sufficiency of evidence.
7. The notion of evidence sources (evidence types).
8. Testimonies. Hearsay evidence. Physical evidence. Documents. Expert's findings (testimony).

LEARNING MATERIALS

1. Theory of knowledge as a basis of evidence law and theory. Characteristics of criminal procedural knowledge.

It is commonly accepted that proving in criminal proceedings is based on the general ideas of theory of knowledge or epistemology. Those branches of human knowledge operate with the terms like 'perception', 'knowledge', 'truth' etc. Consequently, proving deemed as type of perception of the world, the specific way in which facts and circumstances concerning a criminal case are established. Theory of knowledge thus operates as theoretical and philosophical background for theory of evidence and evidence law within criminal process.

Though proving and criminal procedural knowledge are seen as a type of perception and knowledge they have some **distinctive features**. These features distinguish it from scientific and historical knowledge. Some of them are:

- 1) **Focused.** Criminal procedural knowledge is directed towards specific

facts and circumstances concerning criminal offence. Criminal procedure is a sum of different procedural decisions nonetheless all of them are relate to a committed crime and ultimately the task of criminal justice system is to establish whether a defendant guilty in committing an alleged crime, constitutes all the necessary elements (mens rea, actus rea).

2) **Retrospective.** That means all facts and circumstances (vast majority of them) relating to a criminal offence belongs to the past.

3) **Indirect.** This characteristic is in a strong relation to a previous one and implies that no one has an ability to look backwards in time and observe the 'real' facts of a committed crime. Even if a fact-finder (judge or jury) were a witness to the circumstances of the criminal offence it couldn't be a fact-finder in the criminal case, it would be questioned by parties in a courtroom. All the information that is given to the judge is nothing but traces of particular actions and events. Moreover, all these traces have to be interpreted and 'adapted' to the specific construction of an alleged criminal offence.

4) **Formal.** Criminal procedural knowledge can be acquired only in specific forms prescribed by the law. Any omissions as well as violations in the procedure of collecting evidence will result in its exclusion from the criminal case.

5) **Limited in time.** Any criminal case should be completed within reasonable time, which implies that proving has certain time limits. An investigator or a judge cannot conduct investigation until they come to the truth and exclude all alternatives versions until it fits to specific limitations prescribed. That said, it doesn't imply every single case is incomplete or cannot be investigated thoroughly but certain cases can be closed due to the lack of time or resources.

2. Objective of proving in criminal proceedings. Truth as a prospective objective within criminal procedure.

It is a widely held opinion that the objective of proving in criminal proceedings is the **truth**. It even may have an adjective put before it, for instance 'material', 'objective', 'formal', 'judicial' truth etc. The current CCP does not have any mentions of truth in it though it may be implied from the Art. 9 (1) of the Code or can be found

in the Art. 31 of the Constitution of Ukraine.

The term truth itself is a philosophical one and within that branch of knowledge, there is no common approach in either defying it or suggesting its criteria. There are several opposing theories dealing with the truth, some of them are: correspondence theory, coherence theory, pragmatist theories, redundancy theory (deflationism).

Thus, taking into account the difficulties concerning the truth concept the **objective of proving is the proof beyond a reasonable doubt**. This conclusion can be inferred from the provisions of the Art. 17 (2) of the CCP.

3. Circumstances to be proved in criminal proceedings, their structure.

Facts and circumstances to be established and proved constitute what is called a '*fact in issue*'. Circumstances and facts that form the 'fact at issue' can be structured into:

- a) circumstances that form a final objective of proving;
- b) interim (evidentiary) facts;
- c) subsidiary facts³.

Circumstances to be proved in a criminal case are set out in the Art. 91, 485, 505 of the CCP.

4. The notion of evidence in criminal proceedings. Attributes of evidence. Relevance. Admissibility. Admissibility criteria.

Under Art. 84 of the CCP, within criminal proceedings, evidence is factual knowledge, which has been obtained in a procedure prescribed in the present Code on grounds of which investigator, prosecutor, investigating judge and court establish the presence or absence of facts and circumstances, which are important for the criminal proceedings and are subject to be proved.

Procedural sources of evidence are testimonies, physical evidence, documents, and expert findings.

Any piece of information in order to be considered as evidence must have certain characteristics or attributes. The CCP refers to four attributes such as

³ Кримінальний процесуальний кодекс України : Науково -практичний коментар / Відп . ред.: С. В. Ківалов, С. М. Міщенко, В. Ю. Захарченко - Х.: Одіссей, 2013. - С. 256.

relevancy, admissibility, credibility, and sufficiency. Relevancy and admissibility are considered the essential attributes of evidence as lack of either of it would result in exclusion of that particular piece of information from criminal proceedings.

According to the CCP evidence is 1) **relevant** if it directly or indirectly confirms the presence or absence of circumstances to be proved in criminal proceedings and other circumstances, which are important for the criminal proceedings, as well as credibility or non-credibility, possibility or impossibility of using other evidence; 2) found **admissible** if obtained through a procedure prescribed in the Code.

In order to found any piece of information as admissible it should meet **criteria** of 1) proper (due) actor; 2) proper (due) source; 3) proper (due) procedure; 4) proper (due) way of fixation.

Proper (due) actor. The criterion implies that evidence must be acquired only by actors who are entitled by law to collect it. For example, Art. 216 of the CCP - 'investigative jurisdiction (competence)' specifies which pre-trial agency is authorized to conduct pre-trial investigation thus collecting evidence.

Proper (due) source. According to the Art. 84 (2) of the CCP procedural sources of evidence are testimonies, physical evidence, documents, and expert findings. That means that there are only four sources where evidence could be obtained.

Proper (due) procedure. The CCP provides the set of rules and procedures that shall be adhered to while collecting evidence. Non-compliance with any of them would result in inadmissibility of the particular piece of evidence. For example, an entire section regulates procedure for carrying out investigative (search) actions (Chapters 20 and 21 of the CCP).

Proper (due) way of fixation. The results of any action that provide for collecting of evidence shall be fixated in the proper way. That means every action shall take the proper procedural form prescribed by the law.

5. The concept of proving, its elements. The means of collecting and examining evidence. The concept and means of evaluating evidence.

According to Art. 91 (2) of the CCP **proving** consists of collecting, examining and evaluating evidence in order to establish circumstances that are important for criminal proceedings.

However, that is only one side of the proving as proving could be regarded as an argumentation activity. That is the act or process of forming reasons and of drawing conclusions and applying them to a criminal case.

Collection (gathering) of evidence is carried out by parties to criminal proceedings, victim and representative of a legal person in whose respect proceedings are taken in accordance with the procedure laid down in the CCP.

Prosecution carries out collection of evidence by way of conducting investigative (search) actions and covert investigative (search) actions, by demanding and obtaining from state authorities, local government bodies, enterprises, institutions and organizations, officials and natural persons, objects, documents, information, expert opinions, audit and inspection reports, by conducting other procedural actions specified in the CCP.

The defence, victim, and representative of the legal person in whose respect proceedings are taken gather evidence by way of demanding and obtaining from state authorities, bodies of local government, enterprises, institutions, organizations, officials and natural persons objects, copies of documents, information, expert reports, audit and inspection reports; by initiating the conduct of investigative (search) activities, covert (search) activities and other procedural actions, as well as by way of carrying out other activities capable of ensuring the production of relevant and admissible evidence in court.

The evidence may be obtained in a foreign state within the framework of international cooperation in the course of criminal proceedings.

Investigator, prosecutor, investigating judge, court **evaluates evidence** based on his own *inner conviction* grounded in comprehensive, complete, and impartial examination of all circumstances in criminal proceedings being guided by law,

evaluates any evidence from the point of view of adequacy, admissibility, and in respect of the aggregate of collected evidence, sufficiency and correlation, in order to take a proper procedural decision. No evidence shall have any predetermined probative value.

This is an example of what is referred to as a **principle of the free evaluation of evidence**.

6. Burden of proof and standard of proof. The scope of proving and sufficiency of evidence.

The **burden of proving** circumstances provided by in Art. 91 of the CCP (circumstances to be proved in criminal proceedings), except for a number of cases, shall be placed upon investigator, prosecutor and, and in specific cases specified by the CCP, on a victim (see Art. 340 of the CCP).

The **burden of proof** that evidence, knowledge on the amount of procedural expenses and on circumstances that characterize the accused is adequate and admissible is placed upon the presenting party.

While the burden of proof refers to an obligation to prove, the standard of proof addresses the question of what degree of proof is required of a party who bears the burden of proof.

The term '**standard of proof**' refers to the extent or degree to which the burden of proof must be discharged, the degree of persuasion is required of a party who has the burden of proof to convince a court of existence of the 'fact in issue'. According to Art. 17 (2) of the CCP the standard of proof requires the prosecution party to prove the person's guilt **beyond a reasonable doubt**. The other standard of proof that is used in criminal proceedings is '**reasonable suspicion**'. The standard is applied by an investigating judge or a court to decide whether there are grounds to impose measure of restraint (see Art. 132 of the CCP and the ECHR decision in the case [*Fox, Campbell and Hartley v. the United Kingdom*](#)).

According to the ECHR's case law having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence; what may be

regarded as 'reasonable' will however depend upon all the circumstances⁴.

The **scope of proving** is a legal term that refers to what extent shall the circumstance of a case be examined in order to make a justified, reasoned decision. **Sufficiency of evidence** is determined by an actor that makes a criminal procedural decision based on his/her inner conviction subject to a specific standard of proof required by the law for the decision.

7. The notion of evidence sources (evidence types).

Within the scope of criminal proceedings, the usage of the term 'evidence' is quite ambiguous. It may refer to *four different concepts or meanings*.

First, it refers to something that is adduced in a court in order to prove a claim or accusation. Evidence, from this point, can take a form of oral evidence (testimony provided by a witness), documents, objects (physical evidence) and expert findings.

Second, it refers to a proposition of fact (fact in issue) that is established by the evidence in the first meaning (that is, for example, a witness testimony).

Third, it also refers to the proposition of fact but it is also able to serve as a premise for drawing an inference to a matter of a criminal case. For example, the fact that the item allegedly stolen is found at a suspect's house can indicate his involvement in the theft.

Fourth, it refers to a piece of information, which conforms to the requirements to be evidence in criminal proceedings. From this perspective, evidence is information that is relevant and admissible to establish fact in issue⁵.

In the first sense evidence shall take a form, in other words, have a procedural source. Under Art. 84 §2 of the CCP there are four procedural sources of evidence: **testimonies, objects (physical evidence), documents, and expert findings**.

8. Testimonies. Hearsay evidence. Physical evidence. Documents. Expert's findings (testimony).

According to Art. 95 §1 of the Code, **testimonies** refer to oral or written

⁴ *Fox, Campbell and Hartley v. The United Kingdom*, Judgement of 30 August 1990, Appl. 12244/86; 12245/86; 12383/86. (§ 32). URL: <http://hudoc.echr.coe.int/eng?i=001-57721>

⁵ Ho, Hock Lai, "The Legal Concept of Evidence", *The Stanford Encyclopedia of Philosophy* (Winter 2015 Edition), Edward N. Zalta (ed.), URL: <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=evidence-legal>

reports given in the course of interrogation by the suspect, accused, witness, victim, and expert on circumstances they know and which are of importance for the criminal proceedings concerned.

Therefore, there are four types a testimony can take in criminal proceedings: 1) witness's testimony, 2) victim's testimony, 3) suspect's (accused) testimony, and 4) expert's testimony.

The specific type of testimony is **hearsay**. Under Art. 97 § 1 of the CCP 'Hearsay testimony shall be a statement made orally, in writing or in any other form with regard to a certain fact, such statement being based on explanations of another person.' As a rule, hearsay evidence is inadmissible in criminal proceedings but under certain circumstances provided for by Art. 97 of the CCP it is possible to apply it (see also the ECHR case-law, e.g. *mutatis mutandis* [Schatschaschwili v. Germany](#)⁶).

Physical evidence, according to Art. 99 of the CCP, means tangible objects that have been used as an instrument of a criminal violation, retain traces of such or contain other information, which may be used as evidence of the fact or circumstance to be established during criminal proceedings, including the items that have been an object of criminally unlawful actions, money, valuables or other articles obtained in a criminally unlawful manner or gained by the legal person as a result of criminal violation.

Under Art. 98 of the CCP, a **document** shall mean a material object, which was created specifically for conservation of information, such object containing fixed by means of written signs, sound, image etc., the knowledge that can be used as evidence of the fact or circumstance that is established during criminal proceedings. Those may be:

- a) materials of photography, sound recording, video recording and other data media (including electronic);
- b) materials obtained through the taking during criminal proceedings of measures stipulated by valid international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by;

⁶ *Schatschaschwili v. Germany*, Judgement of 15 December 2015, Appl. 9154/10. URL: <https://www.legal-tools.org/doc/ba3469/pdf/>

c) drawn up in accordance with the procedure established by the CCP, records of procedural actions and annexes thereto, as well as data media on which procedural actions have been fixed by technical means;

d) reports on results of audits and examination reports.

According to Art. 101 of the CCP, **expert's finding** is a detailed description of the examination carried out by the expert, as well as the findings of such an examination and grounded responses to the questions posed by the person who invited the expert or the investigating judge or court requesting his opinion.

Expert's findings *shall not be binding* for the person or organ conducting proceedings, but any disagreement with expert's findings must be reasoned in the relevant decision, ruling or judgment.

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THEME 6. MEASURES TO ENSURE CRIMINAL PROCEEDINGS

LEARNING OUTCOMES

The objective is to provide students with knowledge the criminal procedural mechanism of measures to ensure criminal proceedings (what is the aim, procedure, grounds of enforcing them) as well as get students acquainted with current practice of their enforcement.

QUESTIONS COVERED

1. Notion and types of measures to ensure criminal proceedings. General rules for application of measures to ensure criminal proceedings.
2. Summons by investigator, prosecutor. Court summons. Compelled appearance. Imposition of pecuniary penalty.
3. Temporary restriction on a special right.
4. Suspension from position. Temporal removal of a judge from the administration of justice.
5. Provisional access to objects and documents.
6. Provisional seizure of property. Attachment of property.
7. Concept and importance of measures of restraint (preventive measures). System and types of measures of restraint.
8. Purpose and grounds for the application of measures of restraint and circumstances to consider in the selection of measures of restraint.
9. Request of the investigator, prosecutor about the application of preventive measures. Consideration of a request for the application of a preventive measure.
10. Personal commitment.
11. Personal warranty.
12. Bail

13. House arrest
14. Custody.

Learning materials

1. Notion and types of measures to ensure criminal proceedings. General rules for application of measures to ensure criminal proceedings.

Measures to ensure criminal proceedings are state-legal coercion provided by in criminal procedure law, which are applied by authorized bodies (officials) who conduct criminal proceedings in a manner clearly defined by the law in respect for the persons involved in criminal proceedings, in order to achieve effectiveness of criminal proceedings (to prevent and stop unlawful actions, to ensure the detection and consolidation of evidence, etc.)⁷.

Measures to ensure criminal proceedings are:

- 1) summons by investigator, prosecutor, court summons and compelled appearance;
- 2) imposition of pecuniary penalty;
- 3) temporary restriction on a special right;
- 4) suspension from position;
- 5) temporal removal of a judge from the administration of justice;
- 6) provisional access to objects and documents;
- 7) provisional seizure of property;
- 8) attachment of property;
- 9) *measures of restraint (preventive measures)*.

Measures to ensure criminal proceedings are applied based on the ruling of investigating judge or court (in majority of instances) and it could also be prosecutor and investigator.

Enforcement of measures to ensure criminal proceedings should be denied **unless investigator, prosecutor proves that:**

⁷ Кримінальний процес: підручник / За заг. ред. В. В. Коваленка, Л. Д. Удалової, Д. П. Письменного. - К.: «Центр учбової літератури», 2013. - С. 164.

a) there is a *reasonable suspicion* of the commission of criminal offence of such severity that may be a ground for application of measures to ensure criminal proceedings;

b) the needs of pre-trial investigation justify such degree of interference in rights and freedoms of a person stated in the motion of investigator, prosecutor;

c) a task can be fulfilled and in order to accomplish the task the investigator, prosecutor makes a motion.

In order to evaluate needs of pre-trial investigation, investigating judge or court are required to take into account the possibility to obtain, without applying a measure to ensure criminal proceedings, objects and documents, which can be used during trial for establishing circumstances in criminal proceedings.

During consideration of the enforcement of measures to ensure criminal proceedings, parties to criminal proceedings should present to investigating judge or court evidence on circumstances to which they refer.

Attached to the motion of investigator, prosecutor on enforcement, change or repeal of measures to ensure criminal proceedings shall be an extract from the Integrated Register of pre-trial investigations (the IRPI) concerning the criminal proceedings within which the motion is filed.

2. Summons by investigator, prosecutor. Court summons. Compelled appearance. Imposition of pecuniary penalty.

Investigator, prosecutor during pre-trial investigation have **the right to summon a person** if there are sufficient grounds to believe that such person can give testimonies that are important for criminal proceedings, or his participation in a procedural action is mandatory.

Investigating judge during pre-trial investigation or court during trial can, *proprio motu* or upon motion of investigator, prosecutor, suspect, accused, his defence counsel, victim, his representative, summon a certain person if the investigating judge or the court deems there are sufficient grounds to believe that such person can give testimonies that are important for criminal proceedings, or his participation in a procedural action is mandatory.

Court shall summon participants in criminal proceedings whose participation

in trial is mandatory.

A person is summoned to investigator, prosecutor, investigating judge, court by serving court summons on the person concerned, sending it by mail, electronic mail or facsimile communication, by telephone or cable.

If the individual concerned is temporarily out of his home, ruling on court summons shall be served against receipt of his adult family member or to another individual who resides together with the addressee, to the residential management organization at the place of residence, or to the administration at the place of employment.

A person under custody shall be summoned through the administration of the place of confinement.

Ruling on court summons of a minor is served, as a rule, on his father, mother, adopter, or legal representative. Different procedure for serving a summons shall be admissible only in case where this is justified by circumstances of criminal proceedings.

Ruling on court summons of an individual under special ability is served on his caretaker.

Ruling on court summons shall be served on a person by an employee of the post office, employee of a law enforcement agency, investigator, prosecutor, as well as by secretary of court session if such service is made on the court premises.

Ruling on court summons of the individual living abroad shall be made in accordance with international treaty of legal assistance the Verkhovna Rada of Ukraine has given its consent to be bound by, and in its absence, through diplomatic (consular) mission.

A person must receive ruling on court summons or be notified of it in other way at least three days prior to the day on which the person summoned is supposed to appear. Where the CCP specified time limits for the conduct of procedural actions which make it impossible to make summons within the indicated period, the person shall receive ruling on court summons or be notified of it in other way as soon as possible but anyhow leaving him the necessary time to prepare and appear upon summons.

If the suspect, accused, witness, victim, civil plaintiff, who has been summoned according to the procedure set forth in the CCP (in particular, presence of confirmation of receipt of the court summons or of learning its content in other way), failed to appear without valid reason or did not inform on reasons for his non-appearance, he shall be subject to **imposition of pecuniary penalty** in the amount of:

- 0.25 to 0.5 times subsistence level (wage) failing to appear on summons of investigator, prosecutor;

- 0.5 to 2 times subsistence level (wage) failing to appear on summons of investigating judge, court.

Pecuniary penalty may be imposed on participants in the criminal proceedings for failure to fulfil their procedural duties in the cases and amounts stipulated in the CCP.

Pecuniary penalty shall be imposed:

- *in the course of pre-trial investigation* - upon the ruling of the investigating judge based on the motion made by the investigator or the prosecutor or on his own initiative, or

- *in the course of the judicial proceedings* - upon the court's ruling based on the prosecutor's motion or on its own initiative.

In the course of *pre-trial investigation*, the motion made by the investigator or prosecutor for imposition of pecuniary penalty on a person shall be examined by the investigating judge **no later than three days** after the date of submission of the motion to the court.

The official who entered the motion and the person on whom pecuniary penalty may be imposed shall be notified of the time and place of consideration of the motion; however, their default of appearance shall not impede examining this issue.

In the course of *judicial proceedings*, the issue of imposition of pecuniary penalty on a person shall be considered **immediately** after its initiation.

The investigating judge or the court upon establishing that the person concerned failed to fulfil its procedural duty without providing valid reasons shall impose pecuniary penalty on this person. A copy of the corresponding ruling shall be

sent to the person on whom pecuniary penalty was imposed no later than the next working day after taking the decision.

The person on whom pecuniary penalty was imposed and who was absent during consideration of this issue by the investigating judge or the court shall have the right to lodge a motion for revocation of the ruling on imposition of pecuniary penalty on him. This motion shall be filed with the investigating judge or with the court who/which passed the ruling on imposition of pecuniary penalty.

The investigating judge or the court having recognized the validity of the person's arguments may revoke the ruling on imposition of pecuniary penalty at their own discretion, failing that to schedule a court session for examining the motion for revocation of the ruling on imposition of pecuniary penalty. The person who filed this motion, as well as the investigator or prosecutor whose motion became the grounds for imposition of pecuniary penalty shall be notified of the place and time of consideration of the motion; however, their default in appearance shall not impede such consideration.

The investigating judge or the court shall revoke the ruling on imposition of pecuniary penalty on a person based on the results of consideration of this motion during the court session, provided it is established that the penalty had been imposed unfoundedly, otherwise shall not grant the motion.

The judgment made by the investigating judge or the court, based on the results of consideration of the motion to reject the ruling on imposition of pecuniary penalty, **shall be final and cannot be appealed.**

In a case specified in the CCP, compelled appearance may be enforced against the suspect, accused, and witness.

Compelled appearance is a compulsory forwarding of the person against whom it is enforced, by a person execution the ruling on enforcement of compelled appearance, to the place of summons, at the time specified in the ruling.

A decision to enforce compelled appearance shall be taken: during pre-trial investigation, by investigating judge upon motion of investigator, prosecutor or *proprio motu*; and during trial, by court upon motion of a party in criminal proceedings, victim, or *proprio motu*. A decision to enforce compelled appearance

shall be taken in the form of ruling.

Compelled appearance may be enforced against a suspect, accused or a witness. **Compelled appearance of a witness cannot be enforced against** a minor, a pregnant woman, disabled persons of the 1 and 2 degree, a person who is raising children under the age of 6 or disabled children alone, as well as individuals who may not be examined as witnesses under the CCP. Compelled appearance of an officer from the personnel of an intelligence agency of Ukraine in the performance of his duties shall be enforced only in presence of that agency's official representatives.

3. Temporary restriction on a special right.

Temporary restriction on a special right. The measure aims at restricting a *suspect* from the enjoyment of the special right which requires a license. The restriction could be imposed on:

- a) Right to operate a vehicle or a ship;
- b) Right to hunt;
- c) Right to conduct entrepreneurial activity.

The aim of the measure is to 1) stop criminal offence or prevent the commission of another offence, 2) stop or prevent unlawful behaviour of the suspect in respect of obstructing criminal proceedings, and 3) ensure compensation of damage caused by criminal offence. The measure could be applied only if there is a *good reason to believe* that it is necessary to restrict a suspect in his enjoyment of a special right to ensure the achievement of the aims.

The restriction shall be imposed by seizing the documents granting the abovementioned rights. The decision of seizure could be taken by an investigator, prosecutor, investigating judge, or other competent person, though without a ruling of the investigating judge such restriction is deemed as unlawful unless the person was arrested provided for by Art. 208 of the CCP.

Under Art. 149 of the CCP a person who has carried out detention of the person in question is obliged, concurrently with bringing the apprehended person to the authorized official to hand over to this official the temporarily seized documents which confirm special right, if any have been seized. The fact that documents confirming special right and have been seized were handed over is *certified by a*

record.

In case of seizure of the document during detention under Art. 208 of the CCP the prosecutor or the investigator upon prosecutor's approval are required to file a motion to the investigating judge not later than *two days* after temporary seizure has been made. Missing this time limit entails necessity to return temporarily seized documents.

The investigating judge considers motion for temporary restriction of the enjoyment of special right *not later than three days* after such motion has been filed, with participation of prosecutor and/or investigator and the suspect, his defence counsel. When considering motion for temporary restriction of the enjoyment of special right, investigating judge may, upon motion of the parties to criminal proceedings or *proprio motu*, hear any witness or examine any materials of importance for deciding on the issue of temporary restriction of the enjoyment of special right.

The investigating judge ruling to temporary restrict the enjoyment of special right may be extended for more than *two months* if the prosecutor files the motion and proves that: 1) circumstances which laid ground for temporary restriction of a special right continue to exist; 2) prosecution was unable to otherwise ensure achievement of goals for the sake of which the special right has been temporarily restricted, during the time the previous ruling was effective.

4. Suspension from position. Temporal removal of a judge from the administration of justice.

Suspension from position. Under Art. 154 § 1 of the CCP the suspension may be applied to a person who is suspected of or charged with committing a medium-gravity, grave or especially grave crime or, irrespective of the gravity, to a person who is an officer of a law enforcement body.

The person may be suspended from the office if the prosecutor proves that there are grounds to believe that 1) holding the office by the suspect or the accused contributed to perpetration of a criminal offence; and 2) the suspect or the accused, if holding the office, will destroy or forge objects and documents of essential importance for the pre-trial investigation, or exert illegal influence on witnesses and

other participants in criminal proceedings, or otherwise illegally obstruct criminal proceedings.

The decision to impose the measure could be taken by an *investigating judge during pre-trial investigation* and a *court at court proceedings*. Should the person be appointed by the President of Ukraine only he can suspend him from the office. Suspension of the Director of the National Anti-corruption Bureau of Ukraine can be applied by an investigating judge upon the motion of the Prosecutor General of Ukraine.

The motion for suspension of a person from his office shall be considered by the investigating judge or the court *no later than three days* after the date of submission of the motion to the court, with the participation of the investigator and/or prosecutor, as well as the suspect or the accused and his defence counsel. When considering the motion, the investigating judge or the court shall have the right, upon the motion of the parties to criminal proceedings or *proprio motu*, hear any witness or examine any materials of importance for deciding on the issue of suspension from office.

The investigating judge ruling of suspension from position may be extended for more than two months if the prosecutor files the motion and proves that: 1) circumstances which laid ground for temporary restriction of a special right continue to exist; 2) prosecution was unable to otherwise ensure achievement of goals for the sake of which the special right has been temporarily restricted, during the time the previous ruling was effective.

Temporal removal of a judge from the administration of justice. In case a judge is suspected or accused of the commission of a crime he could be temporarily removed from the administration of justice by the High Council of Justice upon the motion of the Prosecutor General of Ukraine. The same rule applies if it is necessary to extend the decision. Such procedure is used at any stage of criminal proceedings.

5. Provisional access to objects and documents.

Provisional access to objects and documents. The measure is applied in order to provide a party of criminal proceedings with the opportunity to examine and make copies of objects and documents of the person who owns them, and, upon

adoption of the appropriate ruling by investigating judge, court, seize them. The access could be provided based solely on a ruling of investigating judge, court.

The motion to grant the access *shall contain* inter alia: 1) grounds to believe that the objects and documents are or can be in possession of the physical or legal person concerned; 2) significance of the objects and documents for establishing circumstances in the criminal proceedings concerned; 3) possibility to use as evidence the information contained in the objects and documents, and impossibility to otherwise prove circumstances which are supposed to be proved with the use of such objects and documents, in case the motion to grant provisional access pertains to objects and documents containing secrets protected by law.

Under Art. 161 of the CCP the *access* to the objects and documents specified in it *is prohibited*. These contain: 1) correspondence or any other form of communication between defence counsel and his client or any person, who represents his client, in connection with the provision of legal assistance; 2) objects, which are attached to such correspondence or any other form of communication.

Investigating judge, court shall issue the ruling to grant provisional access to objects and documents if the party to criminal proceedings proves in its motion the existence of sufficient grounds to believe that the objects or documents:

- a) are or can be in possession of a physical or legal person;
- b) *per se* or in combination with other objects and documents of the criminal proceedings concerned, are significant for establishing important circumstances in the criminal proceedings;
- c) are not secret *per se* or do not include such objects and documents that contain secrets protected by law.

In case of failure to execute the court's ruling on provisional access to objects and documents, investigating judge, court upon motion of the party to criminal proceedings, which has been granted access to objects and documents based on the ruling, may pass a ruling authorizing search in accordance with provisions of the CCP, with the purpose of finding and seizing the objects and documents concerned.

In case the authorization of search was given upon motion of defence party, investigating judge, court shall assign the conduct of search to the investigator,

prosecutor or the body of National police at the venue of the conduct of the action. Search shall be conducted with participation of the person upon whose motion it was authorized, pursuant to provisions of the CCP.

6. *Provisional seizure of property. Attachment of property.*

Provisional seizure of property. Provisional seizure of property is the actual deprivation of the suspect's possibility to possess, use, and dispose of certain property till the issue of attachment or return of property is decided.

Under Art. 167 § 2 of the CCP, the property in the form of objects, documents, money, etc. may be provisionally seized if there are *sufficient grounds to believe* that such property:

a) has been found, fabricated, adapted, or used as means or instruments of the commission of criminal offence and/or preserved signs of it;

b) has been intended (used) to induce a person to the commission of a criminal offence, financing and/or providing material support to or as a reward for its commission;

c) has been an object of a criminal offence related inter alia to its illegal circulation;

d) has been gained as a result of commission of a criminal offence and/or is proceeds of such an offence as well as any property to which they have been converted in full or in part.

Under Art. 168 of the CCP, everyone who has lawfully apprehended a person as prescribed in Art. 207 and 208 of the CCP may provisionally seize property. Property may also be provisionally seized during search, examination.

Attachment of property. Under Art. 170 of the CCP the attachment of property means temporary, until revocation of such attachment of property, according to the procedure established by the CCP, deprivation, by a ruling of the investigating judge or court, of the right of to alienate, dispose and/or use property, in respect of which there is a *sum of grounds* or *reasonable suspicions to believe* that it is evidence of a crime, is subject to confiscation or special confiscation. Special confiscation may be applied to suspect, accused, convicted, or third party and confiscation may be applied to a legal person in order to secure a civil action, recovery from the legal

entity the unduly received profits and/or possible confiscation of property.

The objective of the attachment of property is to prevent the possibility of its concealment, damage, destruction, transformation, alienation.

Motion for attachment of property can be filed by prosecutor, investigator upon approval of the prosecutor and also by a civil plaintiff in order to secure a civil action.

The motion is considered by the investigating judge or court *not later than two days* after it has been lodged, with participation of the investigator and/or public prosecutor, civil plaintiff, if he has filed the motion, suspect, accused, other holder of property, and also of the defence counsel, legal representative and representative of the legal person in whose respect proceedings are taken, if any.

During consideration of the motion for attachment of property, investigating judge may, upon motion of participants to consideration or *proprio motu*, hear any witness or examine any materials which are important for deciding the issue of property attachment.

Investigating judge, court shall dismiss motion for the attachment of property unless the person who filed it proves that such attachment is necessary as well as *existence of risks*, i.e., objectives of the measure.

As to *provisionally seized property*, it is laid out in Art. 171 § 5 of the CCP, that an investigator, prosecutor shall submit motion for the attachment of provisionally seized property not later than the *next day* after the seizure of property, otherwise the property has to be immediately returned to the person from whom it has been seized.

Investigating judge, court shall pass the ruling to attach provisionally seized property within 72 hours after the motion has been received, otherwise such property has to be returned to the person from whom it has been seized (Art. 173 § 6 of the CCP).

7. Concept and importance of measures of restraint (preventive measures). System and types of measures of restraint.

Measures of restraint (preventive measures) is a type of measures to ensure criminal proceedings, which could be applied to a suspect or an accused in order to

ensure the fulfilment of procedural obligations imposed on them and to prevent taking potential unlawful actions.

Measures of restraint take a special place among other measure to ensure criminal proceedings as they are deemed as the most severe measures (especially custody) that could be imposed to a person within criminal proceedings. Such measures limit the most fundamental rights and freedoms of person such as the right to liberty and security as well as freedom of movement guaranteed respectively in Art. 5 of the Convention and Art. 2 of Protocol No. 4 to the Convention.

It is worth noting that this type of measures to ensure criminal proceedings is applied to *an innocent person* due to the provisions of presumption of innocence and absence of a sentence. That is why such a preventive measure could be applied only on the basis of investigating judge's (during pre-trial investigation) and court's (during court proceedings) decision.

It should also be remembered, that it is not an obligation of an investigator or a prosecutor to file a motion on application of the measures. If there are no risks that a suspect or an accused could hide from a pre-trial agency (or a court) or destroy, conceal or spoil evidence that have essential importance for establishing the circumstances of criminal offence there is no need to impose them, though it is virtually impossible to avoid application of the preventive measures.

Measure of restraint could be classified in many groups but it is common to divide them into **two groups**:

- 1) measures of isolative character;
- 2) measures of non-isolative character.

The criterion used for the classification is quite straightforward - whether a measure limits the person's freedom.

Under Art. 176 of the CCP, the following measures of restraint (preventive measures) that could be imposed to a suspect (accused) include:

- a) personal commitment;
- b) personal warranty;
- c) bail;
- d) house arrest;

- e) custody;
- f) detention of a person.

The measures listed in the article are placed in the particular order where the personal commitment is the least strict measure and the custody is the strictest. Such order is crucial as there is the presumption that the least strict measure can prevent the risk(s) of a suspect (accused) unlawful conduct (Art. 194 §1 (3)). Thus, the burden of proof that the personal commitment could not prevent the risk(s) is on prosecution. It's prosecution's obligation to rebut the presumption⁸.

There are **other measures of restraint** that not included in Art. 176:

- g) committing an underage suspect (accused) to supervision (Art. 493);
- h) commitment to the care of custodians, close relatives or family members, under mandatory medical supervision (Art. 508 § 1 (1));
- i) placement in a psychiatric institution under the regime which excludes their dangerous behaviour (Art. 508 § 1 (2))
- j) provisional arrest (Art. 583);
- k) extradition arrest (Art. 584).

The purpose and grounds of application of the measures of restraint are provided for by Art. 177 of the CCP. Under paragraph 1 of the article **the purpose** of the application of the measures is to ensure the compliance of a suspect (accused) with procedural obligations imposed, as well as to prevent attempts to (*risks*):

- a) hide from pre-trial investigation agency and/or the court;
- b) destroy, conceal or spoil any of objects or documents that have essential importance for establishing circumstances of criminal offence;
- c) exert unlawful influence on the victim, witness, another suspect, accused, expert or specialist in the same proceedings;
- d) commit similar or the same criminal offence, or continue the criminal

⁸ See inter alia ECtHR's decisions in cases *Merabishvili v. Georgia*, Judgement of 28 November 2017, Appl. 72508/13. (§ 234). URL: <http://hudoc.echr.coe.int/eng?i=001-178753>, *Bykov v. Russia*, Judgement of 10 March 2009, Appl. 4378/02. (§ 64). URL: <http://hudoc.echr.coe.int/eng?i=001-91704>

offence of which he is suspected, charged;

- e) obstruct criminal proceedings in other ways.

8. Purpose and grounds for the application of measures of restraint and circumstances to consider in the selection of measures of restraint.

Grounds for application of a measure of restraint under Art. 177 § 2 of the CCP shall be the existence of reasonable suspicion of having committed a criminal offence, as well as the existence of risks that provide sufficient grounds for an investigating judge, a court to believe that the suspect, the accused or the convicted person can commit actions specified in the Art. 177 § 1.

Besides the grounds, to decide on the issue of choosing a measure of restraint, in addition to the existence of risks, investigating judge (court) based on materials submitted by parties, is required to assess the totality of **circumstances** including:

- a) importance of available evidence concerning the commission of criminal offence by the suspect (accused);

- b) severity of punishment, which can be imposed on the person concerned if the suspect (accused) is found guilty of the commission of the criminal offence the person suspected (charged) of;

- c) age and state of health of the suspect (accused);

- d) firmness of social relations the suspect (accused) has in the place of his permanent residence, including whether he has a family and dependents;

- e) whether the suspect (accused) has the place of permanent employment or study;

- f) reputation of the suspect (accused);

- g) property status of the suspect (accused);

- h) previous convictions of the suspect (accused);

- i) compliance by the suspect (accused) with terms of previously enforced measures of restraint, if any;

- j) existence of the notice that the person concerned is suspected of having committed another criminal offence

- k) the amount of property damage, in causing which the person is suspected (accused), or the amount of proceeds, resulting from committing a criminal offense

and also the strength of available evidence justifying the appropriate circumstances.

9. Request of the investigator, prosecutor about the application of preventive measures. Consideration of a request for the application of a preventive measure.

Under Art. 184 of the CCP an investigator's, (prosecutor's) **motion to impose a measure of restraint** (in respect of each individual) shall be filed with the local court in the bounds of the territorial jurisdiction of which the pre-trial investigation is conducted, and **shall contain**:

a) brief description of factual circumstances of criminal offence, which a person is suspected or accused of;

b) legal determination of this criminal offence with indication of the article (paragraph of article) of the Ukraine's law on criminal liability;

c) description of circumstances, which give grounds for suspecting, charging the individual concerned in the commission of criminal offence, and reference to materials which support such facts;

d) reference to one or several risks (Art. 177);

e) description of circumstances, which gave ground to investigator, public prosecutor to conclude that a risk or several risks as stated in his motion are real, and reference to materials which support such facts;

f) substantiation of impossibility to prevent the risk or risks referred to in the motion through the application of less strict measures of restraint;

g) substantiation of the necessity to impose specific duties as provided for by the fifth paragraph of Art. 194 of the Code on the suspect or accused.

The motion shall be attached with:

a) copies of materials, which investigator, public prosecutor uses to substantiate his arguments;

b) list of witnesses whom investigator, public prosecutor finds necessary to question during consideration of the measure of restraint;

c) confirmation that the suspect, accused has been handed over copies of the motion and materials used to substantiate the necessity to enforce the measure of restraint.

Copy of the motion and materials in substantiation of the necessity to enforce the measure of restraint shall be handed over to the suspect (accused) *no later than three hours* before the consideration of the motion begins. The rule is accompanied by Art. 187 of the CCP, which provides the appearance of a suspect (accused) concerned⁹ as he/she has rights guaranteed in the Art. 193 § 2 of the CCP. These rights include:

- a) be represented by a defence counsel;
- b) know merits of and grounds for the suspicion or charges;
- c) know the grounds for his/ her apprehension;
- d) waive giving explanations, testimonies in respect of the suspicion or charges;
- e) provide explanations in respect of any circumstances of his/her apprehension and custody;
- f) examine objects, documents, explanations, testimonies that the public prosecutor invokes and produce objects, documents, explanations, testimonies of other persons to deny arguments of the public prosecutor;
- g) make pleas to summon and examine witnesses whose testimonies can be important for deciding the issues considered.

During the consideration of the motion the investigating judge (court) upon request of the parties or *proprio motu* may hear any witness or examine any materials of importance for deciding on the enforcement of a measure of restraint.

As a rule, the decision to impose a measure of restraint is valid for sixty days from the day the ruling was rendered.

Ruling to impose a measure of restraint terminates after expiry of the period of validity of the ruling to enforce the measure of restraint, after delivering judgment of acquittal, or after closing of the criminal proceeding.

The decision can be extended several times during pre-trial investigation but within the time limits of pre-trial investigation (for example, six months in criminal

⁹ Subject to exclusion provided for by Art. 193 § 6 of the CCP.

proceedings in respect of crimes of small or medium gravity). During court proceedings the decision could be extended many times without any limitation but within the time-limits of court proceedings which shall be conducted within a reasonable time. Though it is worth noting that such extension should be justified and grounded.

In case of extension a prosecutor shall prove that there are 1) circumstances, which show that the stated risk has not decreased or that new risks have emerged, which justify imposing a measure; and 2) circumstances which obstruct completion of the pre-trial investigation before expiry of the previous ruling.

The investigating judge's ruling to impose a measure of restraint is subject to appeal review by an appeal court; meanwhile the court's decision during a trial cannot be reviewed until the trial is completed.

10. Personal commitment.

It is the least strict preventive measure, the point of which is that a suspect (accused) pledges to perform duties imposed on him by an investigating judge, court. Duties to be imposed are provided for by Art. 194 of the CCP and include:

- 1) appear before the official specified with periodicity established;
- 2) not to leave the locality where he is registered, resides or stays, without permission of the investigator, public prosecutor or court;
- 3) inform the investigator, public prosecutor or court on the change of place of residence and/or employment;
- 4) abstain from communicating with any individual specified by investigating judge, court or communicate with such person on conditions imposed by investigating judge, court;
- 5) do not visit places specified by investigating judge or court;
- 6) undergo treatment from narcotic or alcohol addiction;
- 7) make efforts to find a job or to enter an educational institution;
- 8) surrender his internal ID, foreign travel passport(s) or other documents authorizing leaving and coming to Ukraine;
- 9) carry an electronic monitor.

The duties may be imposed upon the suspect (accused) for *no longer than 2 months*, extendable, if necessary, on a motion of the prosecutor.

The suspect, accused is notified in the written form against his signature of duties imposed on him, and advised that in case of non-observance, he may be subjected to application of a stricter measure, and a pecuniary penalty may be imposed on him in the amount of 0.25 to 2 times subsistence level for able-bodied people.

11. Personal warranty.

Personal warranty consists in the giving by persons whom investigating judge, court regard as worthy of confidence, of a written obligation that they warrant the observance by the suspect, accused with duties imposed on him in (Art. 194 of the CCP), and undertake, if necessity should arise, to bring him to the agency of pre-trial investigation or to court at first request.

The investigating judge, court, which chooses the measure of the restraint concerned, shall determine number of warrantors. Presence of a single warrantor may be considered sufficient only if he is a *person worthy of special confidence*.

Warrantor may waive assumed obligations before the emergence of grounds for his liability. In such case, he shall ensure the appearance of the suspect, accused at the agency of pre-trial investigation or court for disposal of the issue of replacing his measure of restraint for another one. In case of non-fulfilment by warrantor of assumed obligations, a pecuniary penalty shall be imposed on him in the amount provided for by Art. 180 of the CCP.

12. Bail

Bail is a preventive measure where a person is obliged to pay in funds, in the legal tender of Ukraine, to a special account with the purpose of ensuring the observance by the suspect, accused of obligations imposed on him, on condition of reverting the paid-in funds to the State's revenue in case of non-observance of such duties. Bail may be paid both by the suspect, accused himself and by any other physical or legal person (bail bondsman).

The amount of bail shall be determined by investigating judge, court with due account of circumstances of the criminal offense, of the property and family status of

the suspect, accused, other data on the person and risks (Art. 177). Bail amount shall be required to sufficiently guarantee the fulfilment by the suspect, accused of obligations imposed upon him, and may not be deliberately crippling for him. The amount of bail depends on the gravity of the allegedly committed criminal offence and provided for by Art. 182 § 5. At the same time, *in exceptional cases*, where the investigating judge or the court finds that the bail in the amount specified will not suffice to ensure fulfilment of the obligations imposed on a person suspected of or charged with the commission of a grave or especially grave offence, the bail may be established in the amount exceeding 80 or 300 times the subsistence level for able-bodied people.

In case of non-fulfilment of his duties by the bail bondsman as well as in case that the suspect or accused person, upon proper notice, fail to appear on summons before the investigator, public prosecutor, investigating judge, court without a valid excuse, or failed to inform of the reasons for non-appearance, or violated any other duties imposed upon him in connection with the measure of restraint, the bail shall be reverted into the State's revenue.

Where bail is reverted into the State's revenue, the investigating judge, court shall decide the issue of applying to the suspect or accused person another measure of restraint in form of bail in a higher amount or another measure of restraint.

13. House arrest

House arrest is the preventive measure where person, who is suspected or accused of committing a crime punishable by imprisonment, is prohibited to leave his/her home on the 24-hour basis or during a certain period of day.

A ruling on application of the measure of restraint in the form of house arrest shall be transferred for execution to the body of National police at the suspect's, defendant's place of residence.

Officers of the body of National police may, with the purpose of exercising control over the behaviour of the suspected, accused that is under house arrest, come to the person's home, demand oral or written explanations regarding issues related to the carrying out of duties imposed on his/her, and use electronic means of control.

The term of validity of the order issued by an investigating judge concerning

the period of keeping a person under a house arrest may not exceed two months. If necessary, the period of house arrest may be extended upon request of public prosecutor within the framework of pre-trial investigation. The aggregate duration of house arrest during pre-trial investigation may not exceed six months. Upon termination of this period, the ruling concerning application of the measure of restraint in the form of house arrest shall be valid no longer, and the measure of restraint shall be deemed cancelled.

14. Custody.

Keeping in custody is an exceptional measure of restraint enforced exclusively if public prosecutor proves that none of the less strict measures of restraint can prevent risks (Art. 177), except for the case, when the person concerned is suspected or accused of having committed the crimes specified by Art. 109-114¹, 258-258⁵, 260, and 261 of the Criminal Code of Ukraine. In that case, the custody is the only preventive measure that can be applied to the person.

Under Art. 183 § 2 of the CCP custody can be applied to:

1) a person suspected of or charged with an offence the primary punishment for which is a fine in the amount exceeding 3000 times the minimum citizen's income, except for where the prosecutor, in addition to the grounds (Art. 177), has proven that the suspect (accused) failed to fulfil the obligations imposed upon him by an earlier applied preventive measure or failed to comply with the requirements concerning depositions of bail and submission of documentary proof of such deposition;

2) a person with prior record of convictions who is suspected of or charged with an offence punishable by imprisonment of up to 3 years, except for where the prosecutor, in addition to the grounds (Art. 177), has proven that such person, while being at large, was fleeing pre-trial investigation or trial, obstructed criminal proceedings or has been notified of suspicion in the commission of another offence;

3) a person without prior convictions who is suspected of or charged with an offence that is punishable by imprisonment of up to 5 years, except for where the public prosecutor, in addition to the grounds (Art. 177), has proven that such person, while being at large, was fleeing pre-trial investigation or trial, obstructed criminal

proceedings or has been notified of suspicion in the commission of another offence;

4) a person without prior convictions who is suspected of or charged with an offence punishable by imprisonment of more than 5 years;

5) a person with prior record of convictions who is suspected of or charged with an offence punishable by imprisonment of up to 3 years;

6) a person wanted by competent authorities of a foreign state for commission of a criminal offence in connection with which the issue of extradition to such foreign state for the purpose of instituting criminal proceedings against him or execution of the sentence may be decided.

The investigating judge, court when making a ruling on application of custody as a measure of restraint *must* determine the amount of bail sufficient for ensuring that the suspect or the accused should comply with the duties.

However, under Art. 183 § 4 investigating judge, court when rendering a decision on application of custody as a measure of restraint taking into account the grounds and circumstances (Art. 177 and 178) may put aside a decision on the amount of bail in criminal proceedings:

- 1) in the matter of a violent offence or one involving threat of violence;
- 2) in the matter of an offence causing death of an individual;
- 3) in regard of the person who has violated the terms of a bail selected earlier as a measure of restraint, within the same set of proceedings.

The investigating judge, court when making a ruling on application of custody as a measure of restraint shall be required to determine the amount of bail sufficient for ensuring that the suspect or the accused should comply with the duties provided for by the Code, except otherwise is provided under Art. 183 § 4.

15. Detention of a person.

Detention of a person is a provisional measure of restraint, the maximum duration of which is limited to 72 hours from the moment of detention. According to the CCP there are the following types of arrest:

- 1) detention upon an investigating judge's or court's ruling to grant permission for detention with a view to compelled appearance (Art. 190-191);
- 2) lawful detention (Art. 207);

3) detention by a competent official (Art. 208);

4) detention for extradition (Art. 582);

Detention upon an investigating judge's or court's ruling to grant permission for detention with a view to compelled appearance. The measure is applied to a suspect (accused) for compelled appearance for participation in consideration of a motion on enforcement of a measure of restraint in the form of custody.

The measure is applied upon prosecutor's or investigator's (upon approval of prosecutor) motion that may be filed:

1) concurrently with filing a motion on enforcement of a measure of restraint in the form of custody or on a change of a measure of restraint to custody;

2) after filing a motion on enforcement of a measure of restraint and prior to the appearance of the suspect or accused in court on grounds of court summons;

3) following the non-appearance of the suspect, accused on court summons for participation in consideration of a motion on enforcement of a measure of restraint in the form of custody and the investigating judge's, court's lack information as of the beginning of court session about valid reasons that impede his timely appearance.

Lawful detention. Such type of detention can be applied by anyone without a ruling of investigating judge (court):

1) when someone commits or attempts to commit a criminal offence;

2) immediately after the commission of a criminal offence or during hot pursuit of the person who is suspected of having committed it.

After the detention everyone, who is not a competent official (person empowered by the law to execute apprehension) shall have the duty to immediately bring a detainee to a competent official or immediately inform the competent official of the apprehension and whereabouts of the individual suspected of the commission of criminal offence.

Detention by a competent official. A competent official has the right to apprehend without investigating judge's, court's ruling an individual suspected of the commission of crime for which a punishment of imprisonment is stipulated, only in case:

1) this person was caught upon committing a criminal offence or making an attempt to commit it;

2) if immediately after the commission of crime, an eye-witness, including the victim, or totality of obvious signs on the body, clothes or the scene indicates that this individual has just committed the crime;

3) if there are reasonable grounds to believe that a person suspected of committing a grave corruption offence or that of special gravity can flee in order to avoid criminal responsibility.

It is also possible for a competent official to apprehend a person *without a warrant* of the investigating judge or court but only if a person concerned is suspected of a crime the primary punishment provided for which being a fine in excess of 3000 times the tax-exempt minimum citizen's income and also only if the suspect has defaulted on the duties imposed upon him when a measure of restraint was established or failed to comply as prescribed with the requirements concerning deposition of bail and submission of documentary proof of such deposition.

Detention for extradition. The measure is applied by a competent official to a person wanted by a foreign state in relation of committing a criminal offense for its extradition.

The person shall be released if:

1) within sixty hours after detention the person was not taken to an investigating judge for entering a request for choosing a preventive measure against this person in the form of a provisional or extradition arrest;

2) circumstances have been established under which the extradition is not performed.

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THEME 7. REPAIR (COMPENSATION) OF DAMAGE IN CRIMINAL PROCEEDINGS

LEARNING OUTCOMES

The objective is to provide students with the knowledge of means of reparation of damage caused by a criminal offence within the criminal proceedings of Ukraine.

QUESTIONS COVERED

1. Types of repair (compensation) of damage in criminal proceedings.
2. Definition, subject matter, grounds, and importance of civil action in criminal proceedings.
3. Civil plaintiff, his/her criminal procedural status. Civil defendant, his/her criminal procedural status.
4. Representative of civil plaintiff, his criminal procedural status. Legal representative of plaintiff, his criminal procedural status.
5. General characteristics of civil proceedings (pre-trial and judicial proceedings).

LEARNING MATERIALS

1. Types of repair (compensation) of damage in criminal proceedings.

The CCP prescribes the cases, grounds and procedure of repair (compensation) of damage during criminal proceedings by the Chapter 9, where the possibility is enshrined of repair (compensation) of damage caused to the victim, the territorial community, the state as a result of criminal offence (Art. 127129 of the CCP) as well as repair (compensation) caused by illegal decisions, actions or omission (Art. 130 of the CCP).

In order to repair (compensate) the damage caused to the victim in criminal proceedings, the CCP prescribes a several methods:

- a) voluntary reimbursement of damage by suspect, accused;
- b) bringing a civil action;

- c) compensation by the state;
- d) restitution.

Suspect, accused, as well as upon his consent any other physical or legal person, shall have the right at any stage of criminal proceedings, to repair the damage caused to the victim, the territorial community, the state as a result of criminal offence.

The damage caused by criminal offence or other socially dangerous act may be recovered by a court decision made as a result of bringing of a civil action in criminal proceedings.

In accordance with Art. 127 § 3 of the CCP, the damage caused to the victim by criminal offence shall be repaired to him from the State Budget of Ukraine as prescribed by law.

In addition, the repair of damage can be made by returning the money, valuables, and other property that has been an object of criminal violation or another socially dangerous act and recognised, as a rule, as material evidence in the proceedings (Art. 100 of the CCP).

Under Art. 130 of the CCP, the repair (compensation) of damage caused by illegal decisions, actions or omission of the agency carrying out operative-detective activities, pre-trial investigation, public prosecutor's office or court shall be repaired by the state from the State Budget of Ukraine.

2. Definition, subject matter, grounds, and importance of civil action in criminal proceedings.

Civil action in comparison to other forms of repair of damage has the advantage that its application in the criminal proceedings is carried out with the active involvement of the parties that leads to more comprehensive analysis of all facts of the case that concern the character and amount of caused damage and resolving the issues of its repair.

It should be noted that there is the issue of the possibility of bringing a civil action, if the harm was caused as a result of a socially dangerous act by a person who has reached the age of 11 but has not reached the age of criminal responsibility (by

comparing and analysing Art. 127 § 1 and Art. 129 § 1 of the CCP).

The claim for repair (compensation) of damage may also be brought in civil proceedings, however, the simultaneous process by the criminal court and civil action court has a number of significant advantages aimed at strengthening the rights of citizens and legal entities who have been harmed from the offense or socially dangerous act, and prompt and more complete repair (compensation).

The legal nature of a civil action is ambiguous; it can only be described through a comprehensive analysis of its material and procedural aspects. Material nature is determined by the field of substantive law, the rules of which are regulated by the controversial material and legal relations that have arisen between the plaintiff and the defendant, from which the former issues his claim to the latter; procedural - procedural form, by means of which the plaintiff's material and legal requirement is enforced. Since the same claim for compensation is filed and considered in the criminal proceedings, then, of course, and its procedural nature can only be criminal procedural. Thus, a civil action in criminal proceedings has a dual legal nature: material legal (civil) and procedural legal (criminal procedural) nature.

In general, the **subject of a claim** is a material legal claim of the plaintiff to the defendant arising from the controversial legal relationship. In criminal proceedings, the subject of a civil claim is a claim for repair (compensation) for damage caused by a criminal offense or other socially dangerous act.

There are three types of damage that could be caused by a criminal offence within criminal proceedings: *moral*, *physical* or *pecuniary*, which is the basis for recognizing a person as a victim (Art. 55 § 1 of the CCP). At the same time, the CCP provides the possibility of compensation for moral damage only to a victim - an individual; a legal entity has the right to claim compensation only for pecuniary damage (Art. 55, 61 of the CCP).

Grounds for a civil action are the circumstances (legal facts), the presence or absence of which the law links with the emergence, change or termination of material relations between the parties, namely the event of a criminal offense that caused the damage; damage, claim for compensation of which is filed in a civil action; causal

link between the criminal offense and the damage caused.

The identified subject and grounds form the content of civil action, as well as determine the limits and direction of proceedings for a civil action in criminal proceedings.

3. *Civil plaintiff, his/her criminal procedural status. Civil defendant, his/her criminal procedural status.*

A civil plaintiff in the criminal proceedings is an individual who has suffered pecuniary and/or moral damage caused by a criminal offense or other socially dangerous act, as well as a legal person who caused pecuniary damage by a criminal offense or other socially dangerous act and which, in accordance with the procedure established by the CCP, filed a civil suit. At the same time, the law links the possibility of acquiring the status of a civil plaintiff to a natural person with the task of pecuniary and/or moral damage, and the legal entity is only pecuniary damage.

The current CCP does not require to adopt a separate decision to recognize a person as a civil plaintiff, therefore a ground to obtain the status of a civil plaintiff is to submit a civil claim in the written form to an investigating body or court (Art. 61 § 2 of the CCP), which must comply with the requirements established for actions brought in the order of civil proceedings (Art. 128 § 4 of the CCP). From that moment the rights and obligations of a civil plaintiff arise.

Since a civil plaintiff can, in essence, be the victim, the CCP granted a civil plaintiff with same rights and obligations the victim has, in so far as they relate to the civil action.

Some of *the rights of a civil plaintiff* are:

- the right to promptly accept and register a civil action and receive a document confirming its acceptance and registration from the authorized body to which it was submitted;
- the right to submit documents, items, information for the confirmation of a civil action;
- the right to have a representative and at any time during the criminal proceedings to refuse his services;

- to provide explanations on issues related to a civil action in a native or other language, which is proficient, at the expense of the state, to use the services of an interpreter, if he does not speak the state language or language of criminal proceedings;

- get acquainted and receive copies of materials relating to a civil suit, in the manner prescribed by the CCP, including after the disclosure of materials in accordance with Art. 290 of the CCP;

- to take part in certain procedural actions and to use the technical means in compliance with the requirements of the CCP in carrying out the procedural actions in which he participates;

- to participate in court proceedings;

- the right to maintain a civil action or to refuse it before the removal of a court in a deliberating room for a court decision;

- to participate in direct examination of evidence;

- to appeal decisions, actions or omissions of the investigator, prosecutor, investigator of a judge, court in the manner prescribed by the CCP;

- to file a motion for the attachment of property.

A civil plaintiff is notified about adopted procedural decisions that concern the civil action and receives the copies thereof in cases and according to the procedure established by the CCP to inform and send copies of procedural decisions to the victim (a civil plaintiff has the right to be informed about the adoption, change or cancellation of the suspect, the accused, measures for ensuring criminal proceedings (for example, arrest of the property - Art. 173, 174 of the CCP); obtaining a copy of a verdict or court order (Art. 376 of the CCP) etc.).

There are *procedural obligations* imposed on a civil plaintiff:

- not to disclose, without the permission of the investigator, prosecutor, court, information that became known to him in connection with participation in criminal proceedings and which constitute a secret protected by law;

- to comply with the lawful requirements and procedural decisions of the investigator (Art. 40 § 5 of the CCP) and the prosecutor (Art. 36 § 1 of the CCP);

- to comply with the instructions of the presiding judge (Art. 329 § 2 of the CCP);

- to observe the order in the court session (Art. 329 § 2 of the CCP).

A civil defendant in a criminal proceeding may be a natural or legal person who, by virtue of law, bears civil liability for damage caused by criminal acts (inaction) of a suspect, accused or insane person who committed a socially dangerous act and who has been subjected to civil action in the procedure established by the CCP.

A claim for compensation for damage caused by a criminal offense in criminal proceedings under the general rule shall be brought to the person causing the damage, that is, to the suspect, the accused - the responsible for the moral and material damage caused to a victim. However, often this responsibility rests not on the suspect, the accused, but on other persons who, in the cases specified by law, bear civil liability for damage caused by criminal acts (inactions) of the accused.

A civil defendant has the rights and obligations provided for by the CCP to the suspect, the accused, in so far as the civil action is concerned and arise from the moment the claim is filed to the pre-trial investigation body or court. In addition, he has the right to admit the claim in whole or in part or to object it. A civil defendant is informed on the basis of the procedural decisions in the criminal proceedings concerning the civil claim and receives copies thereof in the cases and according to the procedure established by the CCP for informing and sending copies of procedural decisions to the suspect, the accused.

4. Representative of civil plaintiff, his criminal procedural status. Legal representative of plaintiff, his criminal procedural status.

A representative of a civil plaintiff or a civil defendant is an independent, capable party to the criminal proceedings, specifically authorized by these persons to exercise their complex procedural rights and duties, in order to protect and preserve the rights and legitimate interests of the civil plaintiff or civil defendant.

Representatives of the civil plaintiff and the civil defendant - of natural person can be only persons who have the right to defend themselves in the criminal

proceedings, that is, attorney (Art. 45 of the CCP), and for a legal entity it is its head, another person authorized by law or founding documents, an employee of the legal entity by power of attorney, as well as a person who has the right to be a defence counsel in a criminal proceeding.

All mentioned persons are allowed to participate in criminal proceedings as representatives of civil plaintiff and civil defendant only after confirmation of their authority by *documents*:

1) a certificate of the right to engage in advocacy and a warrant or contract with a lawyer, or on behalf of a body (institution) authorized by law for free legal aid - if the representative is a person who has the right to be a defence counsel in a criminal proceeding;

2) duly certified copies of the constituent documents of a legal entity - if the representative is the head of a legal entity or another person authorized by law or constituent documents;

3) power of attorney on behalf of the legal entity - if the representative is an employee of a legal entity that is a civil plaintiff or civil defendant.

The representative can enjoy all procedural rights of a civil plaintiff, a civil defendant whose interests he represents.

In addition to these rights, representatives of civil plaintiff, civil defendant, although this is not explicitly enshrined in the CCP, bear the responsibilities assigned to the civil plaintiff and civil defendant respectively. If there are the circumstances excluding participation in a criminal proceeding of a representative (Art. 78 of the CCP), such person should refuse to perform the duties to represent the victim in the given proceedings and declare the self-disqualification.

The legal representative of a civil plaintiff is an independent participant in the criminal proceedings, which, in accordance with law, enters in the proceeding in order to protect the rights and legitimate interests of a person who, for objective reasons, is deprived of the opportunity to defend his legitimate interests independently.

It is possible to distinguish *two separate factual grounds* for participation in

criminal proceedings of such an actor as a legal representative:

a) the fact of a minor civil plaintiff,

b) recognition in accordance with the procedure established by civil law incapacitated or limited capacity, which must be reflected in the materials of the criminal proceedings (copy of the birth certificate, passport or court decision declaring a person incapacitated or restricted).

Under Art. 128 of the CCP, to defend the interests of minors and persons recognized as incapacitated or restricted by law, civil action may be brought by their legal representatives. As legal representatives of a civil plaintiff, parents (adoptive parents) may be involved, and in the absence of them - custodians or caregivers of a person, other elderly close relatives or family members, as well as representatives of the guardianship and care institutions, institutions and organizations, under guardianship or whose guardianship is minor, incapacitated or limited capable (Art. 44 § 2 of the CCP).

The moment when a person acquires the procedural status of a legal representative of a civil plaintiff is connected with the fact of involving him in participation in criminal proceedings by the appropriate authorizing body that conducts criminal proceedings. Involving a legal representative, the investigator, the prosecutor decides, and the investigating judge, the court - orders a ruling, a copy of which is given to a legal representative (Art. 44 § 3 of the CCP).

In the absence of a civil plaintiff, parents, adopters, custodians, caregivers, other adult relatives or family members, investigators, prosecutors or courts are required to involve the representatives of the guardianship and guardianship authorities as legal representatives. In case actions or interests of the legal representative contradict the interests of the person he represents, by the decision of the investigator, the prosecutor, investigator of the judge, the court, such legal representative is replaced by another person from the list of persons specified in Art. 44 § 2 of the CCP (Art. 44 § 4 of the CCP). Such a decision is made in the form of a resolution (ruling) and must be motivated. Consequently, a legal representative who acts contrary to the legitimate interests of the persons whom he represents cannot be a

legal representative.

From the moment of the involvement in the proceedings, a legal representative of the victim enjoys the rights of a civil plaintiff.

The legal representative of a civil plaintiff may also be charged with particular duties: to arrive at the request of an investigator, a prosecutor, an investigating judge, a court, and in case of impossibility to arrive at the requested time he should inform the specified persons in advance; to inform a civil plaintiff of the request to an investigator, prosecutor, investigator, judge or court (Art. 489 of the CCP), obey the lawful requirements and orders of the investigator, prosecutor, investigating judge, court.

A legal representative of a civil plaintiff must be informed of his due procedural rights and obligations. Such a notification must be made by a person who engages the actor in criminal proceedings, by handing a memo to a legal representative of his procedural rights and duties as well as explanations if requested.

5. General characteristics of civil proceedings (pre-trial and judicial proceedings).

According to Art. 127 of the CCP a person who has sustained pecuniary and/or moral damage by a criminal offense or other socially dangerous act has the right to bring a civil action to a suspect, accused or to a natural or legal person who is legally civilly responsible for damage caused by acts of a suspect the accused or insulting person who committed a socially dangerous act *during the criminal proceedings before the trial began.*

However, under the current CCP, it is problematic to determine *the start of the trial*, because under Art. 347 of the CCP, the trial begins with the announcement by the prosecutor of a summary statement of the indictment, if the participants in the trial did not file a request for the announcement of the indictment in full, however, by that time at the preparatory steps of the CCP does not provide for the possibility of filing any applications or petitions, a civil action, therefore, in essence, a civil action can be brought before the opening of a court session (Art. 342 of the CCP). Thus, according to the CCP, a civil action can be brought only in two stages: during the

pre-trial investigation, and during the preparatory trial.

The form and content of the action must be in line with the requirements established for actions brought in accordance with the rules of civil proceedings.

The *procedural prerequisites* for initiating a civil claim are:

- a) the commencement of criminal proceedings;
- b) the applicant's procedural legal capacity and liability;
- c) the presentation of a civil action before the trial;
- d) the absence of a court decision which came into force and was pronounced on a dispute between the same parties on the same subject and on the same grounds or a decision to accept a refusal of the plaintiff from the claim or the approval of a settlement agreement between the parties.

Proving the grounds and scope of a civil action, unlike in civil proceedings, where the burden of proof of the circumstances lies on the party as the basis of their claims and objections relies on it (Art. 60 of the Code of Civil Procedure of Ukraine), in criminal proceedings it rests with the investigator and the prosecutor.

Civil action in criminal proceedings is considered by the court according to the rules established by the CCP. If the procedural relations that arose in connection with a civil action are not regulated by the CCP, they are subject to the rules of the Code of Civil Procedure of Ukraine, provided that they do not contradict the principles of criminal proceedings.

Denial of a claim in civil, economic or administrative proceedings shall deprive a civil plaintiff of the right to bring the same claim in a criminal proceeding. A person who has not filed a civil action in criminal proceedings, as well as a person whose civil action is left without consideration, has the right to present the action in accordance with the order of civil proceedings.

The settlement of a civil action in criminal proceedings is as follows. First, by adopting a conviction, when ruling on the application of compulsory measures of a medical or educational nature, the court, depending on the evidentiary nature of the grounds and the amount of the claim, may *sustain the civil action in full or in part*. Secondly, the court may *dismiss a civil action* or *leave it without consideration*

(*undecided*). In case of establishing the absence of the fact of a criminal offense, the court *dismisses the action*, and in case of acquittal of the accused due to absence of elements of crime or his non-involvement in a criminal offense, as well as in cases provided for in Art. 326 § 1 of the CCP, the court leaves the action without consideration (*undecided*).

Leaving the action without consideration (*undecided*) means that the victim (civil plaintiff) may bring a civil action to a court within civil proceedings in relation to the same facts. Such procedure, in general, does not violate the presumption of innocence¹⁰.

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THEME 8. RECORDING CRIMINAL PROCEEDINGS.

PROCEDURAL DECISIONS

LEARNING OUTCOMES

The objective is to provide students with the overview of means of recording used in criminal proceedings as well as types and forms of criminal procedural decisions taken in the course of criminal proceedings.

QUESTIONS COVERED

1. Recording of criminal proceedings: the forms and importance.
2. Reports and annexes to reports. Use of technical means for recording criminal proceedings. Journal of court session.
3. Procedural decisions: the definition and types.
4. Notice in criminal proceedings.

LEARNING MATERIALS

1. Recording of criminal proceedings: the forms and importance.

The CCP prescribes the following **forms** in which criminal proceedings should be recorded:

- a) on a report;
- b) on a medium on which criminal proceedings are recorded with the use of technical means;
- c) in a journal of court session.

In the abovementioned forms the criminal proceeding is being recorded in pre-trial proceedings as well as in the court proceedings. It is necessary to mention that the main form of recording of pre-trial proceeding is a record and technical means and of court proceeding - the forms are technical recording and journal of court session.

Recording of criminal proceedings must provide, firstly, execution of one of the main foundations of the judiciary, enshrined in the Constitution of Ukraine (Art. 129 §3 (7)) - openness of trial and its complete recording by technical means, violation of which leads to annulment of the judicial decisions. Besides that, the importance of recording of criminal proceedings enshrines the possibility to check the legality, validity and motivation of procedural decisions, restoration of violated rights and legitimate interests, facilitates the parties of criminal proceedings to substantiate legal positions and appeal against the decisions taken, as well as the actual recording of criminal proceedings determines such a feature in the criminal procedure as attestation character, providing the process to prove. Recording of criminal proceedings in any other forms, except those specified in Art. 103 of the CCP, is not allowed.

2. Reports and annexes to reports. Use of technical means for recording criminal proceedings. Journal of court session.

Reports are information that evidence acts that consolidate the content and the results of certain procedural actions.

If during pre-trial investigation, a procedural action may be recorded with technical means, the appropriate entry should be made in the record. Consequently, if an interrogation is recorded with technical means, the text of testimony may not be entered in the relevant record on condition that none of the participants in this procedure insists upon this. In such a case, the entry should be made in the report that

the testimony has been recorded on a medium that is attached to the record.

A report made by means of sound and video recording equipment during the conduct of the search by the investigator, the prosecutor, is an integral attachment to the report. The actions and circumstances of the search that are not recorded in the report cannot be entered into the search report and used as evidence in criminal proceedings.

The report must contain of an *introduction*, *descriptive part* and *final part*.

Introduction contains the information on: the place, time and name of the procedural action; individual who conducts the procedural action (first name, last name, patronymic, position held); all those present during the conduct of procedural action (first name, last name, patronymic, age and place of residence); information that participants to procedural action were advised in advance on the use of technical means for recording; characteristics of such technical means, which were used in the course of procedural action, conditions and procedure for the use thereof.

Descriptive part contains information on: sequence of actions; knowledge obtained as a result of procedural action, important for the particular criminal proceedings, including discovered and/or provided objects and documents;

Final part contains information on: objects and documents seized and the way in which they have been identified; the way in which participants were acquainted with the report; comments on, and amendments to the written report by the participants to procedural action.

Before signing the report of procedural action, the participants shall be given the possibility to review its text. If there are any comments and amendments, they should be indicated in the protocol before the signing.

If a person, because of his physical disabilities or any other reasons, cannot personally sign the report, such a person reviews the report in the presence of his defence counsel (legal representative) who attests with his signature the contents of the report and the fact that disabled person cannot sign the report personally. If the person who participated in the conduct of procedural action refused to sign the record, this is mentioned in the record, and such a person shall be given the right to

explain in written the reasons thereof, these explanations being entered in the report. The fact of refusal to sign the report and of the provision of written explanations with regard to reasons for the refusal shall be attested by the signature of his defence counsel (legal representative), and where this is not available, this shall be signed by attesting witnesses.

The report can include different *attachments*. The following may be:

- 1) specially prepared copies, samples of items, objects and documents;
- 2) written explanations of the specialists who participated in the conduct of procedural action concerned;
- 3) verbatim record, audio, video recording of the procedural action concerned;
- 4) photos, schemes, moulds, computer data, and other materials, which explain the contents of the record (Art. 105 § 2 of the CCP).

Annexes to the report shall be duly prepared, packed to ensure their secure preservation, as well as they should be attested by signatures of the investigator, prosecutor, specialist, other individuals who participated in preparation and/or seizure of such annexes.

The widespread **use of technical means of recording** in the criminal procedure is one of the ways of qualitative and effective implementation of this activity, and is one of the essential conditions for achieving the objectives of the criminal proceedings. However, in practice, it often happens that, even if it is necessary, these means of recording are not used due to the low level of knowledge, skills and abilities of the actors of criminal procedural activity on the use thereof. The inadequacy of their use exists also due to the fact that law enforcement agencies are not equipped with technical means of recording.

In the current CCP, the legislator instead of the traditional notion of «scientific and technical means» applied a more modern and precise term that of «technical means of recording»; and such means include: devices, means, tools used for the aim to prevent crimes, recording of the material situation of scenes of commission of criminal acts, the course and results of the conduct of investigative (search) actions,

collecting of material evidence, their examination, criminal procedure registration, search and apprehension of criminals, examination of material evidence during forensic examination¹¹.

Decision on recording of the procedural action with the use of technical means during pre-trial proceedings shall be taken by the person who conducts the procedural action concerned. However, the law prescribes particular cases of obligatory use of recording means: on the motion of parties of procedural actions or on statutory provision in the law on carrying out particular procedural actions, there is necessary recording by technical means of the court proceedings. For instance, during a search, the sound and video recording is mandatory. In addition, the defence party has the right to record the search using a camcorder or other device.

Participants to a procedural action shall be advised in advance that during the procedural action technical means of recording are used.

Records of criminal proceedings shall contain originals of mediums on which the procedural action was fixed, with reserve copies kept separately.

Recording of criminal proceedings in court during court session with technical means shall be compulsory. Where all the persons participating in court proceedings fail to arrive to a court session or where a court, pursuant to provisions of the CCP, proceeds in the absence of such persons, the criminal proceedings in court are not recorded with the use of technical means.

An investigating judge may limit or prohibit access of participants of criminal proceedings of the defence party to the results of the technical record in order to prevent the disclosure of information of the pre-trial investigation if the investigator provided the reasons for the request for a search, the prosecutor provided the results of conducting the secret investigating (detective) actions.

Participants in the court proceedings may obtain a copy of recording of the court session made with the use of technical means.

¹¹ For more detailed analysis see also: Керевич О. В. Застосування технічних засобів фіксування за новим КПК України / О. В. Керевич // Науковий вісник Львівського державного університету внутрішніх справ. - 2013. - № 1. - С. 367-375.

Failure to use technical means for the purpose of recording criminal proceedings where their use is mandatory shall render the proceeding and any findings made as result of it invalid unless the parties do not object to recognize such proceedings and findings made as a result of it as valid.

During court session, a **journal of court session** shall be executed which contains the following:

- 1) name and composition of the court (investigating judge);
- 2) identifying details of criminal proceedings and information on participants to criminal proceedings;
- 3) date and time when court session started and ended;
- 4) time, number and name of procedural action which is conducted during court session, as well as objects, documents, investigating (detective) action records and annexes thereto, which have been transferred to court in the course of procedural action;
- 5) court rulings adopted by court (investigating judge) without retiring in deliberation room;
- 6) other information as specified by the CCP.

A journal of court session shall be executed and signed by the court session secretary.

Besides that, in the end of the pre-trial proceedings a **register of pre-trial investigation proceedings records** must be prepared. Register of pre-trial proceedings records shall be prepared by investigator or prosecutor and sent to court together with the indictment. Register of pre-trial proceedings records shall contain:

- 1) number and name of procedural action which was conducted during pre-trial investigation, as well as the time when it was conducted;
- 2) requisites of procedural decisions taken during pre-trial investigation;
- 3) type of the measure to ensure criminal proceedings, date and period of its application

3. Procedural decisions: the definition and types.

As mentioned above, one of the requirements of the criminal procedure form is

the written consolidation of all procedural actions and procedural decisions taken in certain procedural documents that are divided into two following types: 1) reports and 2) procedural decisions.

Reports of procedural actions only certify the fact of carrying out, the content and results of certain procedural actions, such as investigating (detective) actions.

Contrary to the reports, procedural decisions are legal acts related to the resolution of legal issues that arise during proceedings and contain power rulings regarding the commission of certain legal acts.

Procedural decisions have certain features:

- the decisions are made only by authorized actors of the criminal procedure which use their powers within their competence;

- decisions express the ruling; decisions create, change or terminate criminal procedural relations, decisions confirm existence or absence of material legal relations;

- decisions are expressed in the form prescribed by law, resolutions, decrees, indictments, sentences.

The features of criminal procedural decisions are their *legitimacy*, *reasonableness*, and *validity*.

Procedural decisions shall be all the decisions taken by pre-trial investigation agencies, prosecutor, investigating judge and court.

Court's decision shall be delivered in the form of *ruling*, *writs* or *judgment*, which should meet requirements of Art. 369, 371 to 374 of the CCP.

Investigator, prosecutor's decisions must take the form of *orders*. Also, the procedural decision is prosecutor's *indictment* by which a prosecutor press charges against an accused of committing the crime and with which the completion of pretrial investigation is connected.

Orders shall be issued in the cases as specified in the CCP and also, whenever an investigator finds it necessary.

Decision of the investigator, prosecutor shall consist of 3 parts:

- 1) *introductory part*; 2) *statement of reasons*; 3) *operative part* (Art. 110 § 5 of the

CCP).

An indictment shall be drawn up by investigator, following which it shall be approved by prosecutor. Indictment may be drawn up by prosecutor, in particular, if he does not agree with the indictment drawn up by investigator.

An indictment shall contain the following:

- 1) name of criminal proceedings and registration number thereof;
- 2) biographical particulars of every accused (last name, first name, patronymic, date and place of birth, place of residence, nationality);
- 3) biographical particulars of every victim (last name, first name, patronymic, date and place of birth, place of residence, nationality);
- 4) last name, first name, patronymic and position of investigator, prosecutor;
- 5) description of actual circumstances of criminal offence, which the prosecutor finds established, and legal qualification of criminal offence, with reference to provisions of law and article (article part) of Ukraine's law on criminal liability, and charges as such;
- 6) circumstances that aggravate or mitigate the punishment;
- 7) amount of damage caused as a result of criminal offence;
- 8) such grounds for application of criminal measures to the legal person as the prosecutor deems to have been established;
- 9) amount of expenses on committing an expert (where expert examination was conducted during pre-trial investigation);
- 10) date and place of drawing up and approval.

Indictment is signed by investigator and prosecutor who approved it, or only by prosecutor if he drew it up alone.

Attached to the indictment shall be:

- 1) the register of materials of pre-trial proceedings;
- 2) civil action, if any entered during pre-trial investigation;
- 3) the suspect's acknowledgement of his receipt of a copy of indictment, copy of the civil action, if any is entered during pre-trial investigation, and that of the register of materials of pre-trial proceedings;

4) acknowledgement or any other document confirming the civil defendant's receipt of a copy of the civil action, if any entered during pre-trial investigation against a person other than a suspect;

5) a note on the legal person in whose respect proceedings are taken, indicating the name of the legal person, its legal address, settlement account, identification code, date and place of state registration.

Procedural decisions made in the framework of authority of the corresponding actors are obligatory for every natural and legal person (Art. 36 § 1, Art. 40 § 5, Art. 21 § 2 of the CCP), and binding character is one of the main foundations of the criminal proceedings.

4. Notice in criminal proceedings

Notice in criminal proceedings is a procedural action through which investigator, prosecutor, investigating judge or court notifies a certain participant to criminal proceedings of the date, time and place of conducting the procedural action concerned, or of procedural decision taken, or of conducted procedural action.

Notification of participants in criminal proceedings in respect of conducting procedural actions shall be made in case where the participation of such persons is not mandatory.

Notice in criminal proceedings shall be made in cases specified by the CCP, in accordance with the procedure established in Chapter 11 of the CCP, with the exception of provisions regarding the content of the notice and consequences of non-appearance of a person.

According to the Art. 112 of the CCP notice shall contain:

1) name and position of investigator, prosecutor, investigating judge, appellation of court that makes the notification;

2) of the authority, which sends the notice, number of telephone and other means of communication;

3) name (appellation) of the person being notified and his address;

4) title (number) of criminal proceedings in the framework of which the notification is made;

- 5) current procedural status of the person being notified;
- 6) date, time and place of procedural action in relation to, which the notice is sent to the person;
- 7) substance of the procedural action (actions) that will be conducted, or the procedural action that was conducted, or procedural decision that was taken, of which the person is being notified;
- 8) indication that participation in procedural action is not mandatory and that it will be conducted without participation of the person being notified, in case of his non-appearance;
- 9) signature of investigator, prosecutor, investigating judge, judge who makes the summons.

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SEMINAR PROGRAMME

THEME 1. THE CONCEPT, OBJECTIVES, PRINCIPAL INSTITUTES OF CRIMINAL PROCEDURE AND SYSTEM OF CRIMINAL PROCEEDINGS OF UKRAINE

1. The concept of criminal procedure, its relation to criminal justice and operative and detective activity.
2. Objectives of criminal proceedings.
3. Types and forms of criminal procedure. The form of Ukrainian criminal procedure. The concept of criminal procedural forms and their differentiation.
4. Criminal procedure functions: the concept, forms and the system.
5. The concept and system of stages of criminal proceedings of Ukraine.

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THEME 2. CRIMINAL PROCEDURAL LAW OF UKRAINE.

CRIMINAL PROCEDURAL LEGISLATION.

1. Criminal procedural law of Ukraine. Subject and method of legal regulation of criminal proceedings.
2. Rules of criminal procedural law, their structure.
3. Concept, types of sources of criminal procedural law.
4. Operation of criminal procedural legislation in time, space and in respect of individuals.

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THEME 3: PRINCIPLES OF CRIMINAL PROCEEDINGS

1. The concept of criminal procedure principles. The importance of laying down principles to ensure correct and accurate application of criminal procedural law. The system of principles of criminal procedure.
2. General-law principles in criminal proceedings.
3. Inter-branch principles of criminal proceedings.
4. Principles of criminal procedure (pre-trial and court proceedings principles).

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THEME 4: ACTORS OF CRIMINAL PROCEEDINGS

1. Concept, classification of actors of criminal proceedings.
2. Court as a body of justice in criminal proceedings. Composition of the court in criminal proceedings. Investigating judge as an actor of criminal

proceedings.

3. General characteristics of actors relating to the prosecution.
4. Prosecutor in criminal proceedings, his tasks and authorities.
5. Pre-trial investigation agency. Investigator of the pre-trial investigation agency, his authorities. Head of pre-trial investigation agency, his authorities. Operational units, their tasks and powers.
6. The victim, his rights and duties. Representative of the victim. Legal representative of the victim.
7. The criminal procedural status of the suspect, accused (defendant), acquitted, convicted. The legal representative of the suspect, accused, his criminal procedural status.
8. Defence counsel in criminal proceedings. Mandatory participation of the defence counsel. Rights and duties of the defence counsel. Engagement of the defence counsel. Waiver or replacement of the defence counsel.
9. Other participants in criminal proceedings.

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THEME 5. EVIDENCE AND PROVING IN CRIMINAL PROCEEDINGS

1. Theory of knowledge as a basis of evidence law and theory. Characteristics of criminal procedural knowledge.
2. Objective of proving in criminal proceedings. Truth as a prospective objective within criminal procedure.
3. Circumstances to be proved in criminal proceedings, their structure.
4. The notion of evidence in criminal proceedings. Attributes of evidence. Relevance. Admissibility. Admissibility criteria.
5. The concept of proving, its elements. The means of collecting and examining evidence. The concept and means of evaluating evidence.
6. Burden of proof and standard of proof. The scope of proving and sufficiency of evidence.
7. The notion of evidence sources (evidence types).
8. Testimonies. Hearsay evidence. Physical evidence. Documents. Expert's findings (testimony).

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THEME 6. MEASURES TO ENSURE CRIMINAL PROCEEDINGS

1. Notion and types of measures to ensure criminal proceedings. General rules for application of measures to ensure criminal proceedings.

2. Summons by investigator, prosecutor. Court summons. Compelled appearance. Imposition of pecuniary penalty.

3. Temporary restriction on a special right.

4. Suspension from position. Temporal removal of a judge from the administration of justice.

5. Provisional access to objects and documents.

6. Provisional seizure of property. Attachment of property.

7. Concept and importance of measures of restraint (preventive measures).

System and types of measures of restraint.

8. Purpose and grounds for the application of measures of restraint and circumstances to consider in the selection of measures of restraint.

9. Request of the investigator, prosecutor about the application of preventive measures. Consideration of a request for the application of a preventive measure.

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11. Personal warranty.
12. Bail
13. House arrest
14. Custody.

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THEME 7. REPAIR (COMPENSATION) OF DAMAGE IN CRIMINAL PROCEEDINGS.

1. Types of repair (compensation) of damage in criminal proceedings.
2. Definition, subject matter, grounds, and importance of civil action in criminal proceedings.
3. Civil plaintiff, his/her criminal procedural status. Civil defendant, his/her criminal procedural status.
4. Representative of civil plaintiff, his criminal procedural status. Legal representative of plaintiff, his criminal procedural status.
5. General characteristics of civil proceedings (pre-trial and judicial proceedings).

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8. Степаненко А. С. . Вирішення цивільного позову у випадку недоведення винуватості особи // Наука та суспільне життя України в епоху глобальних викликів людства у цифрову еру (з нагоди 30-річчя проголошення незалежності України та 25-річчя прийняття Конституції України) : у 2 т. : матеріали Міжнар. наук.-практ. конф. (м. Одеса, 21 трав. 2021 р.) / за загальною редакцією С. В. Ківалова. - Одеса : Видавничий дім «Гельветика», 2021. Т. 2. С. 322-326. URL: <http://dspace.onua.edu.ua/handle/11300/15172>

9. Татарин І. І. Відшкодування шкоди потерпілому, заподіяної кримінальним правопорушенням: монографія. Львів, ЛьвДУВС, 2017. 184 с.

THEME 8. RECORDING CRIMINAL PROCEEDINGS. PROCEDURAL DECISIONS.

1. Recording of criminal proceedings: the forms and importance.
2. Reports and annexes to reports. Use of technical means for recording criminal proceedings. Journal of court session.
3. Procedural decisions: the definition and types.
4. Notice in criminal proceedings.

READING

1. Бобечко Н. Р. Суть, значення та класифікаці рішень суду апеляційної та касаційної інстанції у кримінальному провадженні // Право і суспільство. 2016. № 1. Ч. 2. С. 145-153. URL: http://pravoisuspilstvo.org.Ua/archive/2016/1_2016/part_2/28.pdf

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4. Глинська Н. В. Концептуальні засади визначення та забезпечення стандартів доброякісності кримінальних процесуальних рішень. дис. ... докт. юрид. наук 12.00.09. Харків, 2015. 469 с. URL:

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5. Климчук М.П. Обґрунтованість кримінально-процесуальних рішень як елемент засади законності. Часопис Академії адвокатури України. 2015. Т. 8, № 2. С. 55-60.

6. Корчагіна А. М. Поняття, особливості та значення даних, одержаних у результаті застосування науково-технічних засобів у кримінальному провадженні // Актуальні проблеми вітчизняної юриспруденції. 2019. № 5. С. 150-152. DOI:<https://doi.org/10.15421/391976>

7. Куйбіда Р., Сироїд О. Посібник із написання судових рішень. К. : Дрім Арт, 2013. 224 с. URL:<https://osce.org/uk/ukraine/106527>

8. Проведення слідчих (розшукових) дій із застосуванням П 609 звуко- та відеозаписувальних технічних засобів [Текст] : метод. рек. / [В. В. Невгад, Р. М. Дударець, А. А. Саковський, М. П. Климчук]. К. : Нац. акад. внутр. справ, 2018. 67 с.

9. Шульгін С. Поняття процесуального рішення слідчого, прокурора на стадії досудового розслідування // Підприємництво, господарство і право. 2019. № 7. С. 206-210. URL: <http://pgp-journal.kiev.Ua/archive/2019/7/38.pdf>

QUESTIONS FOR EXAM PREPARATION

1. The concept of criminal procedure, it's relation to criminal justice and operative and detective activity. Objectives of criminal proceedings.

2. Historical types and forms of criminal procedure. The form of Ukrainian criminal procedure. The concept of criminal procedural forms and their differentiation.

3. Criminal procedure functions: the concept, forms and the system.

4. The concept and system of stages of criminal proceedings of Ukraine.

5. Criminal procedural law of Ukraine. Subject and method of legal regulation of criminal proceedings.

6. Rules of criminal procedural law, their structure.

7. Concept, types of sources of criminal procedural law.

8. Operation criminal procedural legislation in time, space and in respect of

individuals.

9. The concept of criminal procedure principles. The importance of laying down principles to ensure correct and accurate application of procedural law.

10. The system of principles of criminal procedure.

11. Moral principles of criminal procedure. Realization of justice and humanism principles in criminal proceedings.

12. General-law principles in criminal proceedings.

13. Inter-branch principles of criminal proceedings.

14. Principles of criminal procedure (pre-trial and court proceedings principles).

15. Concept, classification of actors of criminal proceedings.

16. Court as a body of justice in criminal proceedings. Tasks and general description of powers of the court.

17. Forms of the administration of justice. Composition of the court in criminal proceedings.

18. Investigating judge as an actor of criminal proceedings.

19. General characteristics of actors relating to the prosecution.

20. Prosecutor in criminal proceedings, his tasks and authorities.

21. Pre-trial investigation agency. Investigator (enquirer) of the pre-trial investigation agency, his authorities.

22. Head of pre-trial investigation agency, his authorities.

23. Operational units, their tasks and powers.

24. The victim, his rights and duties. Representative of the victim. Legal representative of the victim.

25. The criminal procedural status of the suspect, accused (defendant), acquitted, convicted.

26. The legal representative of the suspect, accused, his criminal procedural status.

27. Defence counsel in criminal proceedings. Mandatory participation of the defence counsel.

28. Rights and duties of the defence counsel.

29. Committing the defence counsel. Waiver or replacement of the defence counsel.

30. Other participants in criminal proceedings.

31. Recusals in criminal proceedings.

32. Theory of knowledge as a basis of evidence law and theory. Characteristics of criminal procedural knowledge.

33. Objective of proving in criminal proceedings. Truth as a prospective objective within criminal procedure.

34. Circumstances to be proved in criminal proceedings, their structure.
35. The notion of evidence in criminal proceedings.
36. Attributes of evidence. Relevance. Admissibility. Admissibility criteria.
37. The concept of proving, its elements.
38. The means of collecting and examining evidence. The concept and means of evaluating evidence.
39. Burden of proof and standard of proof. The scope of proving and sufficiency of evidence.
40. The notion of evidence sources (evidence types). Testimonies. Hearsay evidence. Physical evidence. Documents. Expert's findings (testimony).
41. Notion and types of measures to ensure criminal proceedings.
42. General rules for application of measures to ensure criminal proceedings.
43. Summons by investigator, prosecutor. Court summons.
44. Compelled appearance.
45. Imposition of pecuniary penalty.
46. Temporary restriction on a special right.
47. Suspension from position. Temporal removal of a judge from the administration of justice.
48. Provisional access to objects and documents.
49. Provisional seizure of property.
50. Attachment of property.
51. Concept and importance of measures of restraint (preventive measures). System and types of measures of restraint.
52. Purpose and grounds for the application of measures of restraint and circumstances taken into account in the selection of measures of restraint.
53. Request of the investigator, prosecutor about the application of preventive measures. Consideration of a request for the application of a preventive measure.
54. Personal commitment.
55. Personal warranty.
56. Bail.
57. House arrest.
58. Keeping in custody.
59. Apprehension of a person (arrest).
60. Types of compensation of damage in criminal proceedings.
61. The notion and importance of civil action in criminal proceedings.
62. Civil plaintiff, his criminal procedural status.
63. Civil defendant, his criminal procedural status.
64. Representative of a civil plaintiff, civil defendant, his criminal procedural status.

65. Legal representative of a civil plaintiff, his criminal procedural status.
66. General characteristics of proceedings upon civil action (trial and pretrial proceedings).
67. Forms in which criminal proceedings should be recorded. A record as a form of recording of criminal proceedings. Journal of court session. Register of pre-trial investigation records.
68. Procedural decisions, classification and importance.
69. The notion of 'notice' in criminal proceedings, it's content.

LEARNING RESOURCES

Recommended reading

- Universal Declaration of Human Rights (1948 with amendments).
URL: <http://www.un.org/en/universal-declaration-human-rights/index.html>
- European Convention of Human Rights (1950 with amendments).
URL: http://www.echr.coe.int/Documents/Convention_ENG.pdf
- Constitution of Ukraine (1996). URL: http://www.coe.int/t/dghl/cooperation/ccpe/profiles/ukraineConstitution_en.asp
- The Criminal Procedural Code of Ukraine : Code of Ukraine; Law, Code on April 13, 2012 № 4651-VI // Database «Legislation of Ukraine» / Verkhovna Rada of Ukraine. URL: <https://zakon.rada.gov.ua/go/4651-17>
- The Criminal Code of Ukraine : Code of Ukraine; Code, Law on April 5, 2001 № 2341-III // Database «Legislation of Ukraine» / Verkhovna Rada of Ukraine. URL: <https://zakon.rada.gov.ua/go/2341-14>
- On the Judiciary and the Status of Judges : Law of Ukraine on June 2, 2016 № 1402-VIII // Database «Legislation of Ukraine» / Verkhovna Rada of Ukraine. URL: <https://zakon.rada.gov.ua/go/1402-19>
- Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) CDL-AD(2016)007-e. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e)
- Report on the Rule of Law, adopted by the Venice Commission at 86th Plenary Session (Venice, 26-26 March 2011) CDL-AD(2011)003rev. URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2011)003rev-e)
- Guide on Article 13 of the Convention - Right to an effective remedy / Council of Europe/European Court of Human Rights. August 2020. URL: https://www.echr.coe.int/Documents/Guide_Art_13_ENG.pdf
- Guide on Article 5 of the Convention - Right to liberty and security / Council of Europe/European Court of Human Rights. August 2020. URL: https://www.echr.coe.int/documents/guide_art_5_eng.pdf
- Guide on Article 6 of the Convention - Right to a fair trial (criminal limb) / Council of Europe/European Court of Human Rights. August 2020. URL: https://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf
- Guide on Article 8 of the Convention - Right to respect for private and family life / Council of Europe/European Court of Human Rights. August 2020. URL: https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf

- McBride, Jeremy (2009). Human rights and criminal procedure: The case law of the European Court of Human Rights. Strasbourg: Council of Europe Publishing. URL:<https://rm.coe.int/16806f0ef9>

- Гловюк І. В., Стоянов М. М., Завтур В . А. Використання практики Європейського суду з прав людини у кримінальному провадженні : навчально-методичний посібник. Одеса : Юридична література, 2017. 224 с.

- Кримінальний процес: Навчальний посібник / Л. М. Лобойко , О. А. Банчук - К.: Ваіте, 2014.

- Кримінальний процес: підручник / [О. В . Капліна, О. Г. Шило, В . М. Трофименко та ін.] ; за заг. ред. О. В. Капліної, О. Г. Шило. - Харків: Право, 2018.

- Науково-практичний коментар Кримінального процесуального кодексу України / за ред. С.В. Ківалова та С.І. Кравченко. Одеса: Фенікс, 2020. 924с.

GLOSSARY

| | |
|--|--|
| Accused | Обвинувачений |
| Acquittal | Виправдання |
| Actor of criminal proceedings | Суб'єкт кримінального провадження |
| Adequate time | Достатній час |
| Adhere to the principle of the rule of law | Дотримуватися принципу верховенства права |
| Adjournment of court hearing | Відкладення судового засідання |
| Administration of justice | Відправлення правосуддя |
| Admissibility | Допустимість (доказу) |
| Adversarial process | Змагальний процес Стверджуваний, ймовірний |
| Alleged | Додатки до нього (них) Апеляційне провадження |
| Annexes thereto | Заявник |
| Appeal proceedings | Призначити захисника |
| Applicant | Свавілля |
| Appoint an attorney (defence counsel) | Призначити судовий розгляд |
| Arbitrariness | Арешт майна |
| Assign a trial | Застава |
| Attachment of property | Судовий розпорядник Поза розумним сумнівом Обов'язковий |
| Bail | Порушення статті |
| Bailiff | Подати цивільний позов Тягар доказування |
| Beyond a reasonable doubt | Підзаконні нормативно-правові акти |
| Binding | Провести слідчу (розшукову) дію |
| Breach of article | Судова практика (прецеденти) |
| Bring a civil action | Оскаржити рішення Обвинувачення (у вчиненні кримінального правопорушення) Обставини, що підлягають доказуванню у кримінальному провадженні |
| Burden of proof | Цивільний відповідач |
| By-law | Цивільний позивач Вчинення кримінального правопо- |
| Carry out investigative (detective) action | Compelled appearance |
| Case-law | |
| Challenge a decision | |
| Charge(s) | |
| Circumstances to be proved in criminal proceedings | |
| Civil defendant | |
| Civil plaintiff | |
| Commission of criminal offence | |

| | |
|--|---|
| Complaint | Кримінальне правопорушення |
| Complexity of the case | Кримінально-процесуальна діяльність |
| Composition of a court | Кримінальне переслідування |
| Compulsory medical (educational) measures | Перехресний допит |
| Conduct criminal proceedings | Неявка |
| | Захисник |
| Consider a motion | Сторона захисту |
| Conviction | Затриманий (особа, яка тримається під вартою) |
| Credibility | Затримання (тримання під вартою) |
| Criminal offence | Подвійна відповідальність |
| Criminal procedural activity | Належна правова процедура |
| Criminal prosecution | Ефективний засіб правового захисту |
| Crossexamination | Користуватися правами |
| Default of appearance | В силу закону |
| Defence counsel | Допит свідка |
| Defence party | Дослідити доказ(и) |
| Detainee | Виконання судових рішень |
| | Експерт |
| Detention (on remand) | Висновок експерта |
| Double jeopardy | Закінчення строку |
| Due procedure | Спірний факт (предмет доказування) |
| Effective remedy | Невиконання |
| Enjoy the rights | Справедливий судовий розгляд |
| Ex lege (by virtue of law) | Подати клопотання |
| Examination of a witness | Final judgment |
| Examine evidence | Found guilty |
| Execution of courts decisions | Found inadmissible |
| Expert (witness) | Free evaluation of evidence |
| Expert's finding | Grant prosecutor's motion |
| Expiry of the time-limit | Grounds |
| Fact in (at) issue | Head of the pre-trial investigation agency |
| Failure to comply | Hearsay evidence |
| Fair trial | Impartial |
| File (lodge) a motion | In the course of pre-trial investigation |
| Привід рушення | Indictment |
| Скарга | Inhuman or degrading treatment |
| Складність справи | |
| Склад суду | |
| Примусові заходи медичного (виховного) характеру | |
| Здійснювати кримінальне провадження | |
| Розглянути клопотання | |
| Засудження | |
| Достовірність | |

| | |
|---|--|
| Inner conviction | Окрім іншого |
| Inquisitorial process | Слідчий суддя Виправдувальний |
| Institute criminal proceedings | вирок Обвинувальний вирок Судовий |
| Inter alia | контроль Суд присяжних |
| Investigating judge | Обґрунтувати ухвалу |
| Judgment of acquittal | Захід забезпечення кримінального |
| Judgment of conviction | провадження |
| Judicial supervision (control) | Психічний розлад Малолітня |
| Jury trial | (неповнолітня) особа Клопотання про |
| Justify a ruling | застосування заходу забезпечення |
| Measure to ensure criminal proceedings | Перешкоджати кримінальному про- |
| Mental disorder | вадженню |
| Minor | Оперативний підрозділ Оперативно- |
| Motion to impose a measure of restraint | розшукова діяльність Учасники |
| Obstruct criminal proceedings | кримінального провадження |
| | Матеріальна шкода |
| Operative unit | До судового розгляду |
| Operative-detective activity | Physical evidence (object) Plead guilty |
| Participants to criminal proceedings | Presiding judge Presumed innocent Pre- |
| | trial investigation Preventive measure |
| Pecuniary damage | (measure of restraint) Probative value |
| Pending trial | Pronouncement of sentence |
| Вирок, який набрав законної сили | |
| Визнати винуватим | Proprio motu Prosecution |
| Визнано недопустимим (доказ) | Provided for by article Provisionally |
| Вільна оцінка доказів | seized property Questioning |
| Задовольнити клопотання прокурора | Reasonable suspicion |
| Підстави | Reasonable time |
| Керівник органу досудового розслі- | Recusal |
| дування | Relevancy |
| Показання з чужих слів | Relief of a person from criminal liability |
| Безсторонній | Render a decision |
| Під час досудового розслідування | Restriction of the rights |
| Обвинувальний акт | Revoke a decision |
| Нелюдськи чи таке, що принижує | Right not to incriminate oneself |
| гідність поведження | Right to remain silent |
| Внутрішнє переконання | Save |
| Інквізиційний (розшуковий) процес | Scope of proving Sufficiency |
| Розпочати кримінальне провадження | Summon (subpoena) |

| | |
|---|------------------------------------|
| Superior court | Показання |
| Suspect | Незаконні дії |
| Suspicion | Законний представник потерпілого |
| Testify | Порушення презумпції невинуватості |
| Testimony | |
| Unlawful actions | |
| Victim's legal representative | |
| Violation of presumption of innocence | |
| Речовий доказ | |
| Визнати себе винним | |
| Головуючий суддя | |
| Вважається невинним | |
| Досудове розслідування Запобіжний захід | |
| Доказова сила (значення) | |
| Проголошення вироку (обвинувального) | |
| За власною ініціативою | |
| Обвинувачення (функція) | |
| Передбачено статтею | |
| Тимчасово вилучене майно Допит | |
| Обґрунтована підозра Розумний строк Відвід (самовідвід) | |
| Належність (доказу) | |
| Звільнення особи від кримінальної відповідальності | |
| Виносити рішення | |
| Обмеження прав | |
| Скасувати рішення | |
| Право не свідчити проти себе | |
| Право зберігати мовчання | |
| За виключенням | |
| Межі доказування | |
| Достатність | |
| Виклик (викликати) Суд вищої інстанції Підозрюваний | |
| Підозра | |
| Свідчити | |

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КРИМІНАЛЬНИЙ ПРОЦЕС
ЗАГАЛЬНА ЧАСТИНА

Навчально-методичний посібник

Електронне видання

(Англійською мовою)

Підписано до друку 29.12.2021.
Ум-друк. арк. 9,45. Зам. № 2112-35.

Видано в ПП «Фенікс»
(Свідоцтво суб'єкта видавничої справи ДК № 1044 від 17.09.02).
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