

Malakhova Olha

Ph.D in Law, Czech Republic

**INSTITUTE OF FAVOR DEFENSIONIS ACCORDING TO THE CODE
OF CRIMINAL PROCEDURE OF UKRAINE 2012**

The current Criminal Procedure Code of Ukraine did not limit the effect of the adversarial principle only at the judicial stages of the criminal process, but extended it to the pre-trial investigation. In accordance with Part 1 of Art. 22 of the Code of Criminal Procedure of Ukraine, criminal proceedings are conducted on the basis of adversarial proceedings, which provides for independent defense by the prosecution and the defense parties of their legal positions, rights, freedoms and legitimate interests provided for by the Code of Criminal Procedure of Ukraine. Analysis of Part 2 of Art. 22 of the Criminal Procedure Code of Ukraine makes it possible to conclude that the content of the adversarial principle provides for equality between the prosecution and the defense at all stages of criminal proceedings. The ECtHR notes that in the course of proceedings in a criminal case, when the entire apparatus of the state is behind the prosecution, the principle of equality of the parties is a fundamental guarantee of the accused's right to defense. This principle guarantees the defense a valid opportunity to prepare and present a defense, as well as rebut the arguments and evidence presented to the court on equal terms with the prosecution.

In the case «Salov v. Ukraine», the ECtHR reminded that the principle of equality of parties in the process is only one of the elements of a broader concept of fair trial, which also includes the fundamental principle of adversarial process. Moreover, the principle of equality of arms in the process – in the sense of a “fair balance” between the parties – requires that each party be given a reasonable opportunity to present the case in terms that do not place that party at a significant disadvantage relative to the other party [1].

The main condition for the implementation of the principles of adversarial justice in criminal proceedings is to ensure procedural equality between the parties to

criminal proceedings from the moment of the appearance of a conflict of interests between the prosecution and the defense, from the moment of the appearance of such a participant in the criminal process as a suspect. It is impossible to delay the implementation of the balance of the parties' capabilities in the pre-trial investigation, because it is in the pre-trial proceedings the basis of a sufficient collection of evidence is formed for making a procedural decision fair and reasonable.

Implementation of adversarial principle and ensuring the right to defense is achieved through the participation of the defense party in criminal procedural proving. To ensure real competitiveness in court, the parties must come to court «fully armed», each with a full set of their evidence, collected at the pre-trial stages of the investigation.

In this context the implementation of the favor defensionis in criminal procedural evidence as a legal instrument aimed at granting the suspect (accused) and the defender a set of exclusive rights and establishing the obligations of the subjects of power to take procedural actions in the interests of defense in order to neutralize the difference in the scope of the rights of the parties has a significant meaning.

In the Criminal Procedure Code of Ukraine of 2012, favor defensionis finds its manifestation in such provisions as: the right of the accused, who is accused of committing a crime punishable by life imprisonment, to consider criminal proceedings by a jury (Part 3, Article 31 of the Criminal Procedure Code of Ukraine); the right of the suspect (accused) to know what criminal offense he is suspected or accused of committing (Clause 1, Part 3, Article 42 of the Criminal Procedure Code of Ukraine); the right of the suspect (accused) not to say anything about the suspicion against him, the accusation or to refuse to answer questions at any time (clause 4 part 3 of article 42 of the Criminal Procedure Code of Ukraine); the right of the suspect (accused) to give explanations, statements about suspicions, accusations, including false ones, or to refuse to give them at any time (clause 5, part 3, article 42 of the Criminal Procedure Code of Ukraine); the right of the suspect (accused) to have a defense attorney (Article 20, Item 3, Part 3, Article 42 of the Criminal Procedure Code of Ukraine); the right of the defense party to apply for the involvement of an expert to the investigating judge

in case the investigator, prosecutor refuses to grant such a request (Part 1 of Article 244 of the Criminal Procedure Code of Ukraine); the right of the defense not to give the prosecutor access to any materials that can be used by the prosecutor to prove the guilt of the accused in committing a criminal offense (Part 6 of Article 290 of the Criminal Procedure Code of Ukraine); the right of the defense party to speak in court debates after the prosecutor and the right to the last reply during court debates (Article 364 of the Criminal Procedure Code of Ukraine); the right of the accused to have the last word (Article 365 of the Criminal Code of Ukraine); the right of a convicted person who is in custody to file a cassation appeal within three months from the moment of receiving a copy of the sentence, and not from the moment of the pronouncement of the court decision, as for other participants in court proceedings (Part 2 of Article 426 of the Criminal Procedure Code of Ukraine).

Favor defensionis is an institution of criminal procedural law, which covers a set of legal norms that grant the defense party exclusive rights and establish the obligations of persons in authority to take procedural actions in the interests of the defense, with the aim of balancing the set of rights and opportunities of the parties to criminal proceedings for defending one's own statements in court and denying the arguments of the prosecution.

References:

1. Salov v. Ukraine (Application № 65518/01): Judgement of European Court of human rights, 06 September 2005. URL: <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-185810&filename=CASE%20OF%20SALOV%20v.%20UKRAINE%20%E2%80%93%20Russian%20translation%5D%20summary%20by%20Development%20of%20Legal%20Systems%20Publ.%20Co%20.docx&logEvent=False>