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ENSURING THE RIGHTS AND FREEDOMS OF PARTICIPANTS IN CRIMINAL PROCEEDINGS BROUGHT TO CRIMINAL RESPONSIBILITY

GARANTIR OS DIREITOS E AS LIBERDADES DOS PARTICIPANTES DE PROCESSOS CRIMINAIS LEVADOS À RESPONSABILIDADE CRIMINAL

GARANTIZAR LOS DERECHOS Y LIBERTADES DE LOS PARTICIPANTES EN PROCESOS PENALES SOMETIDOS A RESPONSABILIDAD PENAL

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SUMMARY: *Relevance of the research; 2 Theoretical provisions of the study; 3 Theoretical developments; 4 Presentation of general material; 5 Conclusion; References*.

SUMMARY: The article is devoted to the analysis of the norms of the Romano-Germanic and Anglo-Saxon legal systems following the current criminal legislation of Europe, England, and America. The author examines the main elements of evidence used to establish a person's guilt in committing a criminal offense. The author analyzes the provisions of the Anglo-Saxon and classical Romano-Germanic legal systems regarding the determination of the procedural status of participants in criminal proceedings. It is proved that the right to defense is an important guarantee of fairness in criminal proceedings. Theoretical aspects and practical mechanisms of realization of these guarantees are studied. The author suggests ways to improve legislation and address theoretical and practical challenges in the field of criminal justice.

KEY WORDS: participant, suspect, accused, investigator, judge, public prosecutor, defense counsel.

RESUMO: O artigo é dedicado à análise das normas dos sistemas jurídicos romano-germânico e anglo-saxão de acordo com a legislação penal atual da Europa, Inglaterra e América. O autor examina os principais elementos de prova usados para estabelecer a culpa de uma pessoa ao cometer um delito criminal. O autor analisa as disposições dos sistemas jurídicos anglo-saxão e romano-germânico clássico com relação à determinação do status processual dos participantes de processos criminais. É comprovado que o direito de defesa é um importante garantia de justiça nos processos criminais. São estudados os aspectos teóricos e os mecanismos práticos de realização dessas garantias. O autor sugere maneiras de aprimorar a legislação e abordar os desafios teóricos e práticos no campo da justiça criminal.

PALAVRAS-CHAVE: participante, suspeito, acusado, investigador, juiz, promotor público, advogado de defesa.

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RESUMEN: El artículo está dedicado al análisis de las normas de los ordenamientos jurídicos romano-germánico y anglosajón de acuerdo con la legislación penal vigente en Europa, Inglaterra y América. El autor examina las principales pruebas utilizadas para establecer la culpabilidad de una persona al cometer un delito penal. El autor analiza las disposiciones de los ordenamientos jurídicos anglosajón y romano-germánico clásico en materia de determinación del estatuto procesal de los participantes en un proceso penal. Está demostrado que el derecho a la defensa es una importante garantía de justicia en el proceso penal. Se estudian los aspectos teóricos y los mecanismos prácticos para la realización de estas garantías. El autor sugiere formas de mejorar la legislación y abordar los desafíos teóricos y prácticos en el campo de la justicia penal.

PALABRAS CLAVE: participante, sospechoso, imputado, investigador, juez, fiscal, abogado defensor.

RELEVANCE OF THE RESEARCH

Criminal procedure is predicated on the adversarial nature of the parties and participants involved. This foundational principle arises from the form, type, and systemic structure of the judicial process. Despite the existence of two predominant legal systems worldwide — classical Romano-Germanic and Anglo-Saxon — each possesses distinctive characteristics within the context of criminal procedure.

The classical Romano-Germanic legal system encompasses the procedural authority of investigators, prosecutors, and judges to initiate criminal proceedings based on a statement or report of a criminal offense, as stipulated in Article 214 of the Criminal Procedure Code of Ukraine.

Conversely, the Anglo-Saxon legal system, prevalent in countries such as England, the United States, Japan, and Australia, is characterized by its adversarial framework. Within this system, the interests of the parties to the proceedings and the state are balanced based on this principle. The prosecutor brings a criminal lawsuit before the court, delineating the charges against the individual accused of committing the criminal offense.

An analysis of the classical legal system reveals elements of adversarialism that are evident during the pre-trial investigation stage. At the trial stage, the adversarial framework is firmly established, allowing the parties to present evidence regarding the guilt or innocence of the accused. However, adversarialism must be structured to ensure a clear separation between the functions of prosecution and defense. The pre-trial investigation body should not simultaneously handle both functions, as the theory of functions underpins the entire judicial system.

Under the current Criminal Procedure Code, all participants associated with the prosecution — including the investigator, prosecutor, civil plaintiff, victim, and their representatives — are clearly defined. Conversely, the legal system also delineates the defense, comprising the suspect, the accused, and their legal counsel.

Thus, the purpose of criminal procedure law is to imbue the process with logic and eliminate inquisitorial and repressive elements through the functional distribution of rights, obligations, guarantees, and interests of the participants. This framework facilitates the comprehensive establishment of the circumstances surrounding a criminal offense and the identification of all relevant provisions regarding its commission. The investigator, prosecutor, and judge, drawing on logic and life experience, must reconstruct all the circumstances that need to be proven in a criminal offense.

The fundamental provisions of criminal procedure do not explicitly indicate the functional distribution of rights and freedoms among participants in the process. The theory of criminal procedure encompasses functions as a private theoretical construct with specific practical applications. According to this theory, criminal procedure should be fair and adversarial, granting equal procedural rights and obligations to all parties and participants.

To achieve these objectives, the law stipulates that the tasks of criminal proceedings have dual aspects: on one hand, the protection of the rights, freedoms, and interests of participants based on the guarantees provided to them; on the other hand, ensuring a prompt, thorough, and impartial pre-trial investigation and trial, with guarantees of an adversarial process for all participants.

2 THEORETICAL PROVISIONS OF THE STUDY

Theoretical developments, their genesis, evolution, and refinement of the system have garnered significant attention from legal scholars worldwide. The Anglo-Saxon legal system has been extensively examined in scientific publications by scholars such as E. F. Bezrodnyi, G. Kovalchuk, O. S. Masnyi, and others[1-2] the Romano-Germanic legal system has been analyzed by experts Y.G. Barabash, O.F. Skakun, and Y.M. Todyka, among others[3-4-5].

[1] BEZBORODNYI, E. F. World Classical Thought on the State and Law: Study guide. Kyiv: Yurinkom Inter, 1999.

[2] MIKHEENKO, M. M. Scientific and practical commentary on the Criminal Procedure Code of Ukraine. Kyiv: Naukova Dumka, 1997.

[3] BARABASH, Y. G. **Constitutional jurisdiction**. Selivanov, 2012.

[4] SKAKUN O, F. **Theory of State and Law**. Kharkiv, 2000.

[5] TODYKA, Y. M. **Constitutional Law of Ukraine: a textbook**.Yure Publishing House, 2002.

To determine the legal relations that have developed in the classical legal system and their national construction in Ukraine, France, Germany, Italy, and other European countries, it is essential to consider the insights of Charles Montesquieu. Montesquieu posited that the foundation of government lies in the system of distribution, which acts as a safeguard against the abuse of power. Consequently, the necessity to distinguish between the functions of prosecution and defense becomes apparent, as it includes providing guarantees for participants in the process[6].

In France and Italy, the principle of organizing criminal proceedings has been defined by the separation of the functions of criminal prosecution and pre-trial investigation for two centuries. The function of defense is not solely personal and does not belong exclusively to the suspect, the accused, or their defense counsel. All procedural decisions at the pre-trial investigation stage are made by a supervisory authority that has the procedural authority to determine the necessity of investigative (detective) actions. It is only the investigating judge who makes procedural decisions regarding the temporary restriction of the rights, freedoms, and interests of the participants in the process.

Assessing the classical legal system through the lens of the criminal procedures in France, Italy, and Poland reveals a crucial second aspect: the provision of defense. This aspect underscores a fundamental principle: it is impossible to simultaneously prosecute and defend. Consequently, these legal systems clearly delineate the division of functions, enabling the application of rights, obligations, and guarantees necessary for establishing the circumstances of a criminal offense. This includes the recognition that one cannot prosecute and defend at the same time. Furthermore, resolving criminal proceedings necessitates the protection of the rights, freedoms, and interests of the participants, ensuring they are provided with legal guarantees.

M. Savchyn emphasizes the critical importance of ensuring the uniform application of the law for the adequate protection of the rights, freedoms, and interests of a party to the proceedings. In criminal proceedings, the court acts as a mediator in the legal conflict between public authorities and a citizen. The benchmark for the correct application of the law is its constitutionality. A judge must administer justice to protect the rights, freedoms, and interests not only of the state but also of each participant involved in the process[7].

The judiciary is particularly vulnerable within the public administration system because judges, though independent, are bound solely by the law. The legal and procedural status of a judge is defined by both the Constitution and statutory legislation.

In the adversarial criminal procedures of European countries, key elements of proving the guilt of a suspect or accused fall to the judge. Investigators, prosecutors, and public prosecutors present evidence of the accused's guilt by submitting a formal accusation to the court, which establishes the parameters of guilt at the trial stage. The judge, however, is obliged to consider only the evidence presented during the trial. If the evidence of guilt is not substantiated by the trial participants, the judge is not authorized to issue a guilty verdict.

3 THEORETICAL DEVELOPMENTS

Theoretical developments have been elucidated in the scholarly works of prominent Brazilian legal scholars, including Gustavo Badaruco, Ana Paula Motta Costa, Luciano Feldman Weidenfeld, Paulo Quesari, Luisa Leite Lopes, and Marcelo Janoty[8-9-10]. Their contributions have significantly enriched the discourse on legal theory and practice in Brazil, addressing various aspects of law and jurisprudence with scholarly rigor and insight.

[6] MONTESQUIEU, Charles Louis. **The Spirit of laws**. Ripol Klasik, 2020.

[7] SAVCHYN, M. **The Constitution**: people and institutions. Monograph. Kyiv: Yurinkom Inter, 2024.

[8] VALENTE, Victor. **Direito Penal**: fundamentos preliminares e parte geral - arts. 1º a 120. São Paulo: Juspodivm, 2018.

[9] GOMES, Luiz Flávio; MAZZUOLI, Valerio de Oliveira. **O Juiz e o Direito**: o método dialógico e a magistratura na pós-modernidade. São Paulo: Juspodivm, 2019.

[10] GONÇALVES, Victor Eduardo; ESTEFAM, André. **Direito Penal esquematizado**: parte geral. 9. ed. Saraiva Jur, 2020.

4 PRESENTATION OF GENERAL MATERIAL

The Anglo-Saxon legal system provides a nuanced perspective on adversarial proceedings. Scholarly discourse on the public nature of criminal procedure in the US is a topic of significant scientific interest. It can be argued that the transparency inherent in this system is crucial for administering justice effectively. Central to this process is the requirement that prosecutorial actions commence only upon receipt of a complaint. However, exceptions arise in specific instances, such as terrorist incidents or hostage situations, where the FBI may initiate investigations and undertake procedural actions without a formal complaint from the affected party.

Criminal procedure in the UK and the USA diverges from abstract and dogmatic scientific approaches in favor of principles and methods that govern the conduct of investigative actions. The procedural framework emphasizes universality, ensuring consistency across cases.

In the UK, criminal proceedings focus on establishing the elements of evidence supporting the defendant's guilt rather than uncovering the absolute truth. English legal practice concentrates on presenting significant actions and key evidence favorable to the accused during trial.

The legal system's evidence law operates independently, influenced significantly by the inclusion of juries in all criminal cases in the UK. The absence of a unified criminal procedure code necessitates that courts and juries meticulously assess and validate evidence throughout the sentencing process.

The intricacy of evidence in criminal proceedings transcends mere procedural acquisition; it delves into the essence of the evidence itself, whether inculpatory or exculpatory. Consequently, judges are mandated to meticulously ascertain all factual circumstances surrounding the criminal offense based on evidence presented in court.

Another crucial element entails establishing the identity of the accused responsible for committing the criminal offense. This principle is foundational in the criminal procedure of the UK, emphasizing the necessity of accurately identifying and attributing responsibility to the perpetrator[11].

The general theory of criminal procedure mandates establishing the circumstances of a criminal offense and identifying the perpetrator based on evidentiary proof, a principle shared by both legal systems.

In the Anglo-Saxon legal system, the framework of evidence revolves around several pivotal constructs. In England, the jury plays a central role in the evidential process. The prosecution is tasked with elucidating evidence of guilt and outlining the procedure for proving specific provisions that pertain to or are pertinent to the subject under scrutiny, encompassing both direct and circumstantial evidence[12].

In this legal system, the second element of proof involves the causal establishment of the circumstances of a criminal offense based on judicial precedent. The crucial aspect of evidence lies in obtaining factual data and consolidating them procedurally as evidence, emphasizing their intrinsic value rather than their potential use in court proceedings.

For the Anglo-Saxon legal tradition, the definition of evidence focuses not on its admissibility, but on its reliability, which is determined only during trial. The jury must be persuaded that the suspect committed the alleged criminal offense. The second provision entails scrutinizing evidence during trial, which has limitations as the reliability of evidence is contingent on the cumulative weight of all evidence, not individual types.

It's noteworthy that judges retain the discretion to exclude evidence that lacks relevance to the subject matter of proof and hasn't been substantiated during criminal trial proceedings. These elements converge to form a system aimed at establishing the merits of the prosecution based on all circumstances outlined in the court's verdict. The second aspect encompasses circumstances that lead to a determination of the core issue of the prosecution (the fact in question). The third provision hinges on ancillary facts that either corroborate or contradict the means of proof.

[11] KAPLINA, O. V. **Criminal process**. Kharkiv: Pravo, 2013.

[12] SHYLO, O. G. **Theoretical and applied bases of implementation of the constitutional right of a person and citizen to judicial protection in pre-trial proceedings in the criminal process of Ukraine**. Kharkiv: Pravo, 2011.

The Criminal Procedure Law incorporates several legal constructs within the scope of proof. Here, the investigator, public prosecutor, and judge are tasked with establishing the grounds for accusing a suspect or accused of a criminal offense. Among the pertinent regulations is the determination of criminal intent, such as committing a crime under the influence of substances like drugs or alcohol. However, these aggravating circumstances should not be considered by the judge before trial, as premature attention to them could lead to misinterpretation if the criminal offense is proven. This approach is typically employed during jury trials[13].

Jurors, selected by the court to participate in criminal trials, typically lack formal legal education. They evaluate evidence based on personal conviction and life experience, rendering verdicts on the guilt of the accused and the appropriate punishment.

The classical Romano-Germanic legal system, prevalent in continental Europe including Brazil (where it was adopted from Portuguese legal traditions), finds its roots in the French law of 1805. This system's foundational elements, including rules on evidence, proof, and sentencing, were developed by French scholars and practitioners. However, following Napoleon's conflicts with European Coalition countries in 1864, there was a transition from the French classical system to the Romano-Germanic framework.

In this legal system, the evidential system addresses questions of guilt by elucidating the circumstances that must be proven in criminal proceedings. Evidence is defined as facts, factual data, and information regarding events that indicate a criminal offense.

Criminal procedure in countries such as France, Spain, Portugal, and Germany distinguishes between two primary types of evidence.

The first category of evidence comprises material evidence, consisting of tangible and physical elements integral to criminal proceedings. This includes physical objects, documents, and technical evidence such as video recordings or computer data.

The second category relies on testimonial evidence provided by participants in the criminal proceedings, such as victims, witnesses, experts, or other individuals possessing crucial information about the case.

In these legal systems, evidence is synthesized from diverse sources and validated through forensic methodologies. This approach blends scientific methodologies — like factual data, expert opinions, and technical analyses—with the life experiences of case participants, including observations and personal impressions.

Such an approach enables these countries to effectively establish the facts of a criminal offense and adjudicate cases based on a combination of scientific rigor and personal experience.

Brazilian criminal procedure delineates two primary types of evidence: strict and free evidence:

1. Strict evidence: Brazilian criminal procedure adheres to principles of orality, publicity, and directness. It mandates that all evidence crucial for determining the guilt of the suspect or accused must be formally established and documented according to criminal law. This ensures that the judicial process operates on clearly defined and codified evidence.

2. Free evidence: Brazilian criminal procedure diverges from strict procedural constraints and is not bound by the predefined list of evidence stipulated by law. This type of evidence permits the collection and consideration of factual data and information about the circumstances of a criminal offense or its likelihood, regardless of whether those collecting it directly witnessed the crime. This flexibility allows the prosecution, investigators, or prosecutors to gather and analyze evidence actively during the pre-trial investigation phase.

In Brazil, pre-trial investigations encompass the comprehensive process of gathering, analyzing, and formally consolidating evidence, although it often lacks a systematic approach. This phase involves considering different versions of events, investigating multiple suspects, and conducting covert investigative actions to collect factual evidence. All these actions are documented and can be used as evidence in court proceedings.

[13] MIKHEENKO, M. M. **Scientific and practical commentary on the Criminal Procedure Code of Ukraine**. Kyiv: Naukova Dumka, 1997.

This approach allows for a broad spectrum of factual and scientific methods to establish the circumstances surrounding a criminal offense in Brazil. According to procedural law, if evidence is obtained in violation of procedural rules, parties have the option to include it in the prosecution case or request its exclusion from consideration during sentencing. Typically, the defense advocates for the exclusion of such evidence from the prosecution case file.

The primary objective of the criminal process in classical legal systems is to ascertain the truth based on all evidence presented to the court by the prosecution. In this framework, the prosecution bears the burden of proving the circumstances of a criminal offense. During the trial, the judge assesses the credibility of the evidence presented by the prosecution, and only the evidence deemed credible during this process can be utilized to render a verdict.

According to the general theory of classical legal process, certain categories of criminal cases may involve a jury. Jurors participate in resolving cases according to fundamental principles of the English legal system: they are selected by the parties involved, act independently, and their verdict reflects the defendant's culpability regarding the criminal offense.

Despite the evolution of classical criminal procedure, the court remains central in making procedural decisions and issuing sentences.

Under specific procedural theories, criminal cases are typically adjudicated by a single judge. However, in cases of complexity, the panel of judges can range from three to fifteen members.

Examples of such trials include those conducted at the Nuremberg Court and the International Criminal Tribunal for the former Yugoslavia in The Hague. In these trials, judges adjudicated criminal proceedings based on professional standards alone. These judgments align closely with the principles of the classical legal system, which prioritizes a structured approach to evidence and procedural fairness.

Both the classical and Anglo-Saxon legal systems place significant emphasis on the rights of the defense. In these contexts, defense counsel (lawyers) carries out procedural actions as stipulated by law. They explain the legal aspects of the prosecution to the suspect or accused and develop the defense's position accordingly. This ensures that the accused can effectively confront the charges against them and receive a fair trial[14].

To systematically determine the procedural status of a suspect or accused in criminal proceedings, it is essential to consider teir roles and qualifications as defined by law in various countries worldwide. These roles generally fall into two main groups: the prosecution and the defense.

The prosecution comprises authorities responsible for conducting pre-trial investigations and establishing the facts of a criminal offense. Their rights and procedural status are clearly outlined by law, encompassing aspects such as recording the circumstances of the offense and carrying out investigative actions.

On the other hand, the defense team represents the suspect or accused, ensuring their legal defense throughout the proceedings. In some cases, gaps in criminal procedure legislation may become evident. For instance, while the prosecution is mandated to prove the guilt of the suspect or accused, the latter is not under an obligation to defend themselves against the accusation. Nonetheless, all suspects and accused individuals are entitled to a defense, which becomes mandatory from the moment they are informed of the suspicion against them. This right ensures that they can effectively challenge the allegations and receive fair treatment throughout the legal process.

In criminal procedure legislation, temporary restrictions on the rights, freedoms, and legitimate interests of participants, especially suspects during pre-trial investigations, are common. Often, suspects may not fully understand their procedural status or may feel pressured by law enforcement authorities, and legal frameworks do not always adequately safeguard their rights and freedoms. The primary objective of criminal proceedings is to swiftly, impartially, and objectively establish the circumstances surrounding an offense.

When comparing the classical and Anglo-Saxon legal systems, notable differences in the protection of suspects' interests emerge, particularly in England. In England's legal system, suspects generally have broader opportunities to

[14] ZAYCHUK, O. V.; ONISHCHENKO, N. M. **Theory of state and law**: Academic course. Kyiv: Yurinkom Inter, 2006.

defend their interests throughout the legal process. This can include access to legal representation, mechanisms to challenge evidence, and procedural safeguards that aim to ensure a fair trial. These provisions contribute to a more robust defense and help balance the adversarial nature of criminal proceedings, ensuring a degree of protection for suspects' rights despite the investigative and prosecutorial pressures they may face.

In the classical legal system, a suspect indeed has the right to present evidence in their defense. However, both the investigator, prosecutor, or public prosecutor, as well as the judge, retain the authority to reject this evidence and decide not to include it in the final verdict. This discretion is often exercised, especially when the suspect or accused is in custody, limiting their procedural powers to present evidence effectively.

Another crucial aspect is ensuring a unified legal stance between the suspect and their defense counsel. If the suspect holds a different legal position from that advocated by their defense counsel, the lawyer is obligated to support their client's stance, whether they are a suspect or an accused individual.

It's important to highlight the non-procedural actions of defense lawyers during pre-trial investigations and court proceedings in criminal cases. Instances have shown that lawyers sometimes engage in various legal maneuvers, such as forgery, falsification, or altering the significance of evidence, in attempts to influence the outcome of the case. These practices, while not representative of all defense lawyers underscore the strategic and sometimes contentious nature of legal advocacy in criminal proceedings.

Suspects and defendants in criminal proceedings hold distinct procedural statuses that significantly impact their ability to defend against prosecution. In both theory and practice, it's evident that the prosecution maintains a subjective perspective when initially determining suspicion. This can lead to situations where investigators or prosecutors revise the notice of suspicion multiple times, exercising their procedural authority in this regard.

In practice, there's a procedural rule that mandates the announcement of suspicion before criminal proceedings commence. This often places suspects at a disadvantage, as they may have limited time and access to materials necessary for their defense. Moreover, suspects typically only participate in pre-trial proceedings, with their status transitioning to that of an accused individual during the judicial stages of the case.

Criminal proceedings are designed to facilitate defense through a standardized procedural framework applicable to all participants. Any deviations from this established form, such as improper collection, recording, or evaluation of factual data and evidence by the prosecution, can serve as grounds for higher courts to overturn a judge's sentence. This underscores the importance of procedural integrity in ensuring fair and just legal outcomes.

5 CONCLUSION

The criminal procedure system draws from the established forms and types found in both the classical continental European and Anglo-Saxon legal traditions. An analysis of these procedural frameworks reveals complementary aspects rather than significant contradictions. For instance, features like jury participation in English law find reflection in the legal practices of the European Union.

The procedural status of participants in these systems undergoes continuous refinement, aiming to maintain a clear distinction between the roles of prosecution and defense. The right to a robust defense is safeguarded through procedural norms that govern investigative actions, ensuring the thorough establishment of the circumstances surrounding criminal offenses and the determination of guilt.

Central to the effectiveness of these processes are the key elements that enable judicial oversight of criminal proceedings. Any deviations from established procedural norms can result in the annulment of a verdict by higher courts, underscoring the importance of adherence to current legislation.

Through the examination of both practical applications and theoretical underpinnings of criminal procedure, it becomes evident that there are areas requiring improvement and amendment within the existing procedural

legislation. This ongoing evaluation is crucial for enhancing the fairness and efficiency of criminal justice systems worldwide.

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