

THE CONCEPT OF JUSTICE IN THE CRIMINAL PROCEEDINGS OF UKRAINE

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Summary

The article is devoted to the definition of the concept of justice and its essential characteristics in criminal proceedings in Ukraine. Based on an analysis of scholarly research, it is concluded that justice in criminal proceedings constitutes the law-application activity of a court, carried out in a procedural form established by law, in compliance with the principles of criminal proceedings, and aimed at resolving the accusation on the merits and adopting a lawful, well-reasoned, and fair judicial decision. Justice is examined in correlation with the institutional and procedural elements of the right to a fair trial. It is determined that the institutional elements of the right to a fair trial ensuring the administration of justice include the principles of a tribunal established by law, judicial independence, impartiality, and access to justice. The procedural elements of the right to a fair trial, which ensure the implementation of fairness and provide guarantees of individual rights and the proper administration of justice, are identified as follows: reasonable time for trial, equality of arms, the right to legal assistance, publicity of the trial, and the reasoned nature and binding force of judicial decisions. It is substantiated that a specific feature of the concept of justice is the interconnection of its formal and substantive essential characteristics, which allows it to be considered both as an activity and as a goal. The administration of justice presupposes both a fair judicial process and a fair outcome. Justice, as the goal of judicial activity, is equivalent to fairness. It is established that the purpose of justice in criminal proceedings is realized through the adoption of a lawful, well-reasoned, motivated, and fair judicial decision that resolves a socio-legal conflict and ensures the protection of the rights, freedoms, and interests of individuals.

Key words: justice, essential characteristics of justice, criminal proceedings, law-application activity of the court, procedural form, principles of criminal proceedings.

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1. Introduction

The administration of justice requires the proper organization of the judiciary, its implementation by the courts, and provision by specially authorized bodies and institutions, which in their entirety and interrelationships constitute the justice system. The fundamental provisions on the construction of the justice system in Ukraine are defined by the Constitution of Ukraine (*Constitution of Ukraine, 1996*) and established by the Law of Ukraine «On the Judiciary and the Status of Judges» (*Law of Ukraine, 2016*).

The norms of the Constitution of Ukraine proclaim the exclusive powers of courts to administer justice and extend their jurisdiction to any legal dispute and any criminal charge, as well as the foundations of the judicial system in Ukraine (*Constitution of Ukraine, 1996*).

Judicial power in Ukraine, in accordance with the constitutional principles of the separation of powers, is exercised by independent and impartial courts (*Law of Ukraine, 2016*) and

is provided by a justice system established by law, which includes institutional and functional elements. Therefore, the main link in the justice system are the courts, which exercise judicial power by administering justice within the framework of appropriate judicial procedures.

The above-mentioned regulatory provisions indicate the importance of the concept of «justice» for the legal sphere and the need for its clear definition.

In legal science, the concept of justice is conceptualized as one of the key categories that has formal and substantive essential features. The theoretical basis of this position is formed in works devoted to various aspects of justice: these are monographic studies on the philosophical and theoretical understanding of the problems of justice (*Bihun et al, 2009*), the problems of implementing criminal procedural functions (*Hloviuk, 2015*), as well as fundamental issues of criminal proceedings (*Pohoretskyi, 2007; Shylo, 2011*). Certain aspects of defining the content of the concept of justice are disclosed in specialized works on the problems of improving the legislation regulating criminal procedural activities and reforming criminal justice (*Hroshevyi, 2003; Hroshevyi, 2009*), the procedural functions of the court in criminal justice (*Savenko, 2006; Shevchuk, 2014*), the functions of the judiciary and the court in other branches of justice (*Talykin, 2011; Nesterchuk, 2014; Tkachuk, 2016*).

The purpose of the study is to conceptually substantiate the concept of justice in the criminal process of Ukraine, taking into account the established formal and substantive essential features.

The tasks of the research are to determine the institutional elements of the right to a fair trial, which ensure the administration of justice; in the establishment of functional (procedural) elements of the right to a fair trial, which determine the implementation of justice in the administration of justice; in distinguishing between formal and substantive essential features of justice; in clarifying the goal of justice in the criminal process of Ukraine.

2. Methodology

The research materials cover current constitutional and procedural norms defining justice, acts of the Constitutional Court of Ukraine on the interpretation of the concept of «justice», and international documents containing important provisions on the characteristics of justice. The source base includes doctrinal works devoted to defining the concept, characteristics, content, and purpose of justice in the criminal process. The selection of sources was carried out according to the criteria of regulatory relevance, representativeness for formulating criteria and testing them in practice.

The methodological basis is a combination of normative analysis to reconstruct the content of the concept of justice as a category of the judicial system, a comparative legal approach to correlate national standards with European benchmarks, historical and legal analysis to identify the genesis of key institutions, as well as systemic-structural and formal-logical methods to assess the internal consistency of formal and substantive features of justice. Doctrinal content analysis was applied to identify indicators of the «purpose of justice». The study is based on the principles of methodological triangulation, which ensures the consistent use of different types of sources and approaches, and on a reproducible procedure for selecting material and coding, which allows the proposed criteria to be applied in law enforcement and further empirical verifications.

3. Research and results

3.1. Institutional elements of the right to a fair trial

The Constitution of Ukraine (*Constitution of Ukraine, 1996*) and the Law of Ukraine «On the Judiciary and the Status of Judges» (*Law of Ukraine, 2016*) enshrine fundamental norms on the administration of justice by courts, judges and juries, which determine the purpose and main content of their activities and, at the same time, its goal. At the same time, justice, as a key category of the judicial system and judicial proceedings, requires consideration taking into account its fundamentality and multifacetedness, social and legal nature, as well as in correlation with the elements of the right to a fair trial (*Convention, 1950*).

In the historical process of the emergence and development of law, the state and its main institutions, justice and fairness were considered as integral categories, having a single social and legal nature. This is evidenced by numerous famous monuments of law and the expressed opinions of prominent thinkers of ancient times and the Middle Ages, the Renaissance, the Enlightenment and the Modern Age.

The modern understanding of justice, formulated by the Constitutional Court of Ukraine in the Decision of January 30, 2003 (case on the court's consideration of certain resolutions of the investigator and prosecutor) also connects it with fairness: «Justice is inherently recognized as such only on condition that it meets the requirements of fairness and ensures effective restoration of rights» (*Constitutional Court of Ukraine, 2003, para. 6, item 9*).

The normative definition of the tasks of the court in the Law of Ukraine «On the Judicial System and the Status of Judges» provides that the court, administering justice on the principles of the rule of law, ensures everyone the right to a fair trial (*Law of Ukraine, 2016, Part 1, Article 2*).

The institutional elements of the right to a fair trial determine the implementation of justice, primarily in the organization of the judiciary in accordance with the principles of legality of the tribunal (tribunal established by law), independence of the tribunal, impartiality of the tribunal, and access to justice.

In Ukraine, the administration of justice is declared exclusively by the courts and the prohibition of delegation of the functions of the courts, as well as the appropriation of these functions by other bodies or officials (*Constitution of Ukraine, 1996; Law of Ukraine, 2016*), which is aimed at ensuring the legality of the court. The bodies of legislative, executive and judicial power exercise their powers within the limits established by the Constitution and in accordance with the laws of Ukraine (*Constitution of Ukraine, 1996, Part 2, Article 6*). Judicial power in Ukraine, in accordance with the constitutional principles of the separation of powers, is exercised by independent and impartial courts established by law (*Law of Ukraine, 2016, Part 1, Article 1*).

The independence of the court in the organizational aspect implies the separation of the judiciary from the legislative and executive branches, which should not have the means to interfere in the administration of justice in specific cases, as well as the prohibition of any unlawful influence and interference in the administration of justice; the functional aspect is ensured by the procedure for conducting judicial proceedings, determined by procedural law, which should guarantee the independence of judges.

The independence and inviolability of judges are guaranteed by the Constitution and laws of Ukraine (*Constitution of Ukraine, 1996, Part 1, Article 126*). The Law of Ukraine «On the Judiciary and the Status of Judges» in Article 6 defines the main content of the independence of courts, and in Article 48 it enshrines organizational and legal guarantees for ensuring the independence of judges (*Law of Ukraine, 2016*).

Closely related to the principle of judicial independence is the principle of judicial impartiality, which is defined by the European Court of Human Rights according to a subjective approach (personal conviction or interests of a particular judge in a particular situation), as well as according to an objective approach (it involves the provision by the judge of guarantees sufficient to eliminate any legitimate doubt in this regard) (*Vysnovok*, 2002).

The right of access to justice, which is one of the integral components of the right to a fair trial, is ensured in organizational terms by building a judicial system in accordance with the principles of territoriality, specialization and jurisdiction, and in functional terms it provides for the protection of the rights, freedoms and legitimate interests of a person by the court in the manner determined by procedural law, which must meet the requirements of proportionality between the established means and the goal of justice.

3.2. Procedural elements of the right to a fair trial

In the Legal Encyclopedia, justice is defined as the law enforcement activity of the court to consider and resolve, in accordance with the process procedure established by law, civil, economic, criminal and administrative cases within its competence in order to protect the rights and freedoms of man and citizen, the rights and legitimate interests of legal entities and the interests of the state (*Shemshuchenko (ed)*, 2003, 50).

Other scholars also emphasize the law enforcement nature of the court's activities, noting when defining the concept of justice that the court applies the norms of the relevant substantive law (*Tymchenko*, 2004), and implements the norms of law (*Koval*, 2004), in connection with which it is necessary to clarify the content of law enforcement as one of the forms of law implementation.

In legal theory, the process of law enforcement is defined as an activity that is implemented in a certain sequence of actions, which are called the stages of law enforcement: 1) establishing the factual circumstances of the case; 2) selecting and analyzing legal norms as the legal basis of the case; 3) resolving the legal case and formalizing the decision made (*Zaichuk (ed.)*, *Onishchenko*, 2006). The above-mentioned elements are undoubtedly present in the court's activities in administering justice, which gives grounds for identifying the content of the law enforcement function, in a narrow sense, with justice (*Nesterchuk*, 2014).

In addition, legal literature also states that courts perform a law-making (normative) function, since, in administering justice, courts of general jurisdiction implement the norms of law and, through their activities, contribute to the creation of legal norms (*Nesterchuk* 2014).

However, the position of scholars who deny the exercise of a law-making (normative) function by courts is more acceptable. Thus, O. Tkachuk notes that courts, when considering cases, only analyze specific life circumstances, searching for a legal norm that can be applied to them, and, using it, indicate how personified persons should act in a specific situation (*Tkachuk*, 2016, 94). E. Talykin points out that the law-making function of the court is difficult to include in the concept of «justice», because it is not directly aimed at protecting rights, freedoms and legitimate interests (*Talykin*, 2011, 167).

Agreeing with the above argument, one should also take into account the theoretical provisions that the purpose of lawmaking is to create a single, internally consistent system of norms that regulates social relations that are diverse in content (*Zaichuk (ed.)*, *Onishchenko*, 2006, 355), and with the help of law enforcement activities tasks are carried out to organize the implementation of legal norms and ensure a response from state bodies for violations of legal norms (*Zaichuk (ed.)*, *Onishchenko*, 2006, 453). In this regard, it can be concluded that justice is law enforcement, but not law-making activity of the court.

The substantive content of the court's activity in administering justice is revealed by S. Tymchenko, noting that it takes place in procedural forms determined by law in court

sessions with the participation of the parties and other participants in the process and consists in establishing the factual circumstances of the case and clarifying the truth in the case under consideration by examining the evidence, which ends with the adoption of a decision in the case with the application of the norms of the relevant substantive law (*Tymchenko, 2004, 25*). It can be noted that in general this definition refers to the enforcement of law carried out by a court in a procedural form defined by law. It also indicates the subject, content, purpose and means of the court's activities.

Taking into account the subject of criminal law regulation, the tasks and purpose of criminal procedural activity, the following stages of law enforcement carried out by the court in criminal proceedings can be identified: establishment of circumstances subject to proof and other circumstances that are important for criminal proceedings; criminal legal qualification of the act; adoption and execution of a court decision.

The Constitutional Court of Ukraine expressed the position that, in accordance with Article 124 of the Constitution of Ukraine, justice is an independent branch of state activity, which courts carry out by considering and resolving civil, criminal and other cases in court sessions in a special procedural form established by law (*Constitutional Court of Ukraine, 1997*).

Many scholars, when defining the concept of justice, also emphasize that this activity is carried out by the court in a special, legally established, procedural form (*Hroshevyi, 2009*), in a strictly defined procedural form (*Savenko, 2006; Shevchuk, 2014*).

At the same time, the procedural form should be a guarantee of individual rights and justice, which some scholars rightly paid attention to when formulating the concept of justice.

Thus, Yu. Groshevy noted that justice involves legislative regulation of the entire order of court activities by establishing a process procedure that guarantees the rights and freedoms of the individual, the legality and fairness of court decisions (*Hroshevyi, 2003, 688*).

M. Savenko expressed the opinion that justice in criminal proceedings is only such activity of the court, the procedural form of which ensures the mandatory participation of interested participants in the process in court sessions, endowed with the necessary procedural guarantees that enable the correct resolution of the case on the merits (*Savenko, 2006, 281*).

In the legal literature, when characterizing the activities of administering justice, it is also noted that justice is administered by the court in compliance with the principle of adversarial proceedings and other principles of criminal justice (*Savenko, 2006; Shevchuk, 2014*), on the basis of the law and the principles of justice, equality, freedom and humanism (*Malyshev, 2008*).

Therefore, the administration of justice presupposes a fair judicial process, procedural fairness, in which the procedural form should be a guarantee of individual rights and justice. The functioning of the court must take place in accordance with the principles that determine the procedural guarantees for ensuring the fairness of justice: reasonable terms for considering the case, procedural equality of the parties, the right to legal aid, publicity (publicity and openness) of the trial, motivation and bindingness of court decisions.

3.3. The purpose of justice in criminal proceedings

V. Bihun notes the presence of formal and substantive essential features of justice. The formal sign of justice is its implementation in the form of judicial proceedings by courts as state bodies, and the substantive one is compliance with the requirements of justice and ensuring effective restoration of rights. If the first emphasizes justice as a process carried out by the courts, the second focuses on the result by which it can be defined as a goal (*Bihun et al, 2009*).

O. Tkachuk believes that justice can be considered both as a goal (in this case, the content of justice is associated with the concept of fairness), and as the activity itself to achieve this goal (*Tkachuk, 2016, 83*).

Thus, the peculiarity of the concept of justice is the interrelation of its formal and substantive essential features, which give grounds to consider it simultaneously as an activity and as a goal. The implementation of justice involves a fair judicial process and its fair result. Justice, as the goal of judicial activity, is identical with fairness.

Scientific sources express different views on the purpose of justice and the purpose of judicial activity in general. Thus, the purpose of justice as a law enforcement activity is defined as the protection of human and citizen rights and freedoms, the rights and legitimate interests of legal entities and the interests of the state (*Shemshuchenko (ed), 2003, 50*). However, this interpretation of the purpose of justice is quite broad, since the protection of rights and freedoms is carried out not only by the court, but also by other state bodies, therefore it requires specification in accordance with the subject of the court's activity.

The goal of judicial activity in society and the state is quite reasonably considered to be judicial protection (*Hloviuk, 2015*). At the same time, judicial protection is defined as both an activity and a result of activity (*Hloviuk, 2015; Shylo, 2011*), and justice is considered as a form of its implementation (*Shylo, 2011*).

Undoubtedly, justice as a judicial activity is aimed at protecting the rights, freedoms and legitimate interests of individuals. However, the goal of justice in criminal proceedings has a special meaning, taking into account the specifics of the sectoral subject of regulation.

In the science of criminal procedure, the content of the court's activities in administering justice has traditionally been associated with the consideration and resolution of criminal cases (*Hroshevyi, 2009; Savenko, 2006*).

Based on the analysis of existing points of view and provisions of the current Criminal Procedure Code of Ukraine, I. Glovyuk concludes that justice is such procedural activity, the final decision of which is to resolve the issue of the merits of the accusation/suspicion, the allegation that a person committed another socially dangerous act, provided for by the law of Ukraine on criminal liability (*Hloviuk, 2015, 483–485*).

In our opinion, the resolution of the accusation on the merits can be considered as the goal of justice in a criminal trial in the substantive sense. In the procedural (formal) sense, the goal of justice is the adoption of a lawful, well-founded and fair judicial decision.

M. Pohoretskyi reasonably defines the purpose of the criminal process as resolving the socio-legal conflict that arose in connection with the crime of harming a person, society, and the state (*Pohoretskyi, 2007, 167*). Since the administration of justice in criminal proceedings is aimed at achieving the goal of the criminal process, it can be agreed that justice is a means of resolving a socio-legal conflict.

The goal of justice in the judicial process is realized by adopting a lawful, well-founded, motivated and fair judicial decision that resolves a socio-legal conflict and ensures the protection of the rights, freedoms and interests of individuals.

A court decision is the embodiment of the court's position, based on the perception and analysis of a specific legal situation (factual circumstances), the study and evaluation of evidence, and the application of substantive and procedural law. Compliance with the requirements of legality, reasonableness and fair of court decision gives reasons to affirm its justice and the realization of the goal of justice.

Therefore, justice as a multifaceted category should be considered in a close relationship with equity, institutional elements of the right to a fair trial, as well as a procedural activity carried out by the court in the established form with observance of the principles of judicial procedure, and as the goal of judicial activity, realized by the adoption of a judicial decision.

4. Conclusions

In the procedural aspect, justice is defined as the law enforcement activity of the court, which is carried out in a procedural form established by law and includes: establishing the factual circumstances of the case, selecting and analyzing legal norms as the legal basis of the case, resolving the legal case, and formalizing the decision. Such activities take place in court sessions with the participation of the parties and other participants in the process, and its content is the consideration and resolution in court sessions in a special, legally established procedural form of civil, commercial, administrative cases and criminal proceedings.

Justice in criminal proceedings is the law enforcement activity of the court, which is carried out in the procedural form established by law in compliance with the principles of criminal proceedings, aimed at resolving the charges on the merits and adopting a lawful, well-founded and fair judicial decision.

The essential characteristics of justice in criminal proceedings are: 1) the administration of justice only by the court; 2) the law-enforcement nature of the court's activities, which includes: establishing circumstances subject to proof and other circumstances that are important for criminal proceedings; criminal-legal qualification of the act; adoption and execution of a court decision; 3) the administration of justice in the procedural form established by law, which provides for the holding of a court session in compliance with the principles of criminal proceedings; 4) justice is a means of resolving a social and legal conflict; 5) justice is a form of implementing judicial protection in criminal proceedings; 6) the purpose of justice is to adopt a lawful, well-founded and fair court decision that resolves the charges on the merits.

Further research should focus on formulating a system of guarantees for ensuring the administration of justice in criminal proceedings, as well as developing criteria for assessing the achievement of the goal of justice. The procedural features of criminal proceedings related, in particular, to the administration of justice under martial law require separate consideration.

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