

## THE PRINCIPLE OF EQUALITY BEFORE THE LAW AND THE COURT: ENSURING JUSTICE AND THE RULE OF LAW

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### INTRODUCTION

According to Art. 3 of the Constitution of Ukraine, human rights and freedoms and their guarantees determine the content and direction of the state's activities<sup>1</sup>. One of such legal guarantees is the principle of equality before the law and the court. The provisions of this principle are contained both in the domestic legislation of Ukraine and in certain international legal acts<sup>2</sup>.

According to the norms of the specified principle, all subjects of legal relations are guaranteed the availability of judicial protection of their rights, freedoms and legitimate interests by a proper and impartial court. The essence of legal equality is that all people are free and equal in their dignity and rights regardless of race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics. However, compliance with the principle of equality before the law and the court in practice is not impeccable, therefore, there is a need within the section to clarify the essence, scope and features of the regulatory and legal support for the implementation of this principle, to identify existing shortcomings that affect the regulatory and legal regulation of the specified principle and to identify individual aspects of improving the provisions for the implementation of such a principle in criminal procedural justice.

The issue of equality before the law and the court, as one of the foundations of the criminal procedural legislation of Ukraine, is quite relevant, as evidenced by a significant number of publications by procedural scholars: Yu. P. Alenin, V. G. Bepalko, T. V. Varfolomeeva, V. I. Galahan, V. G. Goncharenko, Yu. M. Groshevy, M. I. Derevyanko, E. G. Kovalenko, O. P. Kuchynska, L. M. Loboyko, V.T. Malyarenko, M. M. Mykheienko, V. T. Nora, M. A. Pogoretsky, M.S. Strogovych, V. M. Tertyshnyk, L. D. Udalova, M. E. Shumylo, and others.

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<sup>1</sup> Про судоустрій та статус суддів. Закон України № 1402-VIII 2 червня 2016 року.  
URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

<sup>2</sup> Конституція України. Прийнята на п'ятій сесії Верховної Ради України 28.06.1996.  
URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

The above-mentioned authors paid sufficient attention to the study of this principle and its individual provisions in their works. Meanwhile, the changes that are made from time to time to the CPC of Ukraine under martial law and their implementation in domestic legislation international legal norms on human rights and freedoms raise a number of issues that require research and attention.

### **1. Regulatory and legal support for the principle of equality before the law and the court**

The principle of equality of all before the law and the court is a cornerstone of modern legal doctrine and one of the fundamental principles of criminal proceedings. This principle, which operates at all stages, requires legislators and law enforcement agencies to provide participants in the process with equal rights and opportunities to protect their interests. It prohibits any privileges or restrictions based on a person's race, gender, ethnic origin, property status, political or religious beliefs, and is enshrined in national legislation and in the fundamental law – the Constitution of Ukraine (Article 24)<sup>3</sup>.

At the same time, it should be noted that the principle of equality before the law and the court is regulated not only by national legislation. Its source is also a number of key international legal acts recognized and ratified by our state. After all, according to Part One of Article 9 of the Constitution of Ukraine, international treaties are in force, the consent to be bound by which has been given The Verkhovna Rada of Ukraine, is part of the national legislation of Ukraine. Such international regulatory legal acts, which, along with other issues, ensure the implementation of the principle of equality before the law and the court, include: 1) The Universal Declaration of Human Rights, adopted in 1948, which in Article 7 declares: “All persons are equal before the law and are entitled without any discrimination to equal protection of the law”<sup>4</sup>; 2) The International Covenant on Civil and Political Rights, 1966, states in Article 14 (1): “All persons are equal before the courts and tribunals”<sup>5</sup>. The aforementioned provision requires that every person, regardless of their status or circumstances, have access to a fair trial. 3) The 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6, guarantees everyone the right to a fair

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<sup>3</sup> Конституція України прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

<sup>4</sup> Загальна декларація прав людини, 1948 р.. URL: [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text)

<sup>5</sup> Міжнародний пакт про громадянські та політичні права, 1966 р.. URL: [https://zakon.rada.gov.ua/laws/show/995\\_043#Text](https://zakon.rada.gov.ua/laws/show/995_043#Text)

trial, which is inextricably linked to the principle of equality<sup>6</sup>. The presence of these provisions in international law obliges the states that have ratified them to implement and effectively apply the principle of equality in their legislation and law enforcement practice. All of the above emphasizes the universal nature and importance of the principle of equality before the law and the courts.

Article 17 of the Law of Ukraine “On the Execution of Decisions and Application of the Practice of the European Court of Human Rights” establishes that courts shall apply the Convention and the practice of the European Court of Human Rights as a source of law when considering cases<sup>7</sup>. Therefore, one of the essential legal mechanisms for ensuring the implementation and compliance with the requirements of the principle of equality before the law and the court should also be the decisions of the European Court of Human Rights, which are universal in their implementation for all states of the European democratic community. For example, in the case of *Nadtochy v. Ukraine* (2008), the European Court of Human Rights clearly established and noted in its decision that during the criminal proceedings by the national court of Ukraine, the principle of equality of arms (which requires that the parties have equal procedural opportunities) was violated, since the decision on monetary recovery in the amount of UAH 9,833.57 was made by the court of Ukraine without summoning the High Commissioner to the court session<sup>8</sup>. Another illustrative example is the case of *Leas v. Estonia* (2019). In this case, the ECtHR found that the principle of equality of arms had been violated because the defence was denied access to materials on covert investigative (search) activities, namely the materials of surveillance and monitoring in the criminal proceedings against Leas, which were used by the prosecutor’s office as evidence. In the opinion of the Court, this indicates an imbalance between the parties in access to evidence and violates the right to a fair trial<sup>9</sup>. In another judgment in *Dombo Beier B.V. v. the Netherlands* (1993), the European Court of Human Rights determined that equality of arms is not

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<sup>6</sup> Конвенція про захист прав людини і основоположних свобод, 1950 р. URL: [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text)

<sup>7</sup> Про виконання рішень та застосування практики Європейського суду з прав людини. Закон України від 23 лютого 2006 року N 3477-IV. URL: <https://zakon.rada.gov.ua/laws/show/3477-15#Text>

<sup>8</sup> Справа «Надточій проти України» (Заява N 7460/03) Рішення Європейського Суду з прав людини, Страсбург, 15 травня 2008 року. URL: [https://zakon.rada.gov.ua/laws/show/974\\_404#Text](https://zakon.rada.gov.ua/laws/show/974_404#Text)

<sup>9</sup> У справі Леас проти Естонії ЄСПЛ визнав порушення Конвенції про захист прав і основоположних свобод. Національна асоціація адвокатів України. URL: <https://unba.org.ua/publications/4163-u-spravi-leas-proti-estonii-espl-viznav-porushennya-konvencii-pro-zahist-prav-lyudini-i-osnovopolozhnih-svobod.html>

simply formal equality, but the ability of each party to present its case before the court without significant obstacles compared to its opponent<sup>10</sup>.

The renowned international judicial institution has repeatedly emphasized in its decisions that the principle of "equality of arms" is an integral element of the right to a fair trial, and requires states, represented by competent authorized bodies, to create and adhere to a rule according to which each party must have a reasonable opportunity to present his case in such conditions that do not put it at a significant disadvantage in relation to the opposing party.

Currently, there is an increase in the use of references to decisions of the European Court of Human Rights by Ukrainian courts, which undoubtedly indicates an increase in the level of awareness of Ukrainian judges with the practice of the ECHR<sup>11</sup>.

The provisions of the principle of equality before the law and the court also find their normative support and reflection in the national legislation of Ukraine, since in addition to the Constitution, these provisions are contained in many domestic laws that regulate various spheres of public life in our state. Thus, the legislation on criminal liability (Article 3 of the Criminal Code of Ukraine) directly indicates that criminal liability is established regardless of nationality, race, gender, property, official status, place of residence and other characteristics<sup>12</sup>. In the field of civil law (Article 21 of the Civil Code of Ukraine) it establishes the equality of all individuals and legal entities in civil relations<sup>13</sup>. In the field of labor relations, according to Article 21 of the Labor Code of Ukraine, any discrimination in the field of labor is prohibited, including refusal to hire, dismissal or establishment of unequal working conditions on grounds not related to the employee's business qualities.<sup>14</sup> In addition, the implementation of the principle of equality finds its place in the Resolutions of the Cabinet of Ministers of Ukraine and departmental regulatory legal acts through the establishment of the same rules for all subjects. This indicates that privileges or restrictions not related

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<sup>10</sup> Огляд практики застосування суддями Касаційного господарського суду у складі Верховного Суду рішень Європейського Суду з прав людини при прийнятті постанов за 2018 рік. Верховний Суд. URL: [https://supreme.court.gov.ua/userfiles/media/oglyad\\_prakt\\_kgs\\_1.pdf](https://supreme.court.gov.ua/userfiles/media/oglyad_prakt_kgs_1.pdf)

<sup>11</sup> Справа «Надточій проти України» (Заява N 7460/03) Рішення Європейського Суду з прав людини, Страсбург, 15 травня 2008 року. URL: [https://zakon.rada.gov.ua/laws/show/974\\_404#Text](https://zakon.rada.gov.ua/laws/show/974_404#Text)

<sup>12</sup> Кримінальний кодекс України від 5 квітня 2001 року № 2341-III. (зі змінами на 17.06.2025). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

<sup>13</sup> Цивільний кодекс України від 16 січня 2003 року № 435-IV. (зі змінами на 14.05.2025). URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

<sup>14</sup> Кодекс законів про працю України від 10 грудня 1971 року № 322-VIII (зі змінами 21.08.2025). URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text>

to objective criteria are unacceptable. Thus, in the field of administrative services, a single procedure has been established for all citizens who apply for a certain service<sup>15</sup>. For example, the rules for obtaining a passport, driver's license, or construction permit are obtained according to the same procedures for everyone, regardless of social status or place of residence in Ukraine. In terms of social protection, government regulations governing the provision of social benefits, such as; assistance to low-income families, social scholarships, establish clear and uniform criteria for all applicants. The principle of equality here means that only those who meet the established requirements have the right to assistance, and this right does not depend on personal ties or other non-objective factors<sup>16</sup>. In the healthcare sector, the Ministry of Health's orders regulating medical protocols emphasize that such protocols should be applied equally to all patients. For example, the rules for providing emergency medical care cannot depend on the financial status or position of the person requiring it<sup>17</sup>. Regarding the issues of obtaining educational services, for example, regarding the conduct of external assessment/national evaluation, enrollment in universities, the Ministry of Education and Science of Ukraine has established the same conditions for all applicants. The assessment results are the only criterion for admission, which also eliminates discrimination and indicates equality in the opportunities for admission to universities to receive educational services<sup>18</sup>.

The provisions of equality before the law and the court are also reflected in the norms on combating discrimination and protecting the rights of minorities in Ukraine. For example, the Laws of Ukraine "On the Principles of Preventing and Combating Discrimination in Ukraine"<sup>19</sup>. "On National Minorities (Communities) of Ukraine"<sup>20</sup> are aimed at protecting the rights of ethnic, religious and other minorities, ensuring them equal opportunities and preventing their discrimination.

In the tax sphere, on issues of tax service activities, the orders of the State Fiscal Service of Ukraine on the procedure for paying taxes and

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<sup>15</sup> Деякі питання призначення та виплати державних соціальних допомог, соціальних стипендій органами Пенсійного фонду України. Постанова Кабінету Міністрів України від 25 червня 2025 р. № 765. URL: <https://zakon.rada.gov.ua/laws/show/765-2025-%D0%BF#Text>

<sup>16</sup> Ibid.

<sup>17</sup> Про затвердження Порядку проведення національного мультипредметного тесту. Наказ Міністерства освіти і науки України від 21.12.2023 № 1547. URL: <https://zakon.rada.gov.ua/laws/show/z0015-24#Text>

<sup>18</sup> Про засади запобігання та протидії дискримінації в Україні. Закон України від 6 вересня 2012 року № 5207-VI. URL: <https://zakon.rada.gov.ua/laws/show/5207-17#Text>

<sup>19</sup> Ibid.

<sup>20</sup> Про національні меншини (спільноти) України. Закон України від 13 грудня 2022 року № 2827-IX. URL: <https://zakon.rada.gov.ua/laws/show/2827-20#Text>

submitting reports are mandatory for all taxpayers, regardless of the form of ownership or size of the business, which ensures equal tax responsibility.<sup>21</sup> And although the examples given do not always directly contain the phrase “equality before the law”, their essence is the creation of unified rules that apply to all subjects who fall under their jurisdiction. The essence of the principle of equality is that the law should be “blind” to social differences between people. This means that the judge, prosecutor and investigator are obliged to ensure that each participant in the process has equal opportunities to exercise their rights and protect their interests. Any undue advantage or restriction granted to one of the parties leads to a violation of this principle, which may result in an unfair decision and undermine public confidence in justice.

## **2. Equality before the law and the court in the field of criminal procedural justice**

As already noted, the essence of legal equality is that there can be no privileges or restrictions based on race, skin color, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, language, or other grounds. The principle of equality of citizens before the law and the court also applies to foreigners, stateless persons and foreign legal entities, who, like citizens of Ukraine, should equally enjoy the right to judicial protection, with exceptions established by law (Article 26 of the Constitution of Ukraine<sup>22</sup>, Articles 7–9 of the Law of Ukraine “On the Judiciary and the Status of Judges”<sup>23</sup>).

In addition, in cases and in accordance with the procedure provided for by the provisions of the Code of Criminal Procedure of Ukraine, certain categories of persons (minors, persons with mental and physical disabilities, etc.) enjoy additional guarantees during criminal proceedings. At first glance, this position contradicts the assertion that everyone is equal before the law and the court. However, the regulatory consolidation of such guarantees cannot be considered a violation of this principle, since the need

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<sup>21</sup> Про затвердження Порядку ведення обліку податків, зборів та інших платежів, єдиного внеску на загальнообов’язкове державне соціальне страхування, внесених на єдиний рахунок. Наказ Міністерства фінансів України від 23.03.2021 № 166. URL: <https://zakon.rada.gov.ua/laws/show/z0667-21#Text>

<sup>22</sup> Конституція України прийнята на п’ятій сесії Верховної Ради України 28 червня 1996 року. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

<sup>23</sup> Про судоустрій та статус суддів. Закон України № 1402-VIII 2 червня 2016 року. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

for their existence is caused by the peculiarities of the legal status of the persons for whom they are provided<sup>24</sup>.

For example, Clause 3, Part 2, Article 52 of the Criminal Procedure Code provides for the mandatory participation of a defense attorney in criminal proceedings against persons who, due to mental or physical disabilities (mute, deaf, blind, etc.), are unable to fully exercise their rights. Paragraph 13 of the Resolution of the Plenum of the Supreme Court of Ukraine (hereinafter referred to as the IIPVSU) dated October 24, 2003 No. 8 “On the Application of Legislation Ensuring the Right to Defense in Criminal Proceedings” clarifies that persons who, due to their physical or mental disabilities, cannot exercise their right to defense themselves should be understood as persons with significant speech defects, sight, hearing, etc., as well as persons who, although recognized as sane, have mental disabilities that prevent them from independently defending themselves against the accusation<sup>25</sup>.

Some doubts may also arise from the norms of criminal procedural legislation that establish a special procedure for criminal proceedings in respect of a separate category of persons: a People’s Deputy of Ukraine; a judge of the Constitutional Court of Ukraine; a professional judge, as well as a juror and a people’s assessor during the time they administer justice; candidate for President of Ukraine; Commissioner of the Verkhovna Rada of Ukraine for Human Rights; Chairman of the Accounting Chamber, his first deputy, deputy, chief controller and secretary of the Accounting Chamber; deputy of the local council; lawyer; Prosecutor General of Ukraine, his deputy (Article 480 of the Code of Criminal Procedure of Ukraine). Meanwhile, this procedure does not create privileges for the specified persons that allow them to violate the law with impunity. It is a mandatory guarantee of the exercise by the specified subjects of their powers, which are determined by the special nature of their activities and the need to protect them from unfounded suspicion or accusation, artificially creating obstacles during the performance of official duties. In the event that the specified category of persons is involved in criminal proceedings on the basis of the law, they are granted the usual procedural rights of a particular subject – a suspect, an accused, etc.

During a trial, both the accused and the victim, as well as the plaintiff and the defendant, have equal procedural rights. This means that each party

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<sup>24</sup> Дерев’яно М.І. Засада рівності перед законом і судом: окремі питання правової природи. Електронне наукове видання «Аналітично-порівняльне правознавство» 2024. С. 609. URL: <http://journal-app.uzhnu.edu.ua/article/view/311301/302528>

<sup>25</sup> Про застосування законодавства, яке забезпечує право на захист у кримінальному судочинстві. Постанова пленуму Верховного суду України № 8 від 24 жовтня 2003 р. URL: <https://zakon.rada.gov.ua/laws/show/v0008700-03#Text>

can present evidence, make motions, provide explanations, and appeal the court's decision.

All persons, regardless of their financial situation, have the right to free legal aid if they need it. This may include a free lawyer (defendant) in criminal proceedings if the suspect or accused cannot afford to pay for his services, or legal advice at free legal aid centers.

The realization of equality in cases where a person does not speak the language of the criminal proceedings requires both timely involvement in the criminal proceedings and providing such a person with a professional interpreter. And it should be supported that it is desirable to do this in a manner similar to the involvement of lawyers through the Centers for the Provision of Free Legal Aid.<sup>26</sup> Although there is indeed no effective legal mechanism for providing interpreters 24/7 through the Centers for the provision of free secondary legal aid, even to persons detained on suspicion who do not speak the language of criminal proceedings, and for providing urgent linguistic assistance to persons under criminal prosecution, for many reasons and due to lack of funds and proper financing in Ukraine so far, which does not exist<sup>27</sup>.

High-ranking officials, civil servants and ordinary citizens are equally responsible for committing offences. This is demonstrated by cases where even those in high positions are held accountable, which underlines the principle of the rule of law and equality of all before the law.

Relevant state bodies and officials must be guided by a specific law, and all individuals subject to this law are equal in its application to them<sup>28</sup>.

The provisions of the law should be applied equally to all, except when objective differences justify differentiation. That is why Article 321 of the Code of Criminal Procedure of Ukraine imposes on the presiding judge the obligation to ensure that the participants in criminal proceedings exercise their procedural rights and obligations, and not to create advantages in the use rights of one of the parties before other participants in the process.

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<sup>26</sup> Рогальська В.В. Регламентация та реалізація права на переклад у контексті забезпечення справедливого судочинства. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2019. № 2. С. 155.

<sup>27</sup> Рогальська В.В. Регламентация та реалізація права на інформування осіб, щодо яких здійснюється кримінальне переслідування, в контексті забезпечення справедливого судочинства: окремі аспекти. *Прикарпатський юридичний вісник*. Випуск 2(23) Том 3, 2018. С. 269.

<sup>28</sup> Конституційний Суд визнав Закон «Про внесення змін до ст. 80 Конституції України» (щодо недоторканості народних депутатів України) конституційним. URL: <https://pravo.org.ua/konstytutsijnyj-sud-vyznav-zakon-pro-vnesennya-zmin-do-statti-80-konstytutsiyi-ukrayiny-shhodo-nedotorkannosti-narodnyh-deputativ-ukrayiny-konstytutsijnym-analiz-vid-ekspertiv-tsprr/>



It should be noted that the equality of participants in the proceedings before the law and the court declared in Part 1 of the commented article is not absolute. The Constitution of Ukraine, other laws, as well as the commented Criminal Procedure Code provide for certain categories of persons involved in criminal proceedings (suspects, accused, witnesses) additional legal guarantees of observance of their rights and freedoms, which other persons in this procedural status do not enjoy. This primarily concerns minors, whose proceedings for committing criminal offenses or socially dangerous acts are carried out in a manner that least disrupts their usual way of life and corresponds to their age and psychological characteristics (see commentary to Chapter 38 of the Criminal Procedure Code of Ukraine)<sup>29</sup>.

As already noted, certain features have been established for proceedings involving persons with physical or mental disabilities, in particular, the mandatory participation of their legal representatives during interrogations – specialists, the mandatory participation of a defense attorney, etc. There are also some features in proceedings involving foreigners (the mandatory participation of an interpreter if they do not speak the language of the proceedings, defender, etc.). In addition, such a measure of securing criminal proceedings as a pretext cannot be applied to minor witnesses and witnesses who are pregnant women, disabled persons of the first or second group, persons who are single-handedly raising children under the age of 6 or disabled children, as well as to persons who, according to the Criminal Procedure Code of Ukraine, are granted certain immunity from giving testimony (Article 65 of the Criminal Procedure Code (Part 3, Article 140 of the Criminal Procedure Code).

Minors are, by definition, less mature than the average adult, so they should not be treated in the same way as an average adult would be treated<sup>30</sup>.

Returning to the question of the category of persons who enjoy additional legal guarantees during criminal proceedings (people's deputies of Ukraine, judges, the Prosecutor General of Ukraine and his deputies, the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, heads of the Accounting Chamber, lawyers, deputies of local councils, etc.), It should be noted that they should be granted these guarantees only in connection with the performance of particularly important or important state or procedural functions. Thus, the specified features are not related to the status of a person and citizen or the status of a participant in the proceedings,

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<sup>29</sup> Науково-практичний коментар Кримінального процесуального кодексу України / За редакцією С. В. Ківалова та С. І. Кравченко. Одеса : Фенікс, 2020. 924 с. ISBN 978-966-928-572-0

<sup>30</sup> Том Бінгем. Правовладдя / за заг. ред. Сергія Головатого; переклад з англ. В Кастеллі та Д. Шкръоби; передмова до українського видання Сергія Головатого. Київ: 2024. С. 55.

but to the nature of the powers assigned to them by law in connection with the performance of such functions.

According to the current Criminal Procedure Code of Ukraine, the specifics of criminal proceedings regarding this category of persons concern the issues of entering information about the committed criminal offense into the ERDR, making an arrest, conducting a search, notifying them of suspicion, choosing a preventive measure, removal from office, from the administration of justice, etc.<sup>31</sup>.

The specifics of the proceedings against some categories of the listed persons are based on the constitutional guarantee of immunity, for example, of people's deputies (Article 80 of the Constitution of Ukraine), and the immunity of judges (Article 49 of the Law of Ukraine "On the Judiciary and the Status of Judges"). Meanwhile, the specified immunity is limited, since in the event of a crime committed by such a person serious, especially serious crime, the law provides for the possibility of their detention during the commission of, or immediately after the commission of such a crime<sup>32</sup>.

In addition, the equality of the subjects of criminal proceedings defined by the criminal procedural legislation before the law and the court does not mean at all that they all have the same rights. This equality should be understood as the equality of rights of subjects of the same rank, provided for in Chapter 3 of the Criminal Procedure Code of Ukraine and the provisions of a number of other laws of Ukraine, for example: "On the Prosecutor's Office"<sup>33</sup>, "On the Bar and Legal Practice"<sup>34</sup>. Therefore, the principle of equality is not identical to the absolute equality of rights for all participants. The procedural status of each person in criminal proceedings (e.g., suspect, victim, witness) determines a unique set of rights and obligations. For example, the right to a lawyer is the exclusive prerogative of the suspect or accused, which is an additional guarantee, and not a violation of the principle of equality.

The concepts of "equal rights", "equal obligations" cannot be equated with the concepts of "equal rights", "equal obligations". Rights or obligations may differ depending on the procedural status of a person (prosecutor, investigator, suspect, victim, etc.).

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<sup>31</sup> Кримінальний процесуальний кодекс України. Закон України № 4651-VI від 13 квітня 2012 року. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

<sup>32</sup> Про судоустрій та статус суддів. Закон України № 1402-VIII 2 червня 2016 року. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

<sup>33</sup> Про прокуратуру. Закон України від 14 жовтня 2014 року № 1697-VII URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>

<sup>34</sup> Про адвокатуру та адвокатську діяльність. Закон України від 5 липня 2012 року № 5076-VI <https://zakon.rada.gov.ua/laws/show/5076-17#Text>

Equality of rights (obligations) means that each participant in criminal proceedings is endowed with rights and bears obligations corresponding to his procedural status. Therefore, the equality of all participants before the law implies a single legal regime that ensures the implementation of their procedural rights, which imposes on the court the obligation not to grant any advantages, that are not stipulated by law, to any of the participants in the proceedings. Any discrimination is also unacceptable. In this regard, the position of a particular participant in criminal proceedings cannot be improved or worsened depending on the race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language, or other personal characteristics of any person (Article 7 of the Criminal Procedure Code of Ukraine).

It should be noted that the provision on the equality of all before the law and the court is based on international norms and principles that have developed standards for the protection of human and civil rights and freedoms in Ukrainian legislation. Such international normative and legal acts are: Universal Declaration of Human Rights of December 10, 1948<sup>35</sup>, International Covenant on Civil and Political Rights of 16 December 1966<sup>36</sup>, International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly on 21 December 1965 and entered into force upon signature by States on 4 January 1969<sup>37</sup>, European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950<sup>38</sup>, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, etc.<sup>39</sup>.

The legislator, implementing the provisions of international legal acts on ensuring human rights and freedoms into domestic legislation, in Article 19 of the Law of Ukraine dated June 29, 2004 “On International Treaties of Ukraine” noted that if an international treaty of Ukraine, concluded in the form of a law, establishes rules other than those provided for in domestic legislation of Ukraine, then the rules of the international treaty of Ukraine

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<sup>35</sup> Загальна декларація прав людини від 10 грудня 1948 Прийнята і проголошена резолюцією 217 А (III) Генеральної Асамблеї ООН від 10 грудня 1948 року. URL: [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text)

<sup>36</sup> Міжнародний пакт про цивільні і політичні права від 16 грудня 1966 року/ URL: [https://zakon.rada.gov.ua/laws/show/995\\_043#Text](https://zakon.rada.gov.ua/laws/show/995_043#Text)

<sup>37</sup> Міжнародна Конвенція про ліквідацію всіх форм расової дискримінації, 1965 р. URL: [https://zakon.rada.gov.ua/laws/show/995\\_105#Text](https://zakon.rada.gov.ua/laws/show/995_105#Text)

<sup>38</sup> Європейська Конвенція з прав людини, від 04.11.1950 р. URL: [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text)

<sup>39</sup> Декларація основних принципів правосуддя для жертв злочинів та зловживання владою. Прийнята резолюцією 40/34 Генеральної Асамблеї від 29 листопада 1985 року. URL: <https://archive.khpg.org/1080460475>

apply<sup>40</sup>. It should be emphasized that this rule is contained in many laws of Ukraine adopted in recent years.

Thus, Ukraine, being a direct member of the world community, has recognized and enshrined at the constitutional and other legislative levels generally recognized principles and international norms regarding human rights and freedoms, including the principle of equality of all people before the law and the court.

Based on certain provisions of international legal acts on the protection of human rights and fundamental freedoms, it should be noted that all persons are equal before the courts, and the enjoyment of the rights and freedoms recognized in these acts must be ensured without discrimination on any grounds – sex, race, color, language, religion, political or other beliefs, national or social origin, membership of a national minority, property status, birth or any other basis.

Equality before the law and the court – applies at all judicial stages, requires the legislator and the entities implementing it to provide participants in legal relations with equal rights to defend their interests and prevent the application of privileges or restrictions on procedural rights. The essence of this principle is to provide them with equal rights and equal obligations before the law regarding participation in the process. Unfortunately, this principle often remains a declaration, since usually the law and truth prevail on the side of those who have power, finances, etc. The principle of equality before the law and the court does not provide for restrictions on the constitutional rights and freedoms of citizens, on the contrary, in cases provided for by law, additional guarantees are established for certain categories of persons. Violation of this principle leads to the adoption of unfair decisions, loss of trust of citizens in state bodies, disrespect for the law. The current socio-political situation and the need to improve criminal procedural legislation require additional research issues of conducting criminal proceedings from the standpoint of equality of all persons before the law and the court. Equality of participants in criminal proceedings imposes on the court the obligation not to provide any advantages to any of the participants in criminal proceedings. Hence, the procedural position of each specific participant in the proceedings cannot be improved or impaired depending on race, color, sex, ethnic and social origin, property status, place of residence, political, religious and other beliefs, language or other grounds. Rights cannot be unduly restricted, however, some rights of participants in the process are determined precisely by their procedural status and the opposing party cannot be granted the same rights. Thus, the plaintiff, unlike

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<sup>40</sup> Про міжнародні договори України. Закон України від 29 червня 2004 року № 1906-IV. URL: <https://zakon.rada.gov.ua/laws/show/1906-15#Text>

the defendant, cannot file a counterclaim, and the right to have a defense attorney is the exclusive prerogative of the suspect, accused, convicted or acquitted. Of course, in such cases there is no question of a violation of this principle. The law is the same for everyone, it is indifferent to the actual differences between people. The law is required to be impartial and “completely blind” to the social differences of people in the legal sphere. The provision on equality before the law and the court applies throughout the entire criminal proceedings. The investigator, prosecutor and judge are obliged to ensure equal opportunity for any citizen to exercise procedural rights, equal opportunity for them to use measures to protect their legitimate rights and interests.

Despite the fact that in Ukraine, criminal liability is established for restrictions on procedural rights depending on racial and national characteristics (Article 161 of the Criminal Code of Ukraine), the implementation of the principle of equality before the law and the court in practice is still not flawless<sup>41</sup>.

Analyzing the issues of implementing the principle of equality of all before the law, Vasylychenko O.P. conditionally divides them into democratic and undemocratic, high-quality and low-quality, fair and unfair, real and fictitious laws. In his opinion, the main criterion for the democratic nature of laws is the completeness of the expression of will people, which is also manifested through the broad participation of the population (civil organizations) in lawmaking (both at the stage of preparing draft laws and during their discussion and adoption). Laws that are adopted without the participation of the population and against the will of the people are undemocratic<sup>42</sup>. Among undemocratic laws, it is worth highlighting the so-called “opportunistic” laws adopted in a specific socio-political situation of the country in the interests of individual political forces, financial and industrial groups, etc. An example of an “opportunistic” law is the recent attempt by the Verkhovna Rada to limit the powers of the Specialized Anti-Corruption Prosecutor’s Office (SAP) and the National Anti-Corruption Bureau of Ukraine (NABU). Such a “opportunistic” legislative initiative aroused public discontent, gave rise to numerous rallies in many regional cities in Ukraine, and brought thousands of people to the streets in Kyiv,

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<sup>41</sup> Цебенко С.Б Рівність громадян перед законом та судом у практиці Європейського суду з прав людини. *Юридичний науковий електронний журнал*. № 9/2021. С. 39. URL: [https://lsei.org.ua/9\\_2021/9.pdf](https://lsei.org.ua/9_2021/9.pdf)

<sup>42</sup> Васильченко О.П. Рівність громадян перед законом як засада демократичної, правової держави. *Право і громадянське суспільство* : електронне видання. 2014. 2(7). С. 19. URL: <http://lclaw.knu.ua/2014-2.pdf>

Lviv, Dnipro, and Odessa<sup>43</sup>. Under public pressure, the Verkhovna Rada canceled its previous decision, and on July 31, 2025, the President of Ukraine signed the Law of Ukraine On Strengthening the Powers of the National Anti-Corruption Bureau of Ukraine and the Specialized Anti-Corruption Prosecutor's Office, adopted by the Verkhovna Rada, thereby restoring the powers and independence of the SAPO and NABU in criminal procedural law<sup>44</sup>.

Each entity in the state must do its own thing. It should not be forgotten that special state bodies have been established to carry out the functions of pre-trial investigation in the fight against financial and corruption offenses, supervision of legality, and justice in relation to such crimes. Their elimination, deprivation of the corresponding rights in the criminal process means the destruction of the state component in purely state activities to combat corruption crimes.

On this issue, it should be emphasized that the reality of a legislative act should be considered in two aspects: as the law's compliance with the objectively existing conditions of social life, and as a material and resource guarantee of the validity of the adopted law.

In particular, domestic legislation partially does not meet the proposed criteria for assessing its effectiveness in terms of ensuring the constitutional principle of equality of all before the law. Therefore, the quality of adopted laws and, indirectly, equality of all before the law, depend not least on: 1) compliance with legislative procedures; 2) the professional level of the legislator; 3) the integrity of legislators and the stability of social relations.

During the preparation and adoption of laws, individual lawyers may insert "legal traps" into their text (non-compliance with the requirements for the form and content of the regulatory act, contradictory provisions, inaccurate terminology, errors).

Such norms allow interested parties to use legislative gaps at their own discretion, which contributes to the violation of constitutional principles, including the principle of equality of all before the law. Due to the fact that laws affect social relations, legislative regulation must correspond to social development, and, if social relations are unstable, then laws will be short-lived and adaptive in nature.

In view of this, it cannot be denied that ensuring the constitutional principle of equality of all before the law and the court is possible primarily

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<sup>43</sup> Верховна Рада ухвалила закон, який обмежує незалежність НАБУ і САП. Це вивело на вулиці тисячі людей. *Радіо Свобода*. URL: <https://www.radiosvoboda.org/uk/parlament-ukhvalyv-zakon-obmezhuje-nezalezhnist-nabu-i-sap/33480793.htm>

<sup>44</sup> Рада ухвалила закон щодо відновлення незалежності НАБУ та САП. *Радіо Свобода*. URL: <https://www.radiosvoboda.org/a/news-rada-nabu-sap/33490936.html>

on condition of adopting high-quality laws. Law and legality are interrelated, and therefore legality in criminal procedural justice can be considered as a legal provision according to which all participants criminal proceedings must comply with the provisions of the criminal procedural law equally.

The essence of the principle of equality is that the law should be "blind" to social differences between people. This means that the judge, prosecutor, and investigator are obliged to provide each participant in the process with equal opportunities to exercise their rights and protect their interests.

Any undue advantage or restriction granted to one of the parties violates this principle, which may result in an unfair decision and undermine public confidence in justice.

In a state that strives to become a state of law, the court must be just that – a court – authoritative, powerful, independent, truly independent. People should see it not as a bureaucratic institution, but as a real guarantor of their rights, a reliable defender of their interests.

Weak protection, ornately, ambiguously stated, contradictory legislative provisions. Deliberate judicial red tape only creates illusions of justice, discrediting the very idea of turning to the court for help, and accordingly, the principle of equality before the law and the court.

## **CONCLUSIONS**

Summarizing the above, it should be noted that: firstly, the principle of equality of all before the law and the court is based on international norms and principles that have developed standards for the observance and protection of human rights and freedoms, and are reflected and legally guaranteed in the provisions of the national legislation of Ukraine; secondly, authorized state bodies and officials must conscientiously be guided by the provisions of the principle of equality before the law and the court, and all participants subject to this law must be equal in the application of its provisions to them; thirdly, the equality of subjects of criminal proceedings before the law and the court does not mean at all that they all have the same rights.

This equality should be understood as the equality of rights of subjects with the same procedural status. Accordingly, the concepts of "equal rights, obligations" are not identical to the concept of "equal rights, and equal obligations".

Since rights and obligations may be different, and this depends on the procedural status of the person (prosecutor, investigator, suspect, victim, witness, etc.); fourthly, the equality of participants in the proceedings before the law and the court is not absolute, the law provides for a separate category of persons (minors, persons who were or are insane, foreigners, etc.) additional legal guarantees to ensure compliance with their rights and freedoms, which

other persons in the same procedural status do not enjoy; Fifthly, such categories of persons as: people's deputies of Ukraine, judges, lawyers, the Prosecutor General of Ukraine, his deputies, the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, heads of the Accounting Chamber, etc., participating in criminal proceedings, should have additional guarantees, if the proceedings concern issues related to the performance by them of particularly important or important state or procedural functions; sixthly, the equality of all participants in the proceedings before the law and the court provides for a single legal regime of proceedings that ensures the exercise of their procedural rights, which imposes on the court the obligation not to grant any advantages not stipulated by law to any of the participants in such proceedings; seventhly, having been proclaimed and normatively enshrined, the principle of equality before the law and the court requires its full and unconditional implementation.

The state must implement the idea of equality in state institutions, in the activities of the courts, prosecutor's office, pre-trial investigation and their officials, in order to overcome legal nihilism in society; and lastly, the quality of the laws adopted, and the equality of all before the law and the court and the extent to which the state is legal, not least depend on: 1) compliance with legislative procedures; 2) the professional level of the legislator himself; 3) the integrity of lawmakers and the stability of social relations.

In general, legislative regulation in the state must correspond to public interests, social development, and if social relations are unstable, then the adopted laws will be short-lived and will be of an adaptive nature.

Ensuring equal rights and opportunities for all participants in the proceedings is not only the duty of the state, but also a key condition for building citizens' trust in the justice system and the rule of law in general.

## **SUMMARY**

The provisions of the national legislation of Ukraine and international legal acts regarding the implementation and observance of the principle of equality before the law and the court are considered.

It is noted that this principle is not absolute for a certain category of persons involved in criminal proceedings, since the legislation provides for additional legal guarantees to ensure their rights and freedoms. It is emphasized that the provision on the equality of all before the law and the court is based on international legal standards, however, the implementation of the principle of equality before the law and the court in practice is not flawless. The quality of adopted laws, the equality of all before the law and the court, not least, also depends on compliance with legislative procedures,



the professional level and integrity of the legislator himself, as well as the stability of social relations. Proposals are provided to improve the provision and observance of the principle of equality before the law and the court in the domestic legal field.

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