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Conceptual Foundations of Criminal Procedure: in Search for Rationale



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The Article is dedicated to the understanding of conceptual foundations of criminal procedure. It is realized by referring to theoretical and methodological foundations of philosophical thought. Thus, the intellectual foundation of the Romano-Germanic legal system is rationalist continental philosophy (Descartes, Spinoza, Leibniz). Meanwhile, the basis of the Anglo-Saxon legal system is the philosophical doctrine of empiricism (Bacon, Hobbes, Locke). The consequence of the indicated difference in theoretical and methodological foundations was a different understanding of truth. If in the continental legal system the objective truth was prevalent, in the case law legal system the truth was reached as a result of adversariality and had a relative nature. Thus, current criminal procedure of post-Soviet countries, which combines features of adversariality and objective truth, requires conceptualization.

Keywords: adversariality, objective truth, rationalism, empiricism, continental legal system, Anglo-Saxon legal system.

Research Problem Formulation. Collapse of the Soviet Union led to the rejection of “rule of Marxism” in all areas of public life. Undoubtedly, law is no an exception. If Soviet legislation was rooted in a legal doctrine developed on the grounds of philosophical and methodological foundations of Marxism, the task of creating legislative-legal system of sovereign states required a new conceptualization.

In search for theoretical basis of the development of new legal regulations, academic theorists and legislators of post-soviet countries predominately turned to the achievements of the Romano-Germanic legal system. As it is known, unlike the Anglo-Saxon legal system, which was based on precedent, the continental approach is founded on the fact that primary source of law is a legislative enactment. In turn, in order to be able to create a legislative act, the lawmaker must clarify objective laws of social relations and reproduce them in a corresponding legal text. In other words, a condition for the possibility of introducing more effective legislation is the ability of the legislator to reach reliable, true knowledge about social processes, that is objective truths. In contrast, law sources of the Anglo-American Legal System are based on theoretical and methodological assumption about specific-situational nature of truth, and thus the impossibility of defined, universal legal norms that would be appropriate always and everywhere.

Thus, it may be assumed that fundamental origins of differences between the Anglo-Saxon and the continental legal systems should be searched for not in specific empirical circumstances, but in the concepts of historically shaped truth. As is known, in the history of philosophy there are two classical ways of approaches to reaching the truth. One of them, called rationalism, derived from the fact that absolute truth is objectively achievable. General ideas inherent in human reason were, a priori, means of reaching it. As a

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**КОНЦЕПТУАЛЬНІ ЗАСАДИ
КРИМІНАЛЬНОГО ПРОЦЕСУ: В
ПОШУКАХ ОБҐРУНТУВАННЯ**

Стаття присвячена осмисленню концептуальних засад кримінального процесу. Це здійснюється через звернення до теоретико-методологічних засад філософської думки. Так, інтелектуальне підґрунтя романо-германської правової системи становить раціоналістична, континентальна філософія (Декарт, Спіноза, Лейбніц). Водночас фундамент англосаксонської правової системи становить філософське вчення емпіризму (Бекон, Гоббс, Локк). Наслідком зазначеної різниці в теоретичних та методологічних засадах стало різне розуміння істини. Якщо в континентальній правовій системі панувала об'єктивна істина, то в прецедентній системі права істина досягалася під час змагальності й носила відносний характер. Відтак сучасний кримінальний процес пострадянських країн, який поєднує в собі риси змагальності та об'єктивної істини, потребує концептуального обґрунтування, адже в пошуках теоретичної бази для розроблення нових нормативно-правових актів учені-теоретики та законодавці пострадянських країн переважно зверталися до здобутків романо-германської правової системи. На відміну від англосаксонської системи права, в основі якої лежить прецедент, континентальний підхід базується на тому, що основним джерелом права є нормативно-правовий акт. Для того, щоб мати змогу створити акт законодавства, суб'єкт правотворчості має з'ясувати об'єктивні закономірності суспільних відносин та відтворити їх у відповідному правовому тексті. Умовою можливості ефективного законодавства є здатність законодавця досягти достовірного, істинного знання про соціальні процеси, тобто об'єктивної істини. На відміну від цього, джерела права англо-американської правової системи базуються на теоретично-методологічному припущенні про конкретно-ситуативну природу істини, а відтак неможливості змістовно визначених, універсальних правових норм, які були б вірними завжди й усюди.

Отже, можна припустити, що фундаментальні витоки відмінностей між англосаксонською та континентальною правовими системами треба шукати не в конкретних емпіричних обставинах, а в концепціях істини, що історично склалися: раціоналізм та емпіризм. Як неважко помітити, подані ґносеологічні моделі лежать в основі загаданих правових систем сучасності: континентальної, що вважає джерелом права загальну норму, закон, та англосаксонської, де право засновано в прецеденті, окремому випадку, якому надається нормативне значення. На рівні окремої галузі права, кримінального процесу, несуперечливе поєднання цих принципів є неможливим, а тому

result, in the course of deduction, the whole diversity of empirical facts seems to be “sifted” through the “sieve” of reason categories, resulting in the form of objective truth: the correspondence of the consciousness content to the cognition object. Supporters of this position were such philosophers of continental Europe as R. Descartes, B. Spinoza, G. Leibniz. On the other hand, representatives of the adversarial philosophical trend – empiricism – claimed that at the core of cognition are not common ideas of reason, but specific facts obtained in the course of experience. Therefore, any truth has not objective-general, but specific and situational nature. Reason, according to J. Locke, is *tabula rasa*,¹ where experience “writes” its history. According to the proponents of empiricism – English philosophers F. Bacon, J. Locke, T. Hobbes – true knowledge should be discovered in the course of induction from an individual case to general conclusions, which, however, are not absolute but only relative in nature. Later on, such views evolved towards the subjective idealism of an Irish philosopher G. Berkeley and the skepticism of a Scotsman D. Hume. It should be emphasized that mentioned epistemological models underlie general legal systems of the present time: the continental, considering the source of law as a general norm, law, and the Anglo-Saxon, where law is based on precedent, individual case, which is assigned normative significance. If in the continental system all facts gathered in a case were to be “sifted” through the “sieve” of the general norm and, following due procedure, to provide the subject of such activity (court, investigation) an absolute, objectively true knowledge on a case, in the Anglo-Saxon legal system, defense and prosecution competed with each other in gathering facts, creating alternative semantic rows and trying to convince the court of the authenticity of their own range of facts.

Article Purpose. Returning to the issue regarding conceptual foundations of legislation, it should be stressed that a positive process of rejecting the theoretical and ideological monopoly of Marxism had its negative side. It manifested itself in those doctrinal gaps which resulted in inconsistencies in legislation. After all, considering the reception of Western models, when some norms and institutions were borrowed from the Romano-Germanic and others from the case law system, conflicts inevitably arose within the legal systems of post-Soviet countries. The indicated tendency most clearly manifested itself while criminal procedure, where the problem of achieving objective truth in the light of a competing adversarial principle has become not theoretical but urgently practical: since criminal prosecution of a person guilty in committing a crime and acquittal of individuals whose guilt is not proved depend on it. Therefore, the introduction of the theoretical and methodological concept of truth corresponding to criminal procedure tasks is the purpose of this article.

Analysis of publications where a solution to the problem is suggested. It should be noted that current Criminal Procedural Codes of most post-Soviet countries explicitly prioritize the adversarial principle of reaching the truth borrowed from the Anglo-Saxon legal system, whereas formerly existing norms of Criminal Procedural Codes of Soviet times stipulated the advantage of the objective truth principle, which was rooted in continental legal understanding. As noted by such scholars as S. V. Slynko, D. S. Slynko, D. V. Filin, the tendency to create conceptual foundations of criminal procedure on the grounds of the Romano-Germanic legal system, has existed in the works of domestic procedural theorists since the late 19th century². Accordingly, adversariality, which inherently belongs to the case law system, comes into doctrinal contradiction with the above-mentioned conceptual

¹ Чиста дошка (лат.)

² Slynko S.V., Slynko D.S., Filin D.V. General and Special Theories of Criminal Procedure // Vestnik Tomskogo gosudarstvennogo universiteta. Tomsk State University Journal, 2021, № 466, p. 249. doi: 10.17223/15617793/466/30



треба звернутися до когерентної концепції істини.

Ключові слова: змагальність, об'єктивна істина, раціоналізм, емпіризм, континентальна правова система, англосаксонська правова система.

A. B. Стовба

КОНЦЕПТУАЛЬНЫЕ ОСНОВЫ УГОЛОВНОГО ПРОЦЕССА: В ПОИСКАХ АРГУМЕНТАЦИИ

Статья посвящена осмыслению концептуальных основ уголовного процесса. Это осуществляется посредством обращения к теоретико-методологическим основаниям философской мысли. Интеллектуальную основу романо-германской правовой системы составляет рационалистическая, континентальная философия (Декарт, Спиноза, Лейбниц). В то же время фундамент англосаксонской правовой системы составляет философское учение эмпиризма (Бэкон, Гоббс, Локк). Следствием указанной разницы в теоретических и методологических основах стало разное понимание истины. Если в континентальной правовой системе господствовала объективная истина, то в прецедентной системе права истина достигалась в ходе состязательности и носила относительный характер. Поэтому современный уголовный процесс постсоветских стран, который соединяет в себе черты состязательности и объективной истины, требует концептуального обоснования. Ведь в поисках теоретической базы для разработки новых нормативно-правовых актов ученые-теоретики и законодатели постсоветских стран преимущественно обращались к достижениям романо-германской правовой системы. В отличие от англосаксонской системы права, в основе которой лежит прецедент, континентальный подход базируется на том, что основным источником права является нормативно-правовой акт. Для того, чтобы иметь возможность создать акт законодательства, субъект правотворчества должен проявить объективные закономерности общественных отношений и отобразить их в правовом тексте. Условием возможности эффективного законодательства является способность законодателя достигнуть достоверного, истинного знания о социальных процессах, то есть объективной истины. В отличие от этого источники права англо-американской правовой системы базируются на теоретико-методологическом предположении о конкретно-ситуативной природе истины, из которой следует невозможность содержательно определенных, универсальных правовых норм, которые были бы верными везде и всегда.

Таким образом, следует предположить, что фундаментальный исток различия между англосаксонской и континентальной правовыми системами следует искать не в конкретных эмпирических обстоятельствах,

principles of the continental system. But jurisprudence, given the norms of law, should not mechanically recreate them, fulfilling a critical function. As a result, a number of distinguished scholars in the former Soviet Union are skeptical towards doctrinal transition from the principle of objective truth to the adversarial principle.

Thus, V.Iu. Shepytko, a famous Ukrainian jurist, academician, addressing the indicated issue, notes that pre-trial investigation should be based on an integrated, full and objective investigation of case circumstances. Fairness while investigation cannot be ensured without establishing (proving) facts reflecting objective circumstances of the event that is the investigation subject³. According to the Ukrainian scientist, the issue of determining purpose and end result of investigation, the desire to establish truth in a case, remain debatable today. There are positions denying the possibility of establishing objective truth in a criminal proceeding or suggesting to replace it with another category: formal truth (procedural, judicial, investigative)⁴. However, as stated by V.Iu. Shepytko, such views are methodologically wrong⁵. Truth in criminal procedure cannot be probabilistic or limited to the type or subject of activity. As a result of investigation and court proceedings, objective truth must be determined, otherwise investigative activity turns out to be irrelevant. An authoritative Russian scientist Ye.Ie. Tsentrov adheres to similar position, who notes that the current Criminal Procedural Code of the Russian Federation abandoned the use of the truth term and opposed it to the adversarial principle of criminal procedure, which is based on confrontation between parties and does not necessarily rely on integrity, objectivity and completeness of collection and due examination of evidence⁶. In turn, another researcher, O.P. Ishchenko, criticizing the Criminal Procedural Code of the Russian Federation, stresses that it has more than just a pronounced competitive nature. Moreover, in his concept, adversariality exists in isolation from objective truth and is even opposed to it⁷. However, establishment of the truth in criminal proceedings is increasingly required. This is its general ultimate goal conditioned by the influence of objective laws. Otherwise, criminal proceedings will be probabilistic, when everything is relative, approximate, conditional, when criminal case seems to be investigated, and sentence seems to be fair⁸. V.S. Burdanova highlights the need for establishing objective truth, emphasizing that it is reached while implementation of the principle of objectivity, integrity and completeness in studying case circumstances⁹.

Supporters of adversariality also provide their arguments. Thus, relativism of the position regarding issues of truth is derived from the fact that legal fact is not an ordinary for us knowledge of natural science type, which objectively and explicitly represents real event, but rather reflection of a complex legal activity¹⁰. In other words, fact in itself is hard acknowledgment of something what is happening with the legally irrelevant. Human interpretation re-

³ Шепитько В. Ю. Реформирование органов досудебного следствия и тенденции криминалистики // Юридическая наука и образование: Вып. 3/2010/ Юридический факультет Белорусского государственного университета. Минск: Право и экономика, 2010. С. 205.

⁴ Там само, С. 206

⁵ Там само, С. 206

⁶ Центров Е. Е. Дидактика криминалистики в свете её дифференциации и интеграции с уголовным процессом // Криминалист первопечатный. № 8. 2014. С.14

⁷ Ищенко Е. П. Об истине в уголовном процессе // Воронежские криминалистические чтения: сб. науч. трудов Вып.1 0 / под ред. О. Я. Баева. Воронеж: издательство Воронежского государственного университета, 2008. С. 189.

⁸ Там само, С. 191.

⁹ Бурданова В. С. Поиски истины в уголовном процессе. СПб.: издательство «Юридический центр-Пресс», 2003. С. 13-16.

¹⁰ Александров А. С. Диспозитив доказывания и аргументация в уголовном судопроизводстве // Российский ежегодник теории права. № 1. 2008. С. 473.

а в концепциях истины, которые сложились исторически: рационализме и эмпиризме. Как несложно заметить, данные гносеологические модели лежат в основе упомянутых правовых систем современности: континентальной, которая считает источником права общую норму, закон, и англосаксонской, где право основано в прецеденте, отдельном случае, которому придается нормативное значение. На уровне отдельной отрасли права, уголовного процесса, непротиворечивое соединение этих принципов невозможно, а потому следует обратиться к когерентной концепции истины.

Ключевые слова: состязательность, объективная истина, рационализм, эмпиризм, континентальная правовая система, англосаксонская правовая система.

Oleksii Stovba

CONCEPTUAL FOUNDATIONS OF CRIMINAL PROCEDURE: IN SEARCH FOR RATIONALE

The article is dedicated to the understanding of the conceptual foundations of criminal procedure. This task is realized through the application of theoretical and methodological foundations of philosophical thought. Thus, the intellectual basis of the Roman-German legal system is rationalist, continental philosophy (Descartes, Spinoza, Leibniz). At the same time, the Anglo-Saxon legal system is grounded on the philosophical trend of empiricism (Bacon, Hobbes, and Locke). The consequence of the mentioned difference in theoretical and methodological foundations is a diverse interpretation of truth. If in the continental legal system dominated the objective truth, in the case law system the truth was reached as a result of adversariality and had a relative nature. In connection with that, modern criminal procedure in post-soviet countries which combines features of the principles of objective truth and adversariality needs to be conceptualized. Since in search for theoretical grounds for elaborating new legal acts, academic theorists and legislators of post-soviet countries predominately turned to the achievements of the Romano-Germanic legal system. Unlike the Anglo-Saxon legal system, which was based on precedent, the continental approach is founded on the fact that primary source of law is legal regulation. In order to be able to create a legislative act, the lawmaker must determine objective laws of social relations and reproduce them in a corresponding legal text. Thus, a condition for the possibility of introducing more effective legislation is the ability of the legislator to reach reliable, true knowledge about social processes, that is objective truth. In contrast, law sources of the Anglo-American Legal System are based on theoretical and methodological assumption about specific-situational nature of truth, and thus the

alized in the course of procedure empowers it exclusively with legal meaning. The theoretical substantiation of such a point of view is the thesis of a distinguished Austrian jurist H. Kelzen, under which the statement that the norm is created by fact is only a figure of speech. Norm is a specific meaning of a fact that is not perceived by our senses, but is the result of interpretation. It is feasible to interpret the meaning of a fact as a norm only under condition that we are stemming from another norm, which endows this fact with the quality of a law-maker; but this, another norm as a result cannot be a positive norm¹¹. In turn, an immensely expressive practical example of this thesis is provided by the lawyer Ye.V. Tymoshyna. Is the fact of money transfer from one person to another at a particular location social? she asks. After all, from the consistent positivist viewpoint, these are simply corresponding movements of the human body to transfer some physical object to each other: cut paper. However, it is possible to understand what this behavioral act is – a bribe, charitable donation, debt repayment or payment for services provided – only in the process of interpreting its meaningful sense¹² subjectively and intersubjectively. Similarly, search for the corpse with signs of violent death does not necessarily point to committed crime, since the diversity of events may vary from premeditated murder to self-defense or incident. And it's not just about assessing what happened. Owing to the fact that neither the investigator nor the prosecutor nor the lawyer nor the judge were at the scene, they can only interpret the evidence in an attempt to picture what happened. In this case, such an interpretation directly depends on the place taken by the interpreter: after all, the prosecution, despite everything, first of all seeks evidence of the suspect's guilt, the defense: exculpatory evidence, etc.

Results and discussion. As a consequence, in the course of adversarial proceedings, the defense and the prosecution put forward their – alternative – models of what's going on, whereas the jury and the court are empowered to decide whose version is more convincing, while they themselves do not undertake any independent activities to collect evidence. According to supporters of adversariality, in search for objective truth the court itself is forced to take one or other position, adherence to which in itself deprives the judge and the jury of the opportunity to objectively assess parties evidence. In the course of adversariality, as stated by A. S. Aleksandrov, the court must choose between arguments of parties, instead of simply giving in to the objective truth of a unified demonstration. This is a qualitative, sometimes ethical choice between two adversarial versions, each of which is supported by specific evidence and therefore involves overcoming sufficient doubts¹³. Accordingly, from the experience of any educated legal practitioner it is well known that legal process is not a predetermined progression of successive logical acts due to which events could be reconstructed with absolute accuracy¹⁴. At the same time, the understanding of the role of evidence changes respectively. While leaving no doubt, if for the proponents of objective truth the latter is considered to be established when there is a full compliance between what was intended and what is determined,¹⁵ then for adherents of adversariality evidence is almost always scarce. In contrast to mathematical demonstration, reconstruction of past events is based on a certain probability, but not absolute certainty¹⁶.

¹¹ Кельзен Г. Наука и политика. Труды Института государства и права РАН. 2020. № 1 (15). С. 192.

¹² Тимошина Е. В. Правовая коммуникация и правовые системы // Труды ИПП РАН. № 4. 2013. С. 65.

¹³ Александров А. С., указ. тв., С. 487.

¹⁴ Александров А. С., указ. тв. С. 482.

¹⁵ Бурданова В. С., указ. тв. С.15.

¹⁶ Александров А. С., указ. тв. С.482.



Thus, it can be emphasized that dichotomy of adversarial nature/ objectivity seems to be unresolvable at the moment: at least in the context of the classical understanding of truth as *adequatio rei ad intellectus*¹⁷. Since, on the one hand, an explicit failure to search for the truth and its replacement by pure relativism of “contractual justice” indicates actual acknowledgment of the possibility of abuses, when a person who agreed to be guilty as a result of coercion, voluntary self-incrimination, bribery, etc. could be sentenced. On the other hand, obliging the court to independently look for evidence of guilt / innocence of the defendant, proponents of objective truth force the court to adhere to a certain position, which in itself already deprives the judge and the jury of the right to distance themselves from case circumstances as much as it would be the key to making objective decision.

Therefore, given the above, it should be concluded that the outlined dilemma (objective truth / adversarial nature) has developed in domestic jurisprudence due to the fact that a dominant adversarial nature (which inherently belongs to another: the Anglo-Saxon legal system) is attempted to be imposed upon the post-Soviet criminal procedure (which belonged to the continental system). From our perspective, the methodological way out of this impasse should be sought in the form of the “third way” that can take us beyond the mentioned dichotomy. Therefore, one should abandon both the concept of objective truth achievable only as an exception in especially favorable circumstances, and relativism in truth issues of adversarial proponents. In our opinion, the way out lies in the area of introduction of the truth concept into procedural matters which has been called “coherent” in science and philosophy.

The theory of coherence was developed in the 20th century by representatives of neo positivism philosophy, Viennese philosophers O. Neurath and R. Carnap. This theory claims that truth lies in coherence of proposals in a particular system. Any new proposal is true if it can be introduced into the system without violating its internal consistency. To be true means to be an element of a consistent system¹⁸.

Such understanding of truth is unexpectedly fruitful for criminal procedure. It has corresponding analogues in the Criminal Procedural Code of Ukraine of 2012. Thus, according to Article 94 of the Criminal Procedural Code of Ukraine, investigator, public prosecutor, investigating judge, court evaluates any evidence from the point of view of adequacy and admissibility in order to take a proper procedural decision. Accordingly, a proper procedural decision is made only in cases when available evidence in case is formed into a consistent system, that is when there is no contradiction between these pieces of evidence, and which could not be adequately explained. As authors of the comment to Article 94 of the Criminal Procedural Code of Ukraine note, relationship between pieces of evidence demonstrates their mutual coherence with each other, absence of contradictions between them which would not be clearly and logically discussed¹⁹.

It should be emphasized that a starting point for the development of such – inconsistent system of evidence – is a source presumption, a peculiar version that, according to the subject of evaluation, must confirm relevant pieces of evidence. Depending on the one who carries out such evaluation (prosecution, defense, court), it may be a presumption of guilt, innocence of a person, presumption of presence or absence of crime event, etc. In any case, this presumption: so to speak the working hypothesis must be able to organize the whole set of facts in a case into a consistent system. At the same

impossibility of defined, universal legal norms that would be appropriate always and everywhere.

Therefore, it should be assumed that fundamental origins of the difference between the Anglo-Saxon and continental legal systems are not determined by specific, empirical circumstances, but by historically established concepts of truth: rationalism and empiricism. As may be noted, mentioned epistemological models underlie general legal systems of the present time: the continental, considering the source of law as a general norm, law, and the Anglo-Saxon, where law is based on precedent, individual case, which is assigned normative significance. At the level of an individual branch of law: criminal procedure, consistent coexistence of the indicated principles is impossible. Due to this fact we need to elaborate the coherent concept of truth.

Keywords: adversariality, objective truth, rationalism, empiricism, continental legal system, Anglo-Saxon legal system.

Oleksii Stovba

FONDAMENTAUX CONCEPTUELS DE PROCÉDURE PÉNALE: EN RECHERCHE DE JUSTIFICATION

L'article est consacré à la compréhension des fondements conceptuels de la procédure pénale. Cela se fait en se référant aux fondements théoriques et méthodologiques de la pensée philosophique. La base intellectuelle du système juridique romano-germanique est la philosophie rationaliste et continentale (Descartes, Spinoza, Leibniz). Parallèlement, le fondement du système juridique anglo-saxon est constitué par les enseignements philosophiques de l'empirisme (Bacon, Hobbes, Locke). La conséquence de cette différence dans les fondements théoriques et méthodologiques était une compréhension différente de la vérité. Si, dans le système juridique continental, la vérité objective prévalait, alors dans le système juridique précédent, la vérité était obtenue au cours d'une procédure contradictoire et était de nature relative. Par conséquent, le processus pénal moderne des pays post-soviétiques qui combine les caractéristiques de la vérité contradictoire et objective, nécessite une justification conceptuelle. Après tout, à la recherche d'une base théorique pour l'élaboration de nouvelles réglementations, les théoriciens et les législateurs des pays post-soviétiques se sont principalement tournés vers les réalisations du système juridique romano-germanique. A la différence du système juridique anglo-saxon, qui reposait sur des précédents, l'approche continentale repose sur le fait que la source principale du droit est un acte juridique normatif. Pour pouvoir créer un acte législatif,

¹⁷ Відповідність речі нашим уявленням (лат.).

¹⁸ Философский словарь / Под ред. И. Т. Фролова. 7-е изд., перераб. и доп. М.: Республика, 2001. С. 250.

¹⁹ Науково-практичний коментар КПК України: у 4 т. / За ред. О. В. Стовби. Харків: 2013. Т.1. С. 281.

le sujet législatif doit clarifier les lois objectives des relations sociales et les refléter dans le texte juridique. Par conséquent, la condition de la possibilité d'une législation efficace est la capacité du législateur à acquérir une connaissance fiable et véritable des processus sociaux, c'est-à-dire une vérité objective. En revanche, les sources du droit du système juridique anglo-américain reposent sur l'hypothèse théorique et méthodologique de la nature situationnelle concrète de la vérité, d'où découle l'impossibilité de normes juridiques significatives et universelles qui seraient vraies partout et toujours.

Ainsi, il faut supposer que la source fondamentale de la différence entre les systèmes juridiques anglo-saxons et continentaux ne doit pas être recherchée dans des circonstances empiriques spécifiques, mais dans les concepts de vérité qui se sont développés historiquement – le rationalisme et l'empirisme. Comme il est facile de le remarquer, ces modèles épistémologiques sous-tendent les systèmes juridiques d'aujourd'hui mentionnés – continental, qui considère la source du droit comme une norme générale, et anglo-saxon, où le droit est basé sur un précédent, un cas séparé, qui reçoit une signification normative. Au niveau d'une branche distincte du droit – la procédure pénale, une combinaison cohérente de ces principes est impossible et nous devons donc nous tourner vers un concept cohérent de vérité.

Mots-clés: esprit de compétition, vérité objective, rationalisme, empirisme, système juridique continental, système juridique anglo-saxon.

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KONZEPTIONELLE GRUNDLAGEN DES STRAFPROZESSES: AUF DER SUCHE NACH BEGRÜNDUNG

Der Artikel widmet sich dem Verständnis der konzeptionellen Grundlagen des Strafverfahrens. Das geschieht durch den Rückgriff auf die theoretischen und methodischen Grundlagen des philosophischen Denkens.

Die intellektuelle Grundlage des römisch-germanischen Rechtssystems ist also eine rationalistische, kontinentale Philosophie (Descartes, Spinoza, Leibniz). Die Grundlage des angelsächsischen Rechtssystems ist zugleich die philosophische Lehre des Empirismus (Bacon, Hobbes, Locke). Die Folge dieses Unterschiedes in theoretischen und methodischen Prinzipien war ein unterschiedliches Verständnis der Wahrheit. Wenn die objektive Wahrheit im kontinentalen Rechtssystem vorherrschte, wurde die Wahrheit im präjudiziellen Rechtssystem beim streitigen Charakter erreicht und war relativ. Daher benötigt der moderne Strafprozess postsowjetischer

time, if one or more pieces of evidence deviate from this system, contradict the starting point of consolidation of facts into a single cohesive unit, and this contradiction cannot be logically eliminated, the system itself is subject to revision. Thus, for example, if the version about a person's guilt in the murder confirmed by a number of evidence pieces does not include an alibi attested by witnesses, and this alibi cannot be disproved, a corresponding system – the sum of collected evidence in a case – is subject to revision based on another presumption. It should be stressed that the material basis for formation of such a – consistent – system of evidence is the activity of collecting required factual data. As is widely known, previously the relevant activity was allocated in particular to the court, which in certain cases was obliged to entrust conduct of investigative actions (Article 315-1 of the Criminal Code of Ukraine of 1960) to pre-trial investigation agencies, refer a case for additional investigation, etc. Meanwhile, the current Criminal Procedural Code of Ukraine excludes the court from the list of people authorized to collect evidence, entrusting their collection to the prosecution and the defense, the victim, a representative of the legal entity who is subject to criminal proceedings (Part 1, Article 93 of the Criminal Procedural Code). The procedure of referring a case for additional investigation is also annulled. Does it mean that the court must fully relativize the truth of the trial, contenting itself with what parties have provided it? This question should be answered negatively. Thus, according to Part 3, Article 333 of the Criminal Procedural Code of Ukraine dated on 2012, the court at the request of criminal proceeding parties has the right to entrust the pre-trial investigation body the conduct of particular investigative actions if during the trial there is a need to establish or review circumstances significant for a case and they cannot be determined or reviewed otherwise. In case if sufficient evidence for proving a person's guilt is not established, and opportunity for obtaining them are exhaustive, the court does not acquit, but adopts a decree to suspend a criminal proceeding (Paragraph 3, Part 1, Article 284 of the Criminal Procedural Code) on the grounds cited. Therefore, in the light of these rules, the court should not blindly adhere to statements of parties, but critically examine them, accepting only the version that most convincingly (in a logical-consistent way) binds together the entire sum of available facts. If none of the standpoints of parties correspond to these criteria, the court has the right to invite parties to collect additional evidence in order to determine questionable circumstances. Finally, it can be stressed that indicated norms strike a reasonable balance between the adversarial principle and objective truth in favor of the principle that can be called the coherence principle.

Conclusions. To summarize the above, in search for conceptualization of the domestic legal system in general and criminal procedure in particular, we tried to observe the evolution of philosophical and methodological foundations of both the continental and the Anglo-Saxon legal systems. If the first is rooted in the rationalist concept of objective truth, the second is based on empirical philosophy viewing any truth as a relative rather than an absolute phenomenon. Therefore, implementation of the adversarial principle in the norms of the Criminal Procedural Code, which is anchored in the relative, empirical concept of truth, inevitably is in doctrinal contradiction with the objective truth principle, being a cornerstone of the continental legal system. The way out of this fundamental legal conflict is to implement the coherent concept of truth in the procedural law. It is aimed at looking for a logically consistent interpretation of legal facts in their totality and therefore enables to find the best solution to the above-mentioned doctrinal and methodological issues.

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Länder, der die Merkmale des streitigen Charakters und der objektiven Wahrheit verbindet, eine konzeptionelle Begründung, denn Theoretiker und Gesetzgeber postsowjetischer Länder wandten sich auf der Suche nach einer theoretischen Grundlage für die Entwicklung neuer Rechtsvorschriften meist an die Errungenschaften des römisch-germanischen Rechtssystems. Im Unterschied zum angelsächsischen Rechtssystem, das auf dem Präzedenzfall basiert, basiert der kontinentale Ansatz darauf, dass die Hauptquelle des Rechts ein normativer Rechtsakt ist. Um einen Rechtsakt schaffen zu können, muss der Rechtssubjekt die objektiven Gesetzmäßigkeiten der gesellschaftlichen Verhältnisse feststellen und sie im entsprechenden Rechtstext wiedergeben. Die Voraussetzung für die Möglichkeit wirksamer Gesetzgebung ist die Fähigkeit des Gesetzgebers, eine sichere, wahre Kenntnis gesellschaftlicher Prozesse, d. h. objektive Wahrheit, zu erreichen. Demgegenüber basieren die Rechtsquellen des angloamerikanischen Rechtssystems auf der theoretischen und methodischen Annahme der spezifischen Situationsnatur der Wahrheit und auf der Unmöglichkeit sinnvoller, universeller Rechtsnormen, die immer und überall gelten würden.

Wir können also vermuten, dass die grundlegenden Quellen der Unterschiede zwischen angelsächsischem und kontinentalem Rechtssystem nicht in spezifischen empirischen Umständen, sondern in den Konzepten der historischen Wahrheit – Rationalismus und Empirismus – zu suchen sind. Wie leicht zu erkennen ist, liegen die angegebenen erkenntnistheoretischen Modelle den genannten Rechtssystemen der Gegenwart: dem kontinentalen Rechtssystem, das die Rechtsquelle als allgemeine Regel, Gesetz betrachtet, und dem angelsächsischen Rechtssystem, in dem das Recht auf dem Präzedenzfall, Sonderfall, dem normative Bedeutung zukommt, basiert, zugrunde. Auf der Ebene eines eigenen Rechtsgebiets, der Strafprozessordnung, ist eine konsistente Kombination dieser Prinzipien nicht möglich, deshalb müssen wir uns einer kohärenten Wahrheitskonzeption zuwenden.

Schlüsselwörter: streitiger Charakter, objektive Wahrheit, Rationalismus, Empirismus, kontinentales Rechtssystem, angelsächsisches Rechtssystem.