

Grounds for acquittal in criminal proceedings under Ukrainian legislation in conditions of national and international tendencies of amplification of legal state

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Abstract. Despite the fact that studies of problematic issues of theory and practice of acquittal in the Ukrainian criminal proceedings has always been in the field of view of both domestic and foreign scholars, the study of respective issues has become particularly relevant upon adoption of the 2012 CPC of Ukraine.

Today, the scientific community ignores studying interinstitutional legal nature of grounds for acquittal in criminal proceedings, provided for in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine. Therefore, the article analyzes the main features of distinguishing grounds for acquittal, provided for in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine in terms of their interinstitutional legal nature.

As a result of the scientific research, it has been established that grounds for delivering judgment of acquittal provided for by the respective articles of the CPC of Ukraine should be distinguished not by content but by the method of their establishing in criminal proceedings (by mechanism of their finding by the court in criminal proceedings). It is argued that acquittal of a person may occur with application of criminal procedural rules of different and independent institutions of criminal procedural law - criminal proceeding closure and trial. Despite the fact that although the respective grounds for acquittal are identical in content, their legal

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nature and method of establishing in criminal proceeding differ and stem from two independent forms of criminal proceeding completion. These forms cannot be combined if the accused commits a single criminal offense. The article reveals that foreign criminal procedural doctrine generally distinguishes two types of acquittals delivered in criminal process, depending on the type of the judge's doubt on the person's guilt in committing a criminal offense.

The article uses the dialectical method of scientific cognition, as well as general scientific and special legal methods of cognition.

Keywords: acquittal, unproven grounds, establishment of grounds, standard of proof, doubt, criminal proceedings.

1. Introduction

Formation and development of a state primarily depends on the quality of human rights and freedoms promotion. It is no secret that human rights, freedoms and interests are most restricted in criminal justice. Interference with a person's private life, violation of inviolability of a person's dwelling, unlawful restriction of a person's right to liberty and security, restriction of other fundamental human freedoms provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the Constitution of Ukraine are the most common violations that happen to be made or allowed by the state (its representatives) during criminal proceedings. These are so-called "overt" violations occurring due to direct delinquency.

However, it seems there may be a group of violations of human rights in criminal proceedings, which cannot be immediately classified as unlawful interference by the state. In particular, this concerns the person's right to a fair trial, to application of due process of law in criminal proceedings and to proper exercise of the presumption of innocence.

The number of acquittals passed by courts upon criminal proceedings can serve as a qualitative indicator showing how the state ensures exercise of the rights of the accused in criminal process. Unfortunately, this indicator remains consistently low in Ukraine today. In particular, according to statistics of the State Judicial Administration of Ukraine, 306 acquittals were passed within Ukraine that have come into force in 2016, 314 acquittals in 2017, 311 in 2018, 140 in 2019, 171 in 2020, and courts of Ukraine passed 179 acquittals that have come into force in 2021. As we can see, the number of acquittals that have entered into force for the last three years (2019 – 2021) does not reach even 200 throughout Ukraine.

Condition of a person's acquittal in criminal process and their rehabilitation have been studied earlier⁴. At the same time, reasons for a consistently low level of acquittals in Ukraine were investigated but the situation was not actually changing.

Adoption and implementation of the Criminal Procedure Code of Ukraine in 2012 (hereinafter referred to as the CPC of Ukraine) had to be the "light at the end of the tunnel", which would put an end to an unjustifiably low level of acquittals. Great hopes were placed on this law, since it undoubtedly strengthened significantly adversarial elements of mixed form of the criminal process in Ukraine in force before its adoption, although the law did not change this mixed form. First of all, this concerned ensuring the right of defense for the suspect, the accused and maximizing implementation of adversarial principle during criminal proceedings consideration. In addition, "emphases" in implementation of procedural functions assigned to the parties and the court during the criminal proceedings have shifted significantly.

⁴ MAZUR, M. "Defense of rights and legal interests of rehabilitated people in criminal procedure". Academic Advisor: Andrij Pavlyshyn. Academy of Advocacy of Ukraine, Kyiv, Ukraine, 2012.

Of course, given traditions of the legal system and form (model) of the criminal process in Ukraine, court, by its role in criminal proceedings, cannot acquire only features of a "passive arbitrator" under the 2012 CPC of Ukraine, however, unambiguous and indisputable is the fact that the court currently has no active "means" to fill the gaps in evidentiary activity of the prosecution. Therefore, if the evidence gathered by the prosecution is not sufficient to prove the prosecution, the court must pass an acquittal in criminal proceedings. Taking judicial statistics of acquittals within Ukraine during 2016 – 2021 (during the effect of the 2012 CPC of Ukraine) into account, a rhetorical question arises: is the acquittals level predetermined by "perfect" work of the prosecution during the criminal proceedings? It is obvious that statistics of acquittals in criminal proceedings within Ukraine is "achieved" not only owing to the prosecution.

However, without going into the study of global determinants of the above level of judicial statistics, it can be argued that a significant role in ensuring exercise of human rights in criminal procedure and maximal implementation of elements of the adversarial model of criminal process (which allows achieving a higher level of acquittals in Ukraine) is played not only by existence of an effective mechanism of criminal procedural regulation, but also by proper interpretation and application of criminal procedural norms as one of the elements of the respective mechanism.

Thus, both in domestic and foreign doctrine, scientific community focuses on studying the institution of acquittal in criminal procedure taking the interdisciplinary approach (in particular, criminal and procedural aspects of acquittal are analyzed) into account, analyzing the role of reasonable doubt in the course of acquittal, and investigating the issue of possibility of acquittal at different stages of criminal proceedings⁵. Scholars pay special attention to studying the standard of proof "beyond any reasonable doubt" and the problem of possible acquittal of "guilty persons" in criminal proceedings⁶. Researchers also analyze the place and significance of acquittals in the system of procedural decisions taken in the course of criminal proceedings⁷. A separate research direction of acquittal institution in criminal proceedings is peculiarities of passing acquittals by a jury⁸. Equally interesting is the study carried out in foreign scientific doctrine (Uruguay) on legal possibility of convicting an accused by a court after the prosecutor's office final speech aimed at acquitting the person, which, in fact, violates not only prosecution principles in criminal proceedings, but also adversarial background⁹.

Therefore, despite the fact that studies of problematic issues of theory and practice of acquittal in the Ukrainian criminal proceedings has always been in the field of view of both domestic and foreign scholars, the need in study of respective issues has become particularly relevant upon adoption of the 2012 CPC of Ukraine. In particular, inter-institutional aspect of the grounds for acquittal in criminal proceedings provided for in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine is currently left beyond consideration by the scientific community.

⁵ KURLEMANN, P. J., et al. "The Acquittal (After Pretrial Detention) – a Rare but Fascinating Phenomenon of the Criminal Justice System", *European Journal of Crime, Criminal Law and Criminal Justice*, 2019, Vol. 27(4), p. 346-362.

⁶ DEI VECCHI, D. M. "Laudan's error: Reasonable doubt and acquittals of guilty people", *The International Journal of Evidence & Proof*, 2015, Nº 24 (3), p. 211-232;
 SLYUSARCHUK, Kh. "Implementation of the standard of proof "beyond a reasonable doubt" in the criminal proceedings of Ukraine", *Visegrad Journal on Human Rights*, 2016, Vol.2 (2), p. 148-153.

⁷ ABAL OLIÚ, A. "Classification of Judicial Decisions", *Revista de la Facultad de Derecho*, 2016, Nº 40, p.13-49. ISSN 0797-8316.

⁸ NEPVEU, K. H. "Beyond «Guilty» or «Not Guilty»: Giving Special Verdicts in Criminal Jury Trials", *Yale Law & Policy Review*, 2003, Nº 21, p. 263-300.

⁹ GARCIA, R. de D. "Verdade Real e a Impossibilidade de Condenação após Manifestação do Ministério Público por Absolvição", *Revista Brasileira De Direito Processual Penal*, Nº 3(3), p. 1043-1070. <https://doi.org/10.22197/rbdpp.v3i3.81>

In addition, there is no unified approach to understanding the mechanism of finding (establishing) grounds for acquittal in criminal proceedings by the court in criminal procedural science of Ukraine and judicial practice till nowadays, which leads to the court using two different and independent forms of criminal proceedings completion (passing an acquittal based on results of a simple general court proceeding (trial) and passing an acquittal with application of rules of criminal proceedings closure institution). Therefore, the questions of determining the legal nature of grounds for acquittal using various forms of criminal proceedings completion, as well as possible functioning of two types of acquittals passed based on "unproven guilt" and "established innocence" in the domestic mixed form of criminal proceedings require thorough scientific substantiation.

Thus, the respective research is aimed at establishing differences and differentiating grounds for acquittal under Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine, taking into account their inter-institutional aspect (acquittal of a person with application of criminal procedural norms of different and independent institutions of criminal procedural law).

2. Materials and methods

Methodological basis of this collective scientific research is a dialectical method of scientific cognition of social phenomena.

General scientific and special legal methods of cognition have been used in the course of the current scientific research. In particular, analysis method was used to study in detail the grounds for acquittal in criminal proceedings in Ukraine, which made it possible to explore scientific positions distinguishing of acquittal types in criminal proceedings. Moreover, the use of synthesis as a scientific cognition method allowed identifying the types of mechanism for cognition of grounds for acquittal in criminal proceedings.

Generalization, as a method for scientific phenomena cognition, was used to form and develop new scientific approaches, proposals re proper use of independent forms of criminal proceedings closure by acquittals as dictated by independent grounds provided by these forms based on positions and opinions already existing in scientific literature on criminal procedure. In addition, by using the appropriate method of cognition, application and understanding of criminal procedural norms establishing grounds for acquittal in criminal proceedings in various forms of criminal proceeding closure by law-enforcer has been improved.

The use of structural-functional method of cognition revealed links between individual grounds for acquittal in criminal proceedings and their importance for formation of knowledge about the circumstances of criminal proceedings, as well as the interrelation of acquittal institution in criminal proceedings with other criminal procedural rules, including those establishing evidentiary rules in criminal proceedings. At the same time, application of structural-functional method contributed to separation of criterion of delimitation of the grounds for acquittal provided for in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine.

Use of dogmatic or special-legal method of cognition equally facilitated achieving the research goal. It revealed a mechanism for the court finding grounds for a person's acquittal (passing acquittal judgment) in criminal proceedings. In turn, hermeneutic method was used to interpret the content of criminal procedural norms enshrining grounds for acquittal in criminal proceedings at the legislative level.

A comparative legal method of cognition was used in the process of comparing norms of national criminal procedural legislation with the respective norms of foreign legislation on acquittals in criminal proceedings, as well as with practice of the Supreme Court and the European Court of Human Rights. In addition, the appropriate method of scientific cognition was used to compare different legal positions of both domestic and foreign criminal procedural doctrine on passing acquittals and person rehabilitation in criminal proceedings.

It seems impossible to carry out proper and well-founded scientific research of any legal phenomena (objects) without historical and legal method of cognition. This method of cognition made it possible to analyze the history of acquittal institution in criminal proceedings, in particular in terms of consolidating a list of grounds for acquittal in criminal proceedings and separation of types of acquittals in criminal proceedings. Furthermore, tendencies of acquittal institution development in criminal proceedings in the context of national and international tendencies of introduction and improvement of competitive form of criminal process have been analyzed and singled out using this method.

Statistical method of cognition was used to analyze and summarize empirical material of scientific research, law enforcement practice, as well as data from official judicial statistics related to the subject of this scientific research.

Empirical basis for the research was comprised of materials of the Unified State Register of Judgments, practice of the Supreme Court and the European Court of Human Rights, rulings of the Ukrainian courts, as well as judicial statistics of the State Judicial Administration for the period 2016-2021.

3. Results and discussions

3.1. "Proven" or "established" in the grounds for acquittal in criminal proceedings under Ukrainian legislation?

A person is acquitted in criminal proceedings of Ukraine exclusively by court through passing an acquittal on the grounds provided for in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine.

Pursuant to part 1 of Art. 373 of the CPC of Ukraine, judgment of acquittal shall be delivered, **unless it was proved that:**

- 1) criminal offence was committed in which a person is accused;
- 2) criminal offence was committed by the defendant;
- 3) the act committed by the defendant contains elements of crime ¹⁰.

At the same time, the legislator stipulates that judgment of acquittal shall also be delivered if the court establishes grounds for closing the criminal proceeding, as set out in cl. 1 and cl. 2 part 1 of Art. 284 of the CPC of Ukraine. In particular, criminal proceedings shall be closed in court by acquittal if:

- 1) absence of occurrence of criminal offence **has been established**;
- 2) absence of elements of criminal offence in the act concerned **has been established** ¹¹.

Based on the initial and literal interpretation of the above rules, relevant grounds for acquittal seem to be identical at first. But is this really so? Thus, a question arises: what is the difference between grounds for delivery of judgment of acquittal in cases provided for in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine? Has the legislator made a mistake and enshrined grounds of the same legal nature and content for judgment of acquittal in different articles of the criminal procedure law?

These questions can be answered based on the results of a literal analysis of the content (semantics) of the words used by the legislator in the relevant articles of the CPC of Ukraine.

As we can see, the legislator puts the same meaning into the grounds set out in subcl. 1-2 of part 373 of the CPC of Ukraine and subcl. 1-2 of part 1 of Art. 284 of the CPC of Ukraine. In essence, these are the same grounds for delivering judgment of acquittal in different institutions of criminal procedural law, the first

¹⁰ UKRAINE. Law of Ukraine, Criminal Procedure Code of Ukraine. Vidomosti of the Verkhovna Rada of Ukraine, 13 April 2012, N° 4651-VI, 474 p.

¹¹ UKRAINE. Law of Ukraine, Criminal Procedure Code of Ukraine. Vidomosti of the Verkhovna Rada of Ukraine, 13 April 2012, N° 4651-VI, 474 p.

ones – for delivery judgment based on trial results of criminal proceedings, the second – for criminal proceedings closure by acquittal.

Taking interinstitutional nature of the respective grounds for acquittal into account, it appears that the grounds for a person's acquittal in criminal proceedings should be distinguished not by content but by the manner in which they are set in criminal proceedings. Distinctive feature of the grounds for acquittal stipulated in Art. 284 of the CPC of Ukraine and the grounds for acquittal, which provided for in Art. 373 of the CPC of Ukraine, is the mechanism for their finding by the court in criminal proceeding. We can make such a conclusion based on the same "verbal surgery" of dispositions of respective articles of the CPC of Ukraine.

In part 1 of Art. 373 of the CPC of Ukraine, the legislator clearly points out that the grounds for delivering judgment of acquittal in criminal proceedings shall be found by the court upon "**failure to prove**" the facts mentioned therein. In turn, the grounds provided for in part 1 of Art. 284 of the CPC of Ukraine, are recognized by the court upon "**establishment**" ("**detection**"). But are not the respective concepts identical?

Actually, in the context of everyday cognition of phenomena (circumstances, events, etc.) it can be argued that "establishment" can occur by "failure to prove", and vice versa, "failure to prove" anything means "establishment of its absence" or "establishment of the opposite". However, these concepts have different legal nature in legal knowledge "coordinates system".

Finding grounds for delivering judgment of acquittal by the court by "**... if it has not been proved that...**" (**unproven presence**) is not identical to the method of cognition "**... if absence of ... has been established**". Unproven commission of a criminal offense the person is accused of and unproven presence of criminal offense in the act of the accused under Art. 373 of the CPC of Ukraine provides that the prosecution has failed to reach the required proving level according to the standard of proof "beyond any reasonable doubt".

Therefore, grounds for delivering judgment of acquittal under Art. 373 of the CPC of Ukraine by mechanism of their finding by the court in criminal proceedings are focused on achieving target level for burden of proof by the prosecution. This means that the prosecution has fulfilled its burden of proof at a level that left "doubts in conviction" of the judge in proving the prosecution (circumstances of the fact in proof), which in turn means failure to reach the standard of proof "beyond any reasonable doubt" under Art. 17 of the CPC of Ukraine.

Pursuant to part 2 of Art. 17 of the CPC of Ukraine, "no one shall be required to prove their innocence of having committed a criminal offence and *shall be acquitted unless the prosecution proves their guilt* beyond any reasonable doubt." Therefore, grounds for the acquittal set out in part 1 of Art. 373 of the CPC of Ukraine, are directly connected to the foundation of criminal proceedings – the presumption of innocence and ensuring proof of guilt, which was normatively consolidated in Art. 17 of the CPC of Ukraine. Therefore, the legislator called the respective foundation of criminal proceedings as "ensuring proof of guilt"!

A logical question may arise: why didn't the legislator name the respective foundation of criminal proceedings as "ensuring establishment guilt"? In the context of international tendencies of criminal procedural regulation mechanism improvement, the above legislator's stance are defining and enshrining the name of the corresponding principle of criminal proceedings seems quite justified and corresponding to proper implementation of adversarial form of criminal process.

The Constitutional Court of Ukraine in its ruling No. 1-r/2019 dated February 26, 2019 in the case of compliance with the Constitution of Ukraine (constitutionality) of Art. 368-2 of the CC of Ukraine noted that "in dubio pro reo" principle, according to which all doubts about the guilt of a person are interpreted in favor of their innocence in assessing the evidence is an element of the

presumption of innocence. The presumption of innocence implies that the *burden of proof* is borne by the state ¹².

At the same time, according to part 1 of Art. 17 of the CPC of Ukraine, a person is considered innocent of the commission of a criminal offence and may not be imposed a criminal penalty unless their guilt is *proved* in accordance with the procedure prescribed in the CPC of Ukraine is *established* in the court judgment of guilt which has taken legal effect.

Therefore, guilt of a person is being "proved" by the prosecution and "established" by court in criminal proceedings. Thus, application of such legislative technique by the legislator provides for and outlines functions performed by the prosecution and the court in criminal proceedings. The prosecution's function is to prosecute criminally, the court's function is to administer justice.

It should be noted that under the 1960 CPC of Ukraine, the legislator used other legislative technique at normative consolidation of the grounds for delivering judgment of acquittal. In particular, pursuant to part 4 of Art. 327 of the 1960 CPC of Ukraine, acquittal judgment was delivered in cases where the case of crime has not been *established*, when *no* corpus delicti has been found in the act of the defendant, as well as when participation of the defendant in commission of the crime has not been proved ¹³.

At present, the Supreme Court in its resolution as of October 3, 2019 in case No. 760/5721/16 stated that in fulfilling its professional duty under Art. 92 of the CPC of Ukraine, the prosecution must prove with proper, admissible and reliable evidence in court there is a single version by which a reasonable and impartial person can explain the facts established in court, namely – guilt of a person in committing a criminal offense they were charged with ¹⁴.

Each and every element that is important for legal qualification of the act must be proved beyond any reasonable doubt: both forming the objective side of the act and defining its subjective side. Reasonable doubt is an insurmountable doubt remaining in investigator, prosecutor, investigating judge, court concerning guilt of the accused or the defendant after comprehensive, full, and objective study of the case's circumstances. Presence of a reasonable doubt re the charge's validity will prevent any impartial person thinking with due reason and conscience from finding the accused guilty ¹⁵.

Having analyzed decision of the European Court of Human Rights in the case "Korobov v. Ukraine", we can conclude that there may be some doubts for each piece of evidence during its evaluation but if this doubt is not reasonable, judgment of guilt can not be delivered ¹⁶.

In turn, grounds for delivering judgment of acquittal under Art. 284 of the CPC of Ukraine, namely: **establishing absence** of occurrence of criminal offence and **establishing absence** of criminal offense in the act of a person provide for "veracity" of these circumstances (grounds veracity). It means there is no "gradation" in fulfillment level of burden of proof, as well as in doubt in the judge's belief in the court finding grounds for acquittal by "establishing" grounds for delivering judgment of acquittal in the institution of criminal proceeding closure. Thus, the court delivers judgment of acquittal on the grounds provided for in Art. 284 of the CPC of Ukraine not using the standard of proof "beyond any reasonable doubt."

¹² UKRAINE. Ruling of the Constitutional Court of Ukraine, N° 1-r/2019, 26 February 2019.

¹³ UKRAINE. Law of Ukraine, Criminal Procedure Code of Ukraine. Vidomosti of the Verkhovna Rada of Ukraine, 13 April 2012, N° 4651-VI, 474 p.

¹⁴ UKRAINE. Resolution of the Supreme Court, in case N° 760/5721/16, 3 October 2019; NOR, V., et.al. Constitution of Ukraine: Scientific and practical comment. Kharkiv: Pravo, 2011, p. 460-462.

¹⁵ UKRAINE. Resolution of the Supreme Court, in case N° 760/5721/16, 3 October 2019.

¹⁶ EUROPEAN COURT OF HUMAN RIGHTS. Korobov v. Ukraine Application N° 37466/04, 20 May 2010.

An example of application of the above grounds for delivering judgment of acquittal may be a situation when the trial establishes that the person has not reached the age of criminal responsibility, which automatically implies the absence of criminal offense in the person's actions and the court's obligation to deliver judgment of acquittal. Therefore, in the outlined situation, there is no "gradation" of the burden of proof by the prosecution. It is impossible to "doubtfully" establish this fact. It is true in its legal nature. Therefore, establishment of the fact of the person not reaching the age of criminal responsibility, which, in turn, leads to absence of criminal offense in the person's act at criminal proceedings trial stage is primarily the basis for criminal proceedings closure at the trial stage by delivering judgment of acquittal according to cl. 2 of part 1 of Art. 284 of the CPC of Ukraine. That is, the institution of the criminal proceedings closure is respectively used as a form of its completion, and not the grounds for delivering judgment of acquittal under part 1 of Art. 373 of the CPC of Ukraine providing for a completely different mechanism for their establishment at the trial stage.

However, it should be emphasized that actually established "veracity" of the above ground for delivering judgment of acquittal due to criminal proceeding closure at trial stage does not establish actual "veracity" of absence of the person's guilt in committing the respective criminal offense.

3.2. "Not guilty" (not proven guilt) or "innocent" (established innocence)?

It should be noted that legal terminology used in the Anglo-American legal system to qualify a person's acquittal in criminal proceedings uses two concepts, namely "not guilty" (not proven guilt) and "innocent" (established innocence). When translating the respective concepts into Ukrainian, these may seem as identical concepts at first. And, they are identical indeed for the average citizen.

However, in "legal field", in particular in criminal proceedings, these concepts are qualitatively different in terms of their content and their use as synonymous concepts can lead to significant violations of law, in particular in ensuring evaluation of evidence in criminal proceedings. In addition, conscious equation of respective concepts leads to misunderstanding of functions content of the parties to the criminal proceedings and the court.

The term "not guilty" means that the court legally recorded the fact of non-fulfillment of burden of proof by the prosecution (failure to prove guilt of a person), which, however, does not mean establishing true fact of the person's innocence.

In turn, an "innocent" person is found not guilty due to the fact that the results of the criminal proceedings established the fact that he did not commit a criminal offense, i.e., in fact, the **innocence** of the person was truly **established**. To admit the accused to be "innocent" means to establish that they have not committed the criminal offense, that is, to establish this fact based on the objective reality. "Not guilty" is a person who has been found not guilty of a criminal offense due to the fact that the prosecution has not proved that the criminal offense was committed by the accused, i.e., it means that the **guilt** of the person **has not been proved**¹⁷.

Foreign criminal procedural doctrine generally distinguishes two types of acquittals delivered in criminal process, depending on type of the judge's (jury's) doubt on the person's guilt in committing a criminal offense ("different kinds of acquittal mean different kinds of doubts").

As noted in scientific literature, the Scottish legal system has been allowing three possible consequences of criminal proceedings since the 17th century:

¹⁷ BUGLIOSI, V. "Beyond a Reasonable Doubt". En: KING, L. (ed.), Beyond a reasonable doubt, Phoenix Books, Beverly Hills, CA, 2006, p. 16-21.

"guilty", "innocent" and "not proven". Acquittal based on "not proven" basis is a sentence "standing between guilty and innocent"¹⁸.

However, no less interesting is acquittals classification used in the Israeli legal system.

One more type of acquittal is introduced in Israeli criminal justice similar to the Scottish one – "not proven", namely "acquittal based on doubts" or "doubt-based acquittal"¹⁹.

According to the researchers, emergence of this type of acquittal is caused by too broad interpretation of the concept of "doubt" re institution of acquittal in criminal proceedings. Thus, realization of respective excessive "relevance" of the study of impact of the doubt category in criminal proceedings harming constitutional rights of the accused, has led Israeli scientists to conclusion that only one acquittal type, namely "innocent" – should exist in criminal proceedings and neither "Scottish" acquittal – "not proven" nor "Israeli" acquittal – "doubt-based acquittal" should be used²⁰.

It seems that integrity of criminal justice system in general and protection of rights of the accused are better ensured through the use of a binary form of decision-making (sentencing) in criminal proceedings: guilty or not guilty. However, at the same time, the respective statement cannot cover and respond to all challenges of judicial and creative law enforcement, taking into account development trends of certain elements of legal system in today's conditions, which is absolutely and initially reflected in the reform of criminal procedure regulation mechanism that should be considered as a separate, full-fledged, and independent element of legal criminal procedure regulation mechanism. Therefore, the need to single out such type of acquittal as "not proven" should be considered as quite reasonable today.

Thus, depending on "direction" of doubt in different historical and legal conditions judgment of acquittal is classified as: judgment of acquittal delivered based on "not proven guilt" and judgment of acquittal delivered based on "established innocence".

3.2.1. The difference between the grounds for delivering judgment of acquittal in the practice of the Supreme Court of Ukraine

When returning to the study of interinstitutional nature of grounds for acquittal under the Ukrainian legislation, it should be noted that difference between the grounds for delivering judgment of acquittal under Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine is also emphasized by the Supreme Court.

In particular, the Supreme Court pointed out in its resolution as of July 4, 2019 in case No. 128/1266/16-k the difference between grounds for delivering judgment of acquittal based on the trial results and grounds for applying the institution of criminal proceedings closure at trial stage by delivering judgment of acquittal.

According to the Court, the verdict of the local court shows lack of the wording of prosecution in the sentencing analysis of the acquittal, which was found not proven by the court. In addition, the court concluded that involvement of the accused in commission of the incriminated crimes **had not been proved**, at the same time it acquitted the latter due to **absence** of corpus delicti in his actions.

¹⁸ BRAY, S. "Not Proven: Introducing a Third Verdict", University of Chicago Law Review, 2005, N° 75, p. 1299-1329.

¹⁹ VAKI, Y., RABIN, Y. "Two kinds of acquittals – different kinds of doubts", Criminal Law Forum, 2021, N° 32, p. 100-121.

²⁰ VAKI, Y., RABIN, Y. "Two kinds of acquittals – different kinds of doubts", Criminal Law Forum, 2021, N° 32, p. 97-123.

That is, the court stated two different independent grounds for acquittal of a person in contradiction to requirements of Art. 373 of the CPC of Ukraine ²¹.

The local court also ruled to close the criminal proceedings against the person upon acquittal. Criminal proceedings closure, as noted by the court of cassation, is one of the forms of proceeding completion applied in cases expressly provided for in Art. 284 of the CPC of Ukraine. Should the court discover circumstances provided for in subcl. 1 and 2 of part 1 of Art. 284 of the CPC of Ukraine during the trial, it must deliver judgment of acquittal. Should circumstances provided for in subcl. 5, 6, 7, 8, 9, 10 of part 1 of Art. 284 of the CPC of Ukraine be discovered in the course of the proceeding, as well as in case provided for in subcl. 2, 3 of part 2 of Art. 284 thereof, the court shall decide to close the criminal proceedings. Despite the above rules, the local court used two mutually exclusive forms for closing the case ²². The appellate court paid no attention to the specified violations of requirements of the criminal procedure law and did not correct them.

Therefore, according to practice of the Supreme Court in criminal proceedings, a person can not be acquitted on two separate grounds for acquittal by application different forms of criminal proceedings completion.

Despite the fact that grounds for delivering judgment of acquittal provided for by the legislator in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine are identical in content, the mechanism of their finding (establishing) in criminal proceedings leads to two different and independent forms of criminal proceedings completion, which can not be applied to get her if a person is accused of committing one criminal offense.

As noted by the Supreme Court in the above resolution: "it is perceived from materials of criminal proceedings that the person was charged with commission of four separate criminal offenses as provided for by different articles of the Criminal code of Ukraine. Based on the above provisions of the procedural law, the court had to find out the case facts for each actin criminated to the accused to assess the evidence provided by the pre-trial investigation body for each of the secrimes separately and pursuant to cl. 1 of part 3 of Art. 374 of the CPC of Ukraine to give grounds for acquittal of the accused for each episode of criminal activity, stating the cause for which the court rejects the prosecution's evidence.

The legislator has determined mandatory circumstances subject to proving in criminal proceedings and being fact in issue under Art. 91 of the CPC of Ukraine. Circumstances related to the criminal offense event must be first established when proving the circumstances of the fact in issue. That is, as the Supreme Court points out, a criminal offense should be considered as a separate phenomen on that occurred in reality and characterized by specific features provided for by criminal law. Thus, circumstances provided for by the corresponding rule of the procedural law have to be established for each charge brought to the person ²³.

However, the court of first instance failed to comply with the above legal requirements, stated a set of evidence as a whole in the judgment not specifying which circumstances being incriminated to the person they have to confirm or refute. Contrary to requirements of Art. 94 of the CPC of Ukraine, the court did not evaluate each piece of evidence separately, rendered super ficial partial evaluation of the evidence, and presented the rest with out roper legal assessment, without justification why it took some evidence into account and rejected other, failed to evaluate the evidence with reference to each other" ²⁴.

Thus, taking practice of the Supreme Court into account, combination of the above forms of criminal proceeding completion (grounds for criminal proceeding

²¹ UKRAINE. Law of Ukraine, Criminal Procedure Code of Ukraine. Vidomosti of the Verkhovna Rada of Ukraine, 13 April 2012, № 4651-VI, 474 p.

²² UKRAINE. Resolution of the Supreme Court, case № 128/1266/16-к, 4 July 2019.

²³ UKRAINE. Resolution of the Supreme Court, case № 128/1266/16-к, 4 July 2019.

²⁴ UKRAINE. Resolution of the Supreme Court, case № 128/1266/16-к, 4 July 2019.

closure by a court by delivering judgment of acquittal and delivery of judgment of acquittal by a court based on the court proceedings results) is possible, if a person is accused of two or more criminal offenses.

Therefore, taking the above into account we can conclude that mechanism of the court finding grounds for delivering judgment of acquittal provided for in Art. 373 of the CPC of Ukraine, namely "...if it has not been proven that...", is conditioned by the prosecution activity and actually is "made from outside." In turn, mechanism of the court finding grounds for delivering judgment of acquittal provided for by Art. 284 of the CPC of Ukraine, namely "... if absence of ... has been established ...", provides for unilateral formation and is "made from inside". Therefore, formation of the mechanism of the court finding grounds for delivering judgment of acquittal in criminal proceedings differs.

3.3. The prosecutor's refusal to support the state indictment in court as a ground for closing criminal proceedings under the legislation of Ukraine in the mechanism of ensuring the right of the accused to be acquitted

In the context of the studying the grounds for delivering judgments of acquittal in criminal proceedings, it is also worth to outline unjustified position of the legislator on a certain list of grounds on which criminal proceedings are closed by the court, according to part 2 of Art. 284 of the CPC of Ukraine.

In particular, pursuant to cl. 2 of part 2 of Art. 284 of the CPC of Ukraine, criminal proceedings shall be closed by the court, if the prosecutor drops public prosecution, except as provided by the CPC of Ukraine (i.e., if a victim supports prosecution in private prosecution proceeding), by issuing a ruling on closing the criminal proceedings.

The respective stance of the legislator seems to be inconsistent with international trends of reforming the mechanism of criminal procedural governance in view of ensuring fundamental human rights and freedoms in criminal justice.

According to cl. 3 of Art. 3 of the Criminal Procedure Code of Ukraine "state prosecution" is defined as the prosecutor's procedural activity, which consists in proving the accusation before the court in order to ensure the criminal responsibility of the person who committed the criminal offense. At the same time, in accordance with cl. 13 of Art. 2 of the Criminal Procedure Code of Ukraine "accusation" is an allegation that a certain person has committed an act provided for by the law of Ukraine on criminal liability, made in accordance with the procedure established by the Criminal Procedure Code of Ukraine.

As we can see, the state prosecution, in the understanding of the legislator, is nothing more than the activity of the prosecutor before the court to prove the allegation that a certain person has committed a crime. It is the prosecutor who bears the responsibility of proving a person's guilt.

In turn, in Art. 22 of the Criminal Procedure Code of Ukraine enshrined the principle of criminal proceedings under the title "Competitiveness of the parties and freedom in presenting their evidence to the court and in proving their persuasiveness before the court." The relevant basis of criminal proceedings determines that the prosecutor, as a representative of the prosecution, during the trial of the criminal proceedings, has the duty to prove to the court the persuasiveness of the evidence submitted by him in connection with the maintenance of the state prosecution in court, namely, proving statement about the commission of a crime by a specific person.

In fact, the assertion of the commission of a crime by a specific person is proven by proving the persuasiveness of the evidence.

Therefore, a rhetorical question arises again: what consequences should arise for such a person (a person who is preliminarily accused of committing a crime on the basis of a state indictment supported by the prosecutor in court proceedings) if the prosecutor refuses to prove to the court the persuasiveness of the evidence

provided by the prosecution? In essence, this means that the prosecution's statement should be considered "unconvincing", or more literally "unfounded" and such that it is impossible (or even not worth it) to believe, which, in turn, indicates the illegality of the legal nature of the state indictment, which was supported by the prosecutor during the criminal proceedings.

If the state, represented by a prosecutor, refuses to support the prosecution (i.e., actually recognizes illegality of the criminal prosecution), then it should be stated that the refusal must result in full person's rehabilitation in the criminal proceedings, which can only take place by delivering judgment of acquittal by court in connection with the prosecutor's refusal to support the prosecution in court.

Moreover, according to Art. 2 of the Law of Ukraine "On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying out Operational and Investigative Activities, Pre-Trial Investigation, Prosecutor's Office and Court", the right for compensation in the amount and manner prescribed there by arises in the following cases:

1) delivery of judgment of acquittal;

1⁻¹) establishment in conviction or other court decision (except for a court ruling on appointment of a new trial) of the fact of illegal notification of suspicion in committing a criminal offense, illegal arrest and keeping in detention, illegal search, seizure, illegal arrest of property in the course of criminal proceedings, illegal dismissal from work (position) and other procedural actions restricting or violating human rights and freedom, illegal conduct of law enforcement intelligence;

2) criminal proceeding closure in the absence of occurrence of criminal offence, absence of criminal offense in the person's actions or failure to establish sufficient evidence to prove the guilt of a person in court and exhaustion of opportunities to obtain them;

4) closing the case on administrative offense ²⁵.

Analysis of the respective article of the law suggests that the legislator, despite the fact that a person acquires the right to compensation for damage caused in case of criminal proceedings closure in the absence of criminal offense, absence of criminal offense in the person's actions or failure to establish sufficient evidence to prove the guilt of a person in court and exhaustion of opportunities to obtain them (i.e., these are actually grounds for criminal proceeding closure by the pre-trial investigation body and the prosecutor at pre-trial investigation stage), does not entitle a person to claim damages in connection with unjustified criminal prosecution in case of the prosecutor's refusal to support the prosecution in court.

This legislative gap should be eliminated by the legislator by amending the respective article of the said law to read as follows:

"The right for compensation in the amount and manner prescribed there by arises in the following cases:

1) delivery of judgment of acquittal;

1⁻¹) establishment in the conviction of a court or other court decision (except for a court decision appointing a new trial) of the fact of illegal notification of suspicion of committing a criminal offense, illegal taking and detention, illegal search, seizure, illegal seizure of property during criminal proceedings, illegal dismissal from work (position) and other procedural actions that restrict or violate the rights and freedoms of citizens, illegal conduct of operational and investigative measures;

2) criminal proceedings closure in the absence of occurrence of criminal offence, absence of criminal offense in the person's actions or failure to establish sufficient evidence to prove the guilt of a person in court and exhaustion of

²⁵ UKRAINE. Law of Ukraine, On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operational and Investigative Activities, Bodies of Pre-Trial Investigation, Prosecutor's Office and Court. Vidomosti of the Verkhovna Rada of Ukraine, 1 December 1994, N° 266/94, 12 p.

opportunities to obtain them as well as in case of the prosecutor's refusal to support the prosecution in court;

4) closing the case on administrative offense”.

However, the most justified option, which will help to ensure the maximum rights of the accused in criminal proceedings, will be to amend the CPC of Ukraine in terms of changing the grounds for criminal proceedings closure by court by delivering judgment of acquittal. In particular, amending part 7 of Art. 284 of the CPC of Ukraine to read as follows:

“if circumstances provided for in clauses 1 and 2 of part one of this article are revealed during the trial, as well as if the prosecutor drops the prosecution, except as set out herein, the court must deliver judgment of acquittal.”

4. Concluding remarks

As a result of the scientific research carried out by using methods of scientific cognition, basic signs of delimitation of the grounds for delivering judgments of acquittals provided for in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine in terms of their interinstitutional legal nature.

In particular, it can be argued that acquittal of a person in criminal proceedings of Ukraine may occur with application of criminal procedural rules of different and independent institutions of criminal procedural law – the institution of criminal proceedings closure and the institution of criminal proceedings trial have been presented.

It has been established that the grounds for delivering judgment of acquittal stipulated in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine, should be distinguished not by content, but by the method of their establishing in criminal proceedings, namely by mechanism of their finding by the court in criminal proceedings.

Finding grounds for delivering judgment of acquittal by the court using the method: “... if it has not been proved that...” (unproven presence) is not identical to cognition method: “... if absence of ... has been established”. Grounds for delivering judgment of acquittal under Art. 373 of the CPC of Ukraine, according to the mechanism of their finding by the court in criminal proceedings refer to achieving target level for burden of proof by the prosecution and failure to reach the standard of proof “beyond any reasonable doubt upon the trial”. In turn, finding grounds for the person's acquittal by the court by “establishing” grounds for delivering judgment of acquittal under Art. 284 of the CPC of Ukraine is carried out by applying rules of the institution of criminal proceedings closure as a form of its completion, in the absence of “gradation” in fulfillment level of burden of proof, as well as in doubt in the judge's belief in veracity of these grounds.

Therefore, despite the fact that grounds for delivering judgment of acquittal provided for by the legislator in Art. 284 of the CPC of Ukraine and Art. 373 of the CPC of Ukraine, are similar in content, their legal nature and mechanism of cognition (establishing) in criminal proceedings differ due to existing two independent forms of criminal proceedings completion. They can be exercised by the court in a single way – delivering judgment of acquittal but mustn't be combined, if the accused committed one criminal offense.

5. Recommendations

It is assumed that results of this research, in particular, the compiled theoretical positions, conclusions and proposals can be used: in legislative activity – to improve rules of criminal procedural legislation of Ukraine governing grounds for delivering judgments of acquittal in criminal proceedings; in law enforcement – to improve activities of practicing lawyers in implementation of criminal procedural rules governing the institution of acquittal in criminal proceedings; in scientific and pedagogical activities – as a basis for further study of grounds for delivering

judgments of acquittal in criminal proceedings, as well as for teaching academic subjects and preparation of textbooks, manuals, and educational materials.

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