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Ensuring the Effectiveness of Legal Regulation of Criminal Misdemeanours

The article aims to study the procedure for conducting legal regulation of criminal misdemeanors and to make suggestions for its improvement. Both general and specific research methods were used to obtain objective and reliable results: historical and legal, comparative-legal, formal, and legal. The main basis of scientific research was the norms of legislative acts of both Ukraine and other countries, which regulate the institute of criminal misdemeanours. Analysing the regulations that regulate the procedure for the pre-trial investigation of criminal offenses, the authors noted that some of them raise critical remarks and, require improvement. The authors concluded, that the legal regulation of pre-trial proceedings in a criminal misdemeanour contains a number of shortcomings, which will cause ambiguous understanding and interpretation for both scholars and law enforcers, and require their elimination.

Garantire l'efficacia della regolamentazione legale dei reati penali

L'articolo ha lo scopo di studiare la procedura per condurre la regolamentazione legale dei reati criminali e di fornire suggerimenti per il suo miglioramento. Sono stati utilizzati metodi di ricerca sia generali che specifici per ottenere risultati oggettivi e affidabili: storici e legali, comparativi-legali, formali e legali. La base principale della ricerca scientifica erano le norme degli atti legislativi sia dell'Ucraina che di altri paesi, che regolano l'istituto dei reati penali. Analizzando i regolamenti che regolano la procedura per le indagini preliminari sui reati, gli autori hanno osservato che alcuni di essi sollevano osservazioni critiche e richiedono miglioramenti. Gli autori hanno concluso che la regolamentazione legale dei procedimenti penali in un reato penale contiene una serie di carenze, che causeranno una comprensione e un'interpretazione ambigue sia per gli studiosi che per le forze dell'ordine e richiederanno la loro eliminazione.

1. *Introduction.* The development of the science of the domestic criminal process leads to the need to study the procedure for criminal proceedings in general and the particular features of proceedings in criminal offenses. This issue is particularly relevant in view of the rapid entry into force of the

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amendments to the CPC of Ukraine[1], which significantly changed the approach to normative regulation of criminal proceedings for criminal offences.
It should be noted that several approaches have been taken in the matter of introduction of the Institute of Criminal Offences into the domestic legislation. In the adopted law[2], the legislator, emphasising the importance of national law-making traditions and taking into account the progressive institutions of the EU legal systems, chose extending the Special part of the Criminal Code of Ukraine by adding to the category of criminal offences, in addition to certain crimes (usually of a small severity), administrative offences that are not violations of the order of management and by their severity are considered socially dangerous, and therefore can be criminalised and punished but not with most severe penalties. At first glance, it is a rather doubtful way, but the expediency of transferring these administrative offences to the category of criminal offences can be justified by the need to extend to a person who committed it, the guarantees provided by criminal procedural legislation (presumption of innocence and ensuring the guilt, openness of the right to defence, court proceedings and their full fixation by technical means, reasonableness of time limits, etc.), as well as establishing judicial control over the application measures of enforcement that temporarily restrict the rights and freedoms of citizens. With regard to certain types of administrative offences, their transfer to the category of criminal misdemeanours is assumed also due to the significant public resonance that arises from their commission. In particular, given that road traffic-related deaths in Ukraine are one of the largest in Europe and are steadily increasing, it is proposed to increase responsibility for the management of intoxicated vehicles by transferring them to the criminal plane. Thus, we believe that the path chosen by the legislator to regulate the institution of criminal offences in the Criminal Code of Ukraine has its positive points and is quite acceptable.
In general, the introduction of the institution of criminal offences in domestic legislation will also help to optimise the implementation of criminal proceedings regarding them. After all, the adopted law provides for a simplified procedure for pre-trial investigation in the form of enquiries into 126 criminal offences that previously belonged to the category of minor crimes, which will

[1] The Criminal Procedure Code of Ukraine of April 13, 2012, No 4651-VI. Available at: *http://zakon5.rada.gov.ua/laws/show/4651-17.*
[2] Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Simplifying Pre-trial Investigation of Certain Categories of Criminal Offences", No 2617-VIII from 11/22/2018. Available at: *https://zakon.rada.gov.ua/laws/show/2617-19.*

certainly help to reduce the burden on pre-trial authorities, to allow investigators of serious and particular serious to focus on investigations. In addition, it should be noted that the law regulates and simplifies the procedure of criminal proceedings. This, in turn, will help to solve the problems of adherence to the principles of parties' competitiveness and direct examination of evidence, dispositiveness and protection of the right to defines, reasonableness of terms of trial and others, which often arise in practice when considering cases of such criminal offences.

The necessity to study the features of the normative regulation of criminal misdemeanours, as well as to analyse the possible problems of law enforcement that may arise, explains the need for writing this article, its logic and content. Due to the novelty of this institute, the research on the issue of criminal proceedings in the criminal process of Ukraine was hardly paid attention. In this regard, it is possible to mention only individual works of such domestic scientists as V.V. Vapniarchuk[3], D.V. Velykodniy[4], G.P. Vlasova[5], K.P. Zadoya[6], N.V. Nestor[7].

2. *Materials and methods.* Both general and specific research methods were used to obtain objective and reliable results. In particular, the following methods were used:

- historical and legal – to analyse the development of the institution of criminal proceedings on criminal offences;
- comparative legal – to compare the procedure of criminal proceedings on criminal offences in different countries, as well as to compare the provisions of current and previous criminal procedural legislation;
- formal and legal – to submit proposals aimed at improving existing and developing new legislation on improvement of the legal regulation of criminal proceedings for criminal offences.

The main basis of scientific research was the norms of legislative acts of both Ukraine and other countries, which regulate the institute of criminal misdemeanours and the procedure for conducting proceedings against them, as well

[3] VAPNIARCHUK, *Stages and forms of pre-trial investigation. Criminal process*, Kharkiv, 2018. 584.
[4] VELYKODNIY, *Simplified forms of criminal proceedings: an overview of the experience of France and Ukraine*, in *Customs Business*, 2014, 2 (92), 120 ss.
[5] VLASOVA, *The limits of proceedings on criminal offences following the example of foreign countries*, in *South Ukrainian Law Journal. Crime Counteraction: Problems of Practice and Scientific Support*, 2015, 5, 24 ss.
[6] ZADOYA, *Simplified proceedings on criminal offences according to the Criminal Procedure Code of Ukraine and the legislation of European states, Bulletin of Criminal Justice*, 2015, 1, 29 ss.
[7] NESTOR, *Simplified criminal proceedings for criminal offences: domestic and international legal aspects*, in *Bulletin of Criminal Justice*, 2017, 3, 64 ss.

as publications on this issue by both domestic scientists and scientists of other countries.

3. *Results and discussion*

3.1 *Issues of legal regulation of pre-trial investigation of criminal offences.* The law adopted by the Verkhovna Rada of Ukraine on new amendments to the Criminal Procedure Code of Ukraine (CPC) regulated the procedure of criminal proceedings concerning criminal offences[8]. It can be stated that the approach chosen by law is aimed at solving a very important task – establishing a simplified procedure for criminal proceedings (both pre-trial and court proceedings) in relation to actions that are considered criminal misdemeanour (first of all it is about minor misdemeanours that have been "transformed" in them).

Analysing the regulations that regulate the procedure for pre-trial investigation of criminal offences, we note that some of them raise critical remarks and, in our view, require improvement. Thus, in particular, Section 4-1, Art. 3 of the CPC provides that «[...] an enquirer is an official of the intelligence unit of the National Police, security, tax compliance authority, State Bureau of Investigation, in the cases established by this Code, an authorised person of another unit of the said authorities and within the competence stipulated by this Code, to conduct pre-trial investigation of a criminal misdemeanour». That is, an enquirer is an official of the relevant authority who conducts the pre-trial investigation in the form of an enquiry. However, if to refer to paragraph 17 of Art. 3 of the CPC of Ukraine (which has not been amended), it is seen that an officer who conducts the pre-trial investigation (i.e. both an enquiry and pre-trial investigation) of a criminal misdemeanour is an investigator. Thus, we consider it necessary to make changes to p.17 of Art. 3 of the CPC of Ukraine, namely to replace the general term "pre-trial investigation" with "pre-trial enquiry".

There are also comments to Art. 40-1 of the CPC, which regulates the procedural status of an enquirer. It is worth noting that the proposed paragraph 2 of Part 2 of Art. 40-1 is improperly constructed from the point of view of legal technique, and is to be reduced to the words " to conduct enquiry (investigative) actions and unspoken enquiry (investigative) actions in the cases estab-

[8] Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Simplifying Pre-trial Investigation of Certain Categories of Criminal Offences", No 2617-VIII from 11/22/2018. Available at: *https://zakon.rada.gov.ua/laws/show/2617-19.*

lished by this Code", since the right to inspect the scene is enquiry (investigative)) action, and interrogation of persons, seizure of tools and means of committing an offence, things and documents, which are the direct object of a criminal misdemeanour or discovered during detention, can be carried out both during enquiry (investigative) actions and other procedural activities (for example, temporary access to objects and documents).

In general, the issue of the possibility to conduct any "verification" actions before entering information about a criminal offence in the Unified Register of Pre-trial Investigations is, in our opinion, rather controversial. After all, one of the main conceptual ideas of the CPC of 2012 was (and still remains) the need to initiate criminal proceedings for any information about a criminal offence without first checking it. The possibility of conducting a single enquiry (investigative) action – inspection of the scene before entering the information into the ERDR – is explained by the fact that its main purpose is not to check but to preserve the traces of a criminal offence.

In addition, it should be noted that the law (art. 298-1 of the CPC) provides that the results of such "verification" actions will become independent procedural sources of evidence in criminal misconduct proceedings. In our opinion, such a provision of the law is rather dubious. Thus, the proposal to extend the scope of evidence in the course of the enquiry by such a procedural source as explaining a person being held liable, notwithstanding the remarks "other than those specified in Article 84 of this Code", is grossly contrary to the requirements of the CPC of Ukraine, since Article 8 Art. 95 of the CPC of Ukraine categorically stipulates that the parties to the criminal proceedings, a victim, a representative of a legal entity in charge of the proceedings, have the right to receive explanations from participants of the criminal proceedings and other persons with their consent, which are not the source of evidence. In addition, by suggesting such a procedural source of evidence as explanation, the drafters did not in any way explain what they represented and what procedural steps they could receive. Against this background, there is no guarantee of the rights and legitimate interests of persons providing such explanations, in particular, the rights to the protection of a suspect.

Regarding the proposal to introduce as evidence of testimony of technical devices, it can be argued that they can be used in criminal proceedings as material evidence (Article 98 of the CPC of Ukraine), without special stipulation of this in Art. 298-1 CPC. Indications of technical means having the function of photography and filming, video recording or means of photography and filming, video recording, if appropriate, may be similarly used in criminal pro-

ceedings or as material evidence (Article 98 of the CPC of Ukraine) or as documents (Art. 99 of the CPC of Ukraine). At the same time, paragraph 3.4 is subject to mandatory consideration. Judgment of the Constitutional Court of Ukraine of 20 October 2011, in the case of the constitutional submission of the Security Service of Ukraine on the official interpretation of the provisions of Article 62.3 of the Constitution of Ukraine.

With regard to procedural sources of evidence such as "medical examination results" and "expert's opinion", it should be noted that the lack of definitions of the content of these concepts, as well as the requirements for their receipt, will naturally lead to the absence of a guarantee of the rights and legitimate interests of participants in criminal proceedings, in the collection of such evidence and the lack of assurance as to its accuracy and admissibility. In particular, the question of the inaccuracy of a specialist's conclusion may be raised even on the ground that that person is not warned of criminal responsibility for giving a deliberately false conclusion.

The provisions of Part 1 of Art. 214 of the CPC is also doubtful, according to which «An investigator who will conduct the pre-trial investigation is determined by a head of a pre-trial investigation body and an enquirer – by a head of the pre-trial body, and in the absence of an investigation unit – by a head of a pre-trial investigation body». It is believed that the latter provision is superfluous, since according to clauses 7-1 Art. 3 of the CPC, the head of the pre-trial investigation body in the absence of the enquiry unit is the head of the enquiry body.

The need for regulation in Art. 298-3 of the order of seizure of things and documents is considered rather dubious for the reason that the order of temporary seizure of property is provided for by the relevant provisions of the current CPC of Ukraine. Thus in Art. 298-3 of the CPC makes no mention that the said items and documents have the status of temporarily seized property (no exceptions are provided in Article 167, 168 of the CPC of Ukraine) and should be seized. Instead, it shall be noted that the items and documents referred to in paragraph 1 of this Article removed during the examination are admitted as physical evidence, as an enquirer makes the relevant decision, and are attached to the inquiry materials. In addition, it should be noted that the need for such a resolution is not provided by law in criminal proceedings (Article 100 of the CPC).

On the basis of the foregoing, we believe that the legal regulation of pre-trial proceedings in a criminal misdemeanour contains a number of shortcomings, which will cause ambiguous understanding and interpretation for both schol-

ars and law enforcers, and require their elimination.

3.2 *Issues of legal regulation of court proceedings regarding criminal misdemeanours.* In the reform of the criminal justice system, more and more attention is paid to the simplified procedure. This is due to a number of factors, including the need to save resources. The simplified procedure avoids unreasonable delays in criminal proceedings and makes a decision as soon as possible. The application of this procedure of criminal proceedings for criminal misdemeanours results in less social danger of the latter, but in practice it may face the problem of observing the general principles of the parties' competitiveness and direct examination of the evidence, dispositiveness and protection of the right to defence.

According to the CPC, summary proceedings in respect of criminal misdemeanours are conducted in accordance with the general rules of court proceedings provided for by the Code, taking into account the provisions of Section 30, Chapter 30, "Special Procedures for the Court of First Instance". Thus, Article 381 of the CPC provides for general provisions on criminal misdemeanours. In particular, the court, at the request of a prosecutor or an investigator agreed with a prosecutor, has the right to consider an indictment for committing a criminal misdemeanour without conducting a court hearing in the absence of participants in the court proceedings, if an accused, who has been represented by a defence lawyer, disputes established by the pre-trial investigation of the circumstance and agree to the consideration of an indictment in his absence, and a victim does not object to such consideration. Thus, a legislator specifies a comprehensive list of conditions, the absence of at least one of which, makes it impossible to apply this type of proceedings. Procedural registration of the guilty plea is made in the corresponding statement, which is obligatory attached to the indictment and the petition of an investigator, the prosecutor. The absence of victim's objection to an application of the simplified procedure is confirmed by a written statement of consent to the circumstances established by the pre-trial investigation, familiarisation with the limitation of the right of appeal and consideration of the indictment in the summary proceedings.

Consideration of an indictment in the summary proceedings is governed by the provisions of Art. 382 of the CPC. Thus, the court, within 5 days from the date of receipt of an indictment with a request for its consideration in the summary proceedings, examines it and the materials added to it, and adopt the sentence. It is worth noting that the appointment of such a review is only a

matter of law and not a duty. Therefore, the CPC states that the court has the right to order an indictment that came with the motion for summary judgment and to call participants in criminal proceedings if it deems it necessary.
The judgment of the court following the summary proceedings shall be adopted in accordance with the procedure described in the CPC and shall comply with the general requirements for the court's judgment as set out in Articles 368, 370, 371, 373, 374 of the CPC. The court's verdict, according the results of the summary proceedings, instead of the evidence to confirm the circumstances established by the court shall specify the circumstances established by a body of pre-trial investigation, which are not contested by participants of court proceedings. A copy of the sentence following a consideration of an indictment with a request for its consideration in the summary proceedings no later than the day following the day of its adoption shall be sent to the participants of the court proceedings.
The judgment on results of a consideration of an indictment with the request for its consideration in the summary proceedings may be appealed, taking into account the features provided by Art. 394 CPC. Thus, a judgment of the court of first instance, adopted on the basis of the summary proceedings in accordance with the procedure provided for by Articles 381 and 382 of the CPC, cannot be appealed on the grounds of consideration of the proceedings in the absence of participants in the court proceedings, failure to examine the evidence in court or for the purpose of trial investigating the circumstances.
In general, we consider that the procedure proposed by the legislator for criminal proceedings is perfectly acceptable and in line with the established European practice of simplification of court proceedings. The only remark that, in our opinion, can be made here even in the absence of a court practice in such proceedings (and as a result of revealing typical shortcomings in the legislation and enforcement difficulties) is that the question of ensuring the effective implementation of the right to defend an accused is unclear. Can the defence counsel take part in an indictment and what are his/her powers in such proceedings?

3.3 *The experience of European countries on the legal regulation of misdemeanours.* Having prioritised European and Euro-Atlantic development vectors, Ukraine is constantly turning to the experience of leading foreign countries, where criminal justice is based on generally recognised democratic values and has a strong humanistic focus.
The criminal law of the vast majority of European countries provides for two

or even three types of criminally punishable actions (crime-misdemeanour-violation). In Europe, it has been concluded long ago that there can be no more than one type of criminal misdemeanour in the field of criminal law. An analysis of the text of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention)[9] and the case law of the European Court of Human Rights (hereinafter referred to as the ECHR or the Court) makes it possible to delineate in a certain way the actions that are to be considered as criminal misdemeanours. The text of Art. 6 and Art. 7 of the Convention uses the term "criminal offence". In a number of other provisions, for example, Art. 2 uses the term "crime". In researching the ECHR's practice of understanding the content of the concept of "criminal offence", it can be said that it is much broader than the concept of "crime". The ECHR has repeatedly reiterated its position that certain offences at national level may be considered administrative or disciplinary offences, however, in view of the objectives of the Convention, some of these offences should be considered "criminal" in the conventional sense.

Thus, the Court, in particular, recognised the administrative offences in the field of traffic provided by the legislation of Germany to be criminal in nature within the meaning of the Convention. In order to reach such a conclusion, the Court referred to the "Engel criteria" formed by him in the examination of similar cases earlier[10]. The first is the criterion of national law, that is, whether a certain unlawful act is subject to a crime under the national law of the respective state. However, this criterion is "no more than a starting point", and the information thus obtained has only a formal meaning. The second is the criterion of the circle of addressees, that is, if the liability extends to an indefinite circle of persons. The third is the criterion for the purpose of punishment and the severity of the consequences for an individual. If there is an element of punishment in the sanction and it is sufficiently severe, then the act is considered criminal. According to this criterion, the Court recognised the criminal nature of the Code of Administrative Offences[11]. Thus, it is established that the guarantees provided for in Art. 6 and 7 of the Convention should be provided not only to persons who have committed actions that are crimes under national law, but also to persons who have committed offences

[9] Convention on the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. Available at: *https://zakon.rada.gov.ua/laws/show/995_004.*

[10] Case of Engel and others v. The Netherlands. Available at: *https://hudoc.echr.coe.int/eng#{"itemid":["001-57479"]}.*

[11] *Ibidem.*

that are found to be criminally convicted.
As for the foreign experience of the legal regulation of the institution of criminal offences and the procedure for proceeding with respect to criminal proceedings, the experience of France is interesting. Thus, the French procedure for simplified criminal proceedings is quite specific. In general terms, it stipulates that a prosecutor sends the case file to the correctional court (police tribunal), the court (tribunal) examines them and issues a punishment order (containing an indication of the legal qualification of the committed and the punishment chosen by the accused), if he considers court hearing unnecessary, or return to the prosecutor if he deems court hearing necessary. The punishment order is then brought to the attention of a prosecutor and an accused, who may appeal it. In case of appeal, a full trial of a case takes place (an accused is warned that in such a case the punishment may be more severe than that stipulated by the punishment order). If an appeal against a punishment order does not occur, it has the force of a final decision in the case[12].
In addition, there are two other specific criminal proceedings: the so-called "fine by agreement" and "fixed fine". The first one assumes that a prosecutor invites an accused to voluntarily fulfil certain obligations (to pay a fine, to relinquish certain rights, to attend certain courses or programs, etc.) and to inform a victim of such an offer. If an accused agrees, a prosecutor appeals to the court with a motion to suspend criminal proceedings, the court considers the request (having the right to summon interested persons) and approves or disapproves it. In the latter case, the criminal prosecution of a person continues, in the other case – the court decision becomes final and enforceable. If a person does not fulfil or improperly fulfils his obligations, a prosecutor may apply to the court for further criminal proceedings in the general procedure. The "fixed fine" procedure applicable to certain traffic offences precludes a judicial review of the case at all and provides for an offender to pay a fine immediately after committing an offence to an authorized representative directly or within the time specified by law. In the event of failure to pay the fine within a specified period, a prosecutor issues an order for his compulsory recovery[13].
Simplified proceedings according to the German legislation can be applied to criminal misdemeanour. The German Code of Criminal Procedure provides

[12] Code de procédure pénale. Available at: *https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154.*
[13] VELYKODNIY, *Simplified forms of criminal proceedings: an overview of the experience of France and Ukraine*, in *Customs Business*, 2014, 2 (92), 120 ss.

for a special type of misdemeanour litigation – the so-called summary proceedings, characterised by the following features:
- the hearing of the case in the summary proceedings is initiated by a prosecutor, when a request of a prosecutor not agreeing with an accused or a victim;
- a request of a prosecutor specifies the legal consequences which he asks to apply to an accused;
- the court may reject an application if it doubts the possibility of rendering a decision without trial or does not agree with legal consequences that a prosecutor proposes to apply to an accused; in this case, the general procedure is applied;
- an accused may file a protest against a sentence given in the summary proceedings, but in such a case the court will no longer be bound by legal consequences set out in a prosecutor's request[14].

Criminal offence cases in Germany are handled by a single-judge district judge, who is restricted in the choice of a type and size of punishment, since the most severe punishment for a criminal offence may be imprisonment for a term not exceeding 1 year. The judgement of the court which will hear the case on the merits, and with it the boundaries of the court proceedings itself, is the prerogative of a prosecutor. However, in such a case, a prosecutor must additionally state in a petition a punishment, which, in his/her opinion, is appropriate for such an offender. In addition, if a defendant has exercised his/her right not to participate in the trial personally, a punishment for his/her offence can be only in the form of a fine or, if it is related to a violation of traffic rules, deprivation of the driver's license[15].

The Swiss Code of Criminal Procedure sets out the features of criminal proceedings in cases where a person pleads guilty or when there are reasonable grounds for believing him/her guilty of a criminal offence. In this case, a public prosecutor is obliged to draw up a punishment order, which in particular contains an indication of the legal qualification of the committed offence and the degree of punishment chosen for a person. As a rule, a police report is the basis for ordering, and the order is not considered by Swiss law as a formal charge against a person. When deciding to issue a sentence, a public prosecutor may not initiate a pre-trial investigation. If no objection is issued within 10 days to an order issued by an accused, other interested persons or the office of the Swiss Attorney General, it will in fact become the final decision in the case. In case of objections, a public prosecutor may not change a

[14] The Criminal Procedure Code of Germany. Available at: *http://pravo.org.ua/files/_(1).pdf.*
[15] *Ibidem.*

punishment order issued, close the proceedings, issue a new order or bring the case to court in a general manner. If a public prosecutor decides not to change an order issued, the court shall consider its validity as well as the validity of the objections against it. If the court finds an order unjustified, it remits a case for a new pre-trial hearing[16].

Criminal procedural law of Spain regulates the procedure of criminal proceedings for offences, which provides that in cases of a statement of a manifest offence (an offender is known), the judicial police immediately interrogate an applicant, a victim, an accused, witnesses, draws up a report and directs it to the so-called "regular court" – one of the courts of first instance within the judicial district that handles small civil and criminal cases on a particular day. The next court shall immediately appoint a court hearing summoning all persons named in a record, but only if there is an opportunity to hear an applicant, a victim, an accused, witnesses during the "duty" of the relevant court of first instance. The judgment of the court may be appealed. If consideration of the protocol received from the judicial police is not possible during the period of "duty" of the respective court of first instance, the case shall be considered in a general manner[17].

According to the Latvian Criminal Procedure Code, the summary proceedings procedure is applied provided that an accused pleads guilty, compensates for damage caused and does not object to the termination of criminal proceedings on the basis of a prosecutor's order. In such circumstances, a prosecutor issues a punishment order stating the legal qualification of a committed person, as well as determining a punishment to be applied to a person, and an accused, in turn, within 5 days of receiving a copy of the order, must consent to its content. That is, the most notable feature of such a procedure is the unconditional completion of criminal proceedings without trial[18].

Thus, having examined some of the provisions of criminal procedural law of some European states, it can be concluded that most of them do not have the consent of an accused to hear the case in summary proceedings. At the same time, the right of appeal against a decision taken in summary judgment is not subject to any restrictions. In addition, a victim's consent to hear the case in summary judgment is generally unknown to the criminal procedural law of

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[16] Swiss Criminal Procedure Code. Available at: *https://www.admin.ch/opc/en/classified-compilation/20052319/index.html.*

[17] ZADOYA, *Simplified proceedings on criminal offences according to the Criminal Procedure Code of Ukraine and the legislation of European states*, *Bulletin of Criminal Justice*, 2015, 1, 29 ss.

[18] NESTOR, *Simplified criminal proceedings for criminal offences: domestic and international legal aspects*, in *Bulletin of Criminal Justice*, 2017, 3, 64 ss.

Germany, France, Spain, Switzerland and Latvia. It can be stated that in these countries the courts have broad discretionary powers, in particular to agree or disagree with a prosecutor's motion to consider a case in summary proceedings based on an evaluation of evidence. In this way, a legislator prevents an abuse of a prosecution by the summary court proceedings. It should be noted that in some European countries, the simplified mechanism for dealing with criminal misdemeanours involves generally bringing such cases within the jurisdiction of the courts. However, it should be emphasised that in most cases the court is still limited in the choice of the punishment – it should appoint it within a prosecutor's proposal[19].
In general, despite a number of positive points, criminal proceedings in European countries are also characterised by a legislative restriction on a number of criminal proceedings, such as the direct examination of evidence by the courts, the adversarial nature of the parties, the right to challenge procedural decisions, actions or omissions.

4. *Conclusions.* Discussions on the introduction of the institution of a criminal misdemeanour in Ukraine have been going on for a long time. In essence, from 2012 to 2019, the CPC was the only statutory instrument that contained provisions on criminal offences. And this is the difficulty. After all, it is obvious that the rules of procedural law cannot condition the existence of rules of property law. Considerable efforts have been made in recent years to address this situation, which consisted not only of the drafting and consideration of a number of bills, but also of the adoption, by the Verkhovna Rada of Ukraine of the above and analysed changes.
In general, in support of an idea of introducing a criminal misdemeanour institute and the need for some unloading of pre-trial investigation bodies, one cannot fully agree with the adopted provisions, in particular with regard to the creation of separate pre-trial investigation structures for criminal misconduct. Such changes, for example, can cause unnecessary complexity and confusion. In particular, the norms for deadlines set for enquiry seems to be incomplete, since their implementation in practice seems quite difficult. Consequently, criminal proceedings are also jeopardised.

[19] Opinion of the Directorate General Human Rights and Rule of Law of the Council of Europe on the draft law of Ukraine No 7279 "On Amending Certain Legislative Acts Concerning Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences". Available at: *https://rm.coe.int/coe-ukraine-law-on-misdemeanours-oct-2018-final/16808eaeaf?fbclid=IwAR3i_DWmA3qcuFcqcUOUS3cLBtnYm6rf93rPwwFNrMzkFqGCZ5t98a8imLY*

The new version also contains a number of evaluative concepts that could lead to abuse or inefficiency of pre-trial investigation bodies. In addition, the law contains a number of terminological errors that create inconsistencies between different rules of the CPC or in general between different provisions of the same rule. In our opinion, the proposed provisions are set out without taking into account the provisions of the relevant laws, that is, there is no systematic reform of criminal procedural legislation. The developers of this law have repeatedly pointed to the experience of foreign countries when creating it. Indeed, given the processes of Ukraine's integration into the European political and legal space, there is a need to harmonise norms. Of course, there is no doubt about the expediency of borrowing foreign experience, but it should be remembered that, as we noted above, such experience is quite diverse, as well as the need to take into account the particularities of the national legal system.