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## **ЗОВНІШНЯ ПОЛІТИКА ЯК ВИБІР ДЕРЖАВИ ТА СУЧАСНЕ МІЖНАРОДНЕ ПРАВО**

### **Анотація**

Стаття присвячена аналізу поняття і змісту права вибору, дослідженню питання права вибору держави як суб'єкта міжнародного права. Аналізуються поняття та зміст зовнішньої політики як загального курсу держави у міжнародних справах, як вибору держави. Досліджується співвідношення зовнішньої політики і міжнародного права, вплив міжнародного права на зовнішню політику та вплив зовнішньої політики на сучасне міжнародне право. Міжнародні відносини розглядаються як сукупність зовнішньополітичної діяльності держав. Визначаються певні риси сучасних міжнародних відносин. На підставі юридичної літератури надається визначення сучасного міжнародного права як права розвитку.

**Ключові слова:** вибір, право вибору, зовнішня політика, міжнародне право, сучасне міжнародне право, право розвитку, міжнародні відносини, політика, право.

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## **ВНЕШНЯЯ ПОЛИТИКА КАК ВЫБОР ГОСУДАРСТВА И СОВРЕМЕННОЕ МЕЖДУНАРОДНОЕ ПРАВО**

### **Аннотация**

Статья посвящена анализу понятия и содержания права выбора, исследованию вопроса права выбора государства как субъекта международного права. Анализируются понятие и содержание внешней политики как общего курса государства в международных делах, как выбора государства. Исследуется соотношение внешней политики и международного права, влияние международного права на внешнюю политику и влияние внешней политики на современное международное право. Международные отношения рассматриваются как совокупность внешнеполитической деятельности государств. Указываются определенные черты современных международных отношений. На основании юридической литературы дается определение современного международного права как права развития.

**Ключевые слова:** выбор, право выбора, внешняя политика, международное право, современное международное право, право развития, международные отношения, политика, право.

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## **DEFINITION OF RESPECT FOR HUMAN DIGNITY AS A PRINCIPLE OF CRIMINAL PROCEEDINGS**

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The author reveals the main point of human dignity as an independent principle of criminal proceedings. Reflection of this provision in the national legislation is defined. The content of given principle and its implementation in criminal procedural activities being studied. The international acts components of this principle being examined.

**Keywords:** principle, honour, dignity, respect, security of person, criminal proceedings.

**Definition of the problem.** According to Art. 28 of the Constitution of Ukraine everyone has the right to respect for his dignity. No one shall be subjected to torture, cruel inhuman or degrading treatment or punishment. No man without his free consent shall be subjected to medical, scientific and other experiments. International instruments which stipulates the requirements of

Art. 28 of the Constitution of Ukraine includes: the Universal Declaration of Human Rights 1948 (Art. 5) and the International Covenant on Civil and Political Rights 1966 (Art. 7), the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or those Inhuman or Degrading Treatment or Punishment of 1975. In addition to above, there are internationally ac-

cepted and valid multilateral treaties (conventions, declarations) which are specifically dedicated to respect for human dignity during the criminal proceedings and the penal jurisdiction. These international instruments were recognized by Ukraine and are the part of national legislation. These includes, in particular: the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the UN General Assembly on 10 December 1984 (ratified by Ukraine on Feb. 24, 1987 p.); European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 26 November 1987 (Ukraine acceded May 2, 1996 p., Ratified on 24 January 1997 and entered into force in Ukraine on September 1, 1997 p.); The European Convention on Human Rights and Fundamental Freedoms (Art. 3).

The principle of respect for human dignity is a constituent principle of the inviolability of the person. In literature developed broad and narrow interpretations of the concept of the principle of the inviolability of the person. The narrow interpretation of the personal integrity is linked with the freedom from arbitrary arrest. In that sense it is used right in the text of the International Convention on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms. Meanwhile a wide interpretation of the personal integrity is – a complex concept, which consists of physical integrity, moral integrity, the inviolability of honour and dignity. Thus, we will disclose above principles in details.

#### **Analysis of recent researches and publications.**

The issue of human rights for liberty and personal security had received considerable attention in the scientific literature, and particularly in works of V.T. Malyarenko, V.I. Maryniva, O.R. Mikhaylenko, O.P. Kuchynskoyi, I.L. Petruhina, A.V. Shvydkova and others.

**The purpose of the article.** The purpose of this article is to identify and characterize respect for human dignity as a standalone principle in the criminal proceedings.

**Presentation of the basic material.** Protection of honour and dignity is one of the manifestations of the state of personal integrity. Respect for the honour and dignity mandatory for all agencies and officials involved in criminal proceedings. At the heart of this common position is a constitutional principle which states that a person, his life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value (Article 3 of the Constitution of Ukraine).

The concept of "dignity" is usually associated with the concept of pride and his self, so individual dignity is reflected in their self-esteem rights. Honour binds to specific social position of a man and his recognized moral merit. Therefore, the dignity of every person and citizen are equal but honour – is not. Synonyms of the word "honour" are the reputation, good name, prestige, authority [1].

Moral and ethical categories "honour" and "dignity" of man appears as an object of legal protection, legal support as the international legal level and at the level of national law. By the standards aimed at protecting human dignity should include

the right to humane circulation and respect for the dignity of man and his rights (Art. Art. 5, 12 para. 2, Art. 29 of the Universal Declaration of Human Rights, Art. Art. 2, 7, 10 International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from torture and other cruel, inhuman or degrading treatment or punishment; Standard Minimum Rules for the Treatment of Prisoners, Code of Conduct officers to support the rule of law, Art. 4 Charter of Fundamental Principles of Justice for Victims of Crime and Abuse authority).

Causation of raising at so high (international law) level of the problem of protecting human dignity is defined in the formula, which is fixed in most international acts, addressing the rights and freedoms of man and citizen: "Recognition of the inherent human dignity and the equal and inalienable rights of all members of human community is the foundation of freedom, justice and peace in the world. "

Detriment of dignity is expressed in the concept of "humiliation." A typical example of encroachment on this moral value is an insult. It can be expressed, for example, in the rough, tactless, arrogant action against the investigator, prosecutor, investigating judge or court to witness, victim or other party during criminal proceedings. "Larger" examples are torture, cruel and inhuman attitude to a man. Expanded definition of torture is given in Article 1 of the Declaration on the Protection of All Persons from torture and other cruel, inhuman or degrading treatment or punishment of 9 December 1975, and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment and Punishment from 10 December 1984. (ch. 1, Art. 1).

In these international legal instruments torture means severe pain or suffering, whether physical or mental, by the official or his incitement to obtain from him or a third person information or confessions, punish him for his actions that he did or in implementing them suspected, or intimidating him or other persons. However, the Declaration emphasizes that "this interpretation does not include pain or suffering arising only through lawful imprisonment, because of a condition peculiar to this or because of this, in that degree, to the extent consistent with the minimum standard rules for treatment of prisoners (n. 1, Art. 1). It should be noted that international legal definition of torture mentioned here is much wider than that which is usually given in the national philological and legal dictionaries. They considered under immoral phenomenon only "physical violence, torture during interrogation", "causing the accused and witnesses in criminal proceedings tormented physical coercion in order to testify." International documents in the concept of "torture" included not only physical but also psychological impact on the participants in the criminal process, which, admittedly, is more complete and more accurate.

The European Court of Human Rights, taking its decision "Ireland against the United Kingdom," adjudicated contravene of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. five techniques of sensory deprivation (disorientation "or" loss of feeling),

used by the British police during the interrogation of suspects in Northern Ireland, standing by the wall in a very difficult position, opaque hood covering the head, the noise impact on suspects, suspected sleep deprivation, depriving suspects of food and drink. In this case, the court drew a distinction between three groups banned treatment of persons: a) torture concluded in deliberate inhuman treatment causing very serious and cruel suffering; b) inhuman treatment – in the face causing severe physical and mental suffering; c) degrading treatment – the ill-directed to call a person a sense of fear, pain and disability that may demean, defame them and perhaps break their physical and moral resistance [2].

The principle of respect for human dignity is secured in the new Criminal Procedure Code of Ukraine Article 11. Thus, the court, the judge, the investigating judge, prosecutor, investigator, carrying the proceedings and making a decision in a criminal case must respect the honour and dignity of all persons involved in the case. When performing investigative, judicial and other actions it is prohibited to humiliate honour and dignity, to use the torture, cruel or inhuman treatment, violence, threats, unlawfully restrict the rights and legitimate interests of individuals. The law also states the right of everyone is to defend themselves by all means not prohibited by law including their dignity, rights, freedoms and interests raised during the criminal proceedings. Following judicial proceeding might be mentioned as well as violation of Art 3. of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. took place in the "Elchi and Others vs Turkey», 23145/93, 13 November 2003 the court finds that the applicants about the conditions of their detention – cold, darkness and dampness, poor bed, poor nutrition and poor water closet – as well as the statement ... we were subjected to insults, given a slaps and intimidated in order to force to the signing of various documents ... are trustworthy and do not contradict with each other. The Court also accepts that in critical moments of detention – for example, during interrogations and confrontations with Mr. Guven – they were blindfolded ... the Court considers that the applicants have ...

suffered physical and mental violence by the gendarmerie during their detention in November and December 1993. Such abusive treatment has inflicted on them severe pain and suffering and was particularly serious and cruel and should be regarded as such that was torture as defined in article 3 of the Convention [3].

The provisions of this principle find its reflection in many standards of Criminal Procedural Code, for example, Part 2. Art. 87 provides for the inadmissibility of evidence obtained as a result of substantial violation of rights and freedoms, obtaining evidence as a result of torture, cruel, inhuman or degrading individual treatment or threats of such treatment; in Articles 224, 226 CPC it is stated that questioning cannot continue without a break for more than two hours, but in general – more than eight hours a day; questioning the minor or the minor cannot continue without a break for more than one hour, and in general – more than two hours a day; investigative experiment should be conducted on conditions that it does not create a danger to life and health of a people taking part in it, or ones people, not humiliated their honour and dignity, does not causes harm, during examination it is not permitted to execute any actions that humiliate honour dignity or dangerous to his or her health. Examination which includes any forms of nudity has to be carried out by persons of the same sex (st. 241 CPC). It is prohibited to incite a person to commit a crime with the aim of further exposure, to help the person to commit a crime, which he would not have done without investigators abet, or to influence the behaviour of violence, threats, blackmail and others with the same goal, during the preparation and conducting of such tacit investigative (detective) activities as a control for the offense.

**Conclusion.** It should be noted that the principle of respect for human dignity is widely reflected in national legislation, namely the criminal procedure law. At the time of the investigation and consideration of criminal proceedings in the interests of justice the rights and freedoms of the suspect and the accused might be limited, as well as the others participants in criminal proceedings, while the circumstances being investigated for personal and family lives.

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## **ВИЗНАЧЕННЯ ПОВАГИ ДО ЛЮДСЬКОЇ ГІДНОСТІ ЯК ЗАСАДИ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ**

### **Анотація**

У статті автор розкриває сутність поваги до людської гідності як окремої засади кримінального провадження. Також, визначено як само вищезазначена засада відображається у національному законодавстві. Досліджено зміст даної засади і її відображення при здійсненні кримінальної процесуальної діяльності. Розглянуто зміст окремих складових засади у міжнародних актах.

**Ключові слова:** засада, честь, гідність, повага, особиста недоторканність, кримінальне провадження.

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## **ОПРЕДЕЛЕНИЕ УВАЖЕНИЯ К ЧЕЛОВЕЧЕСКОМУ ДОСТОИНСТВУ КАК ПРИНЦИПА УГОЛОВНОГО ПРОИЗВОДСТВА**

### **Аннотация**

В статье автор раскрывает сущность уважения к человеческому достоинству как отдельного принципа уголовного производства. Также, определено как данное положение отображается в национальном законодательстве. Исследовано содержание данного принципа и его отображение при осуществлении уголовной процессуальной деятельности. Рассмотрены составляющие данного принципа в международных актах.

**Ключевые слова:** принцип, честь, достоинство, уважение, личная неприкосновенность, уголовное производство.

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## **LE PRINCIPE DE LA SEPARATION DES FONCTIONS DE LA JUSTICE PENALE FRANÇAISE ET UKRAINIENNE**

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Le problème de la séparation des fonctions de la justice pénale en procédure pénale de la France et de l'Ukraine est le sujet de l'analyse de l'article. Il dit que la théorie française sépare les fonctions de poursuite, d'instruction et de jugement, seulement entre les autorités publiques. La défense ne se distingue pas comme une fonction séparé et est considérée comme un l'élément du respect des droits de la défense. Au lieu de cela, le Code de procédure pénale de l'Ukraine prévoit la séparation des fonctions de accusation publique, la défense et le jugement.

**Mots-clés:** poursuite, accusation, défense, jugement, instruction, Convention de sauvegarde des droits de l'homme et des libertés fondamentales.

La justice pénale ukrainienne a été reformée globalement en raison de l'entrance en vigueur du Code de procédure pénale 2012 dont le but est l'implémentation dans la procédure pénale ukrainienne et dans les affaires pénales des standards du "procès équitable" en vertu de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et la jurisprudence de la Cour européenne des droits de l'homme. La structure même de l'article 6 permet d'identifier deux séries d'éléments du droit à un procès équitable: le premier paragraphe énonce les garanties dont bénéficie tout individu dans le cadre d'une procédure de nature civile ou pénale; le second pa-

ragraphe est consacré aux garanties spéciales dont bénéficie toute personne poursuivie au pénal [1]. Le principe d'égalité des armes est la garantie fondamentale du procès équitable. L'égalité des armes veut que chaque partie se voie offrir une possibilité raisonnable de présenter sa cause dans des conditions qui ne la placent pas dans une situation de désavantage par rapport à son adversaire [2, p. 19]. Au pénal, ce principe impose un équilibre entre la personne poursuivie et le ministère public, mais également entre l'accusé et la partie civile [1].

Conformément au Code de procédure pénale 2012, le procès pénal (au sens étroit, l'expression "procès pénal" vise l'instruction et le jugement