H. Bahniuk

Postgraduate Student, Department of Justice and Criminal Law, National University of Ostroh Academy

HISTORICAL AND LEGAL ASPECT OF THE FORMATION AND DEVELOPMENT OF THE PRINCIPLES OF TRANSPARENCY AND OPENNESS IN CRIMINAL PROCEEDINGS OF UKRAINE

The article is an attempt to study the historical and theoretical context and the legal doctrine of principles of transparency and openness in criminal proceedings. The author analyzes the basic principles of transparency provisions of the criminal proceedings in Ukraine, in the European countries and Russia. It is indicated that a characteristic feature of Ukrainian procedural law has always been openness (publicity) of proceedings. On the positive side, even in the Middle Ages the institute of publicity of proceedings was not limited as in Western countries. A striking example of public proceedings were proceedings in the Zaporizhzhian Sich. A particularly important role was played by the common law, where the principle of transparency was the basis of customary process. Many customary rules were formed and received the degree of state law.

There were drawbacks. The first Soviet regulative acts of justice widely declared publicity but did not specify detailed rules for its implementation. And the basis of exercise of ideas of justice publicity was the principle of expediency. In the 1930s-1950s, the principle of transparency in criminal cases was often violated, which considerably contributed to making illegal sentencing. Rejection of opinions on how to guarantee publicity and independence of the court from the higher state bodies contributed to the lawlessness that took place at that time.

The paper also examines ways of creating a legal framework of principles of openness in the Soviet criminal trial. Summarizing the results of the study, the author concludes that the history of Soviet criminal procedure has demonstrated that consolidation of principles of publicity of judicial activity, even at the constitutional level, is yet not enough to consistently exercise it in practice.

Further development of ideas of judicial publicity requires not only improvement of the regulatory framework and practical application of the provisions regarding publicity of courts', but also deep scientific research in the given field. There are still many unresolved problems. Particularly debatable remains content, as well as bases of the concept of publicity.