**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No.3-r (II)/2022 of June 8, 2022 in the case upon the constitutional complaint of Oleksandr Krotiukregarding the constitutionality of Article 284.1.4 of the Code of Criminal Procedure of Ukraine (case on the presumption of innocence)**

O.V.Krotiuk filed a complaint to the Constitutional Court with a request to review the constitutionality of Article 284.1.4 of the Code of Criminal Procedure (hereinafter referred to as the Code), according to which criminal proceedings shall be terminated if “a law took effect by which criminal liability for the action committed by the person concerned, has been abolished.”

In the understanding of the provisions of Articles 3, 8, 28, 55, 58, 62, and 92.1.22 of the Constitution in their interrelationship, the state has a positive duty to create appropriate domestic organisational and legal mechanisms for prosecuting a person, that can guarantee comprehensive protection of dignity, in particular, to ensure functioning and completion of criminal proceedings in such a way that the most important constitutional guarantees for protecting a person from unjustified criminal prosecution, namely the basic principle of the rule of law and related principles, such as the presumption of innocence, irreversibility of time (prohibition of retroactivity) of criminal law, the principle of *nullum crimen, nulla poena sine lege* (“no law – no crime, no law – no punishment”), as well as the right to state one’s position and the right to a fair trial.

The constitutional principle of the presumption of innocence is multidimensional, it is applicable at all stages of criminal proceeding and even after it has been completed, as the essence of this principle lies in the fact that the presumption regarding the non-involvement of a person in the commission of a criminal offense is universal in nature, it is extending to all spheres of individual’s public life and shall remain in effect until it has not been properly refuted, that is, in accordance with the provisions of Article 62 of the Constitution, in a legal manner and by a guilty verdict handed down by a court. In the understanding of these constitutional provisions, the purpose of the principle of the presumption of innocence is to protect the person against whom criminal proceedings are being carried out from any forms of censure from public authorities identified in connection with this, as a result of which the non-involvement of such a person in the commission of a criminal offense is called into question, until guilt will not be proven legally and established by a guilty verdict of the court. According to Article 62.1 of the Constitution, only a guilty verdict of a court is the judicial act in which the guilt of a person in committing a criminal offense must be established, therefore, other acts of public authority cannot contain any positions on the person’s guilt, even in the form of assumptions regarding such guilt.

A person suspected of having committed a criminal offense, after the criminal proceedings against him/her have been closed for any reason, must be perceived by all public authorities as having not committed a criminal offense, the treatment of him/her must correspond to such a perception and not cause any obvious condemnation, not form a negative perception by society of such person, not to undermine his/her reputation, etc.

The Constitutional Court considers that the presumption of innocence is not only a mandatory element of the exercise of the constitutional right to judicial protection, without which a fair trial is impossible, but also an important constitutional guarantee that requires a fair trial and effective judicial protection. This creates the need to provide a person with the opportunity to express a position regarding his/her innocence, to prove his/her position in court, otherwise the basic principles of legal proceedings will be violated.

Unjustified criminal prosecution is an infringement on the right of everyone to respect for his/her dignity, which is guaranteed by Article 28 of the Constitution (Article 28.1), therefore, the state is obliged to ensure the possibility of rehabilitation of a person after the criminal proceedings have been terminated, that is, the restoration of his/her honour, good name, reputation, affected in connection with the suspicion or accusation of committing a criminal offense, as well as to guarantee the review in court of the legality and validity of criminal prosecution and the procedural decisions taken in its implementation.

The Constitutional Court finds that the termination of criminal proceedings against a person without his/her consent and effective judicial protection, as a result of which there is a doubt about the innocence of the person, the exclusion of the rehabilitation of the person after such closure is a violation of the constitutional right to judicial protection.

The principle of the presumption of innocence gives rise to the need for creation of such legal regulation mechanisms upon completion of criminal proceedings that will protect against doubts about the guilt of a person in committing such an act, which was considered a criminal offense before its decriminalization.

Article 284.1.4 of the Code defines the basis for the mandatory and automatic closure of criminal proceedings at the stage of pre-trial investigation, it shall be closed if a law took effect by which criminal liability for the action committed by the person concerned, has been abolished, in particular, through the adoption by the prosecutor of a decision to terminated criminal proceedings against a suspect. That is, the lawful (legitimate) goal of the impugned provision of Article 284 of the Code is to terminate criminal prosecution against a person for an act that has ceased to be socially dangerous and is no longer a crime in accordance with the legislation on criminal liability, which, as a general rule, should exclude the continuation of criminal proceedings and consistent with the principle of recurrence in time of a less severe criminal law and *nullum crimen, nulla poena sine lege*.

At the same time, termination of criminal proceedings must be carried out in compliance with both these principles and other constitutional principles and rights, namely, the principle of the presumption of innocence, the rights to respect for human dignity and to judicial protection.

The grounds for the termination of criminal proceedings, considering the legal consequences caused by them for the person in respect of whom such termination takes place, in the theory of law and law enforcement practice are usually classified as rehabilitation and non-rehabilitation grounds. However, there is no such clear classification in the national legal regulation.

At the same time, the Constitutional Court states that due to the non-rehabilitative nature of the grounds for criminal proceedings to be terminated, which are stipulated in Article 284.1.4 of the Code, for persons in respect of whom such a ground is applied, the possibility of compensation for damage caused by illegal actions of the bodies carrying out operational and investigative activities, pre-trial investigation bodies, the prosecutor’s office and the court, as well as certain restrictions for such persons, is not provided at the legislative level.

The Constitutional Court also draws attention to the fact that in national judicial practice the grounds for termination of criminal proceedings, as defined by Article 284.1.4 of the Code, are usually referred to as non-rehabilitative grounds.

Article 284.1.4 of the Code defines a non-rehabilitative basis for the closure of criminal proceedings, which, in the context of the existing national legal regulation and law enforcement, entails adverse consequences for the reputation, honour, dignity of the person in respect of whom such termination occurred, and this definitely indicates the attitude of the public as to the guilty, but without a guilty verdict of the court. Consequently, the termination of criminal proceedings at the stage of pre-trial investigation on a non-rehabilitation basis, determined by the impugned provision of Article 284 of the Code, causes a legitimate concern about the innocence of a person against whom criminal proceedings are terminated in this way, negatively affects his/her reputation, honour and dignity, as well as such a person in society.

A person in respect of whom criminal proceedings have been terminated on a certain impugned provision of Article 284 of the Code on a non-rehabilitative basis must be guaranteed the right to effective judicial protection, which consists in the opportunity to apply to the court to check and assess the legality and validity of procedural decisions adopted in criminal proceedings, in which suspicion, accusation of a criminal offense was brought against a person. In case of establishing the facts confirming the illegality and unfoundedness of criminal prosecution, the court must decide on rehabilitation, that is, on the protection of reputation, honour and dignity of a person who was despised by wrongful suspicion, accusation, restoration of his/her violated rights, compensation and reparation for harm suffered.

But instead, the Code does not contain a mechanism that would allow dispelling doubts about the innocence of a person against whom criminal proceedings are terminated on the basis of Article 284.1.4 of the Code, and obliges the prosecutor to carry out such terminated without the consent of the said person, even if he/she is in the status of a suspect, and by preventing the extension of criminal proceedings under any circumstances.

According to the principle of the rule of law, a person’s consent to the termination of criminal proceedings against him/her in connection with the decriminalisation of an act is mandatory, since this is a condition for exercising the right to state the own position regarding his/her innocence. The lack of such an opportunity does not ensure compliance with the basic constitutional principles that are applied to criminal proceedings, namely, equality before the court and the law, adversarial nature of legal proceedings, and freedom in presenting evidence to the court and in proving parties’ persuasiveness before the court, which therefore leads to a violation of the right for judicial protection.

At the same time, the regulation in the Code (Articles 42.3.16, 303, 304) of the issue of appealing against the decision, actions and inaction of the prosecutor does not guarantee the protection of the presumption of innocence and the rehabilitation of the suspect, in respect of whom criminal proceedings were terminated due to the decriminalisation of the act, as it allows a judicial appeal against the decision of the prosecutor to terminated the criminal proceedings under the impugned provision of Article 284 of the Code, however, does not make it possible to carry out the said appeal against such termination so that there is no doubt that the person in respect of whom it occurred was not involved in the commission of the decriminalised act.

Given the inevitable negative consequences for the reputation, honour and dignity of a person as a result of termination of criminal proceedings against him/her on a non-rehabilitation basis, determined by the impugned provision of Article 284 of the Code, the Constitutional Court considers that the wording “committed by a person”, contained in this provision, actually indicates the indisputable guilt of such a person in committing an act, which was considered a criminal offense before its decriminalisation. Consequently, at the legislative level, it is possible to violate the presumption of innocence of a person, since the decriminalisation of an act does not refute the involvement of such a person in the commission of a criminal offense in the past and does not eliminate the legitimate threats to his/her reputation, honour and dignity.

The Constitutional Court notes that the issue of compliance of Article 284.1.4 of the Code with the Constitution primarily occurs due to the use of the wording “committed by a person”. However, this wording is an integral element of a legal structure that reproduces the holistic procedural provision of the specified paragraph of the Code as a basis for criminal proceedings to be terminated, which, in the current version, allows termination of such proceedings in connection with the decriminalisation of the act with the simultaneous emergence of doubts about the innocence of the person in respect of whom such termination takes place. Accordingly, Article 284.1.4 of the Code as a whole contradicts Articles 3, 8, 28, 55, and 62 of the Constitution, since it embodies the principle of *nullum crimen, nulla poena sine lege*, but does not ensure the observance of constitutional rights to respect for human dignity, judicial protection, the principle of the presumption of innocence.

Thus, the Constitutional Court of Ukraine held to declare Article 284.1.4 of the Code of Criminal Procedure of Ukraine to be unconstitutional. It shall cease to have effect three months since the adoption of this decision by the Constitutional Court.

The Verkhovna Rada of Ukraine shall bring the normative regulation established by Article 284.1.4 of the Code of Criminal Procedure, which was declared unconstitutional in line with the Constitution of Ukraine and this Decision.

**References:**

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