# THE ESSENCE OF THE PHILOSOPHICAL CATEGORY „TRUTH": CRIMINAL PROCEDURAL ASPECT

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**Abstract:** *The urgency of the problem stated in the article is conditioned by ambiguous approaches to understanding the essence of the category "truth" both in philosophy and law in general, and in criminal procedural activity in particular. The aim of the article is to identify and analyse philosophical ideas about truth and to study their influence on scientific views on this issue in criminal procedural law, as well as to substantiate the author's approach to understanding the essence of truth and its significance in domestic criminal procedural evidence. The main approach to the study of this problem was to systematise conceptual approaches to understanding truth (theories of truth) in both philosophy and the science of criminal process, expressed critical (both positively and negatively) opinions on each of them. The paper analyses the five philosophical concepts of truth (classical, coherent, pragmatic, semantic, and referential) and theories of truth that are most advanced in the modern science of criminal process (objective, procedural, coherent, and conventional). Based on the analysis of the latter, the authors' understanding of the essence of truth as the purpose of proving in criminal proceedings is offered, in particular, it is concluded that the position of all theories of truth in criminal process are constituent components of this concept. The materials of the article represent both theoretical and practical value. They can be used for further scientific investigation of the essence of the category of "truth" in law in general and criminal procedural in particular, as well as for the proper understanding and implementation of law enforcement criminal proceedings.*

**Keywords:** objective truth theory, procedural truth theory, coherent truth theory, conventional truth theory, philosophical doctrine.

In all the years in the world and national science, there has been a debate about understanding the truth. This discussion is also extrapolated to the field of legal sciences in which this category is of fundamental importance. In particular, in the science of criminal proceedings, the clarification of the essence of truth is necessary to resolve questions about understanding the purpose and content of both criminal procedural activity in general and criminal procedural evidence in particular.To address these questions, in authors' view, it is advisable to analyse the different approaches to truth that have taken place in philosophy and their impact on understanding the essence of this concept in the science of criminal process. Exactly these circumstances necessitate this article, its logic and content.

Many thinkers (Protagoras, Heraclitus, Hume, Plato, Aristotle, Descartes, Hegel, Marx, Kant, Spinoza, Pierce, Chudinov, Aidukevich, Tarski, etc.) have paid attention to the question of the essence of truth in philosophy. In the right science in general and the criminal process in particular, this issue is devoted to the work of such domestic scientists as M.M. Mikheyenko, Yu.M. Groshevey, S.M. Stakhivskyi, V.P. Gmyrko, M.A. Pogoretsky, V.V. Vapniarchuk and others.

The aim of the article is to identify and analyse philosophical ideas about truth and to study their influence on scientific views on this issue in criminal procedural law, as well as to substantiate the authors' approach to understanding the essence of truth and its significance in domestic criminal procedural evidence.

## Materials and methods

The scientific study of the category "truth" was conducted using a methodological approach, the essence of which is to change the attention of the researcher from the object as such (which occurs when applying the naturalistic methodological approach) to the means and methods of his own thinking. After all, ideas about the object are defined and determined not only and not by the material of nature, but by the means and methods of human thought-making. What tools and methods will be used by the researcher, what qualities and properties he will have on the output. Using the very methodological approach in philosophy and domestic criminal procedural science, various conceptual theories of truth have been developed, which have been highlighted and analysed in this paper, as well as the authors' (complex) approach to the category of "truth", which is essential provisions of individual truth theories as components of this concept. 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 philosophical ideas about truth and theories of truth in the science of criminal process;

– comparative legal – to establish the ratio of ideas within the different conceptual approaches to understanding the essence of the category "truth";

– formal and legal – to submit proposals aimed at continuing scientific research into the substance of the truth in criminal proceedings.

The main basis of scientific research was the publication of philosophers and jurists of the past and present, who were devoted to studying the essence of truth, as well as the rules of criminal procedural law of Ukraine, which served as a basis for the conclusion about the possibility of using the various theories of domestic crime.

## Results and discussion

### *Philosophical notions of truth and their impact on the science of criminal process*

As a philosophical category, truth, together with the categories of good and freedom, reflects the profound meaning of the human worldview and comprehension of being, the pursuit of the human spirit, and the creation of humanistic ideals. Truth expresses the essential content and immediate purpose of the cognitive process and characterises its result – knowledge as an adequate reflection of the subjective and objective reality in the mind of human. Truth is established by determining the conformity of the cognitive image, the knowledge of the real state of things in reality, which gives truth in its content of independence from the subject. However, this conformity is not considered as a complete coincidence of cognitive image and object, since the latter is characterised by cognitive inexhaustibility, and the process of cognition is always predetermined historically, limited in its cognitive capabilities, depends on the level of development of cognitive tools. At each particular stage, the cognitive image reproduces an object relatively correctly, but with the development of cognition it replenishes with new qualitative definitions of an object, more and more accurately reproduces it. Therefore, truth is not something static and unchanging, but is seen as a continuous process of consistently approaching the fullness of reproduction[1].

The doctrine of truth is one of the oldest in philosophy. It has been developed since the time of ancient philosophy and continues to be actively researched in our time. In ancient times, two diametrically opposed philosophical currents arose depending on the possibility of knowing or not knowing (the limitedness of knowledge) of truth. Agnostics (Protagoras, Heraclitus, Hume, etc.) have wholly or partially rejected the possibility of adequate human understanding of facts, phenomena and processes. Other thinkers (Plato, Aristotle, Descartes, Hegel, Marx, etc.) considered that the human mind has such a power. However, among the adherents of a possible knowledge of truth, there has not been a single approach (a single concept) to understanding its essence.

The classical concept of truth is recognised dominant in the theory of cognition (epistemology), the first and simplest (in Western philosophical literature it is referred to as correspondence theory of truth

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[1] V.I. Shinkaruk (Ed.), *Philosophical encyclopedic dictionary*, Abris, Kyiv, 2002.

or theory of correspondence)[2]. According to it, truth is seen as a correspondence of thoughts to reality. The basic tenet of this theory is the belief that reality can be known, reproduced in the knowledge system. Its founders were Plato and Aristotle. Thus, Plato characterised the truth, "he who speaks of things as they are – speaks the truth; he who speaks of them otherwise – lies"[3]. Logically, the essence of this concept lies in the fact that outside of human consciousness and independently of it there is an objective reality that is reflected in the human mind through feelings, ideas, concepts, judgments, theories, etc.[4]

It is worth noting that the classical concept of truth has long been considered in the domestic criminal procedural science sufficient to understand the essence of truth. This was largely explained by the fact that the Marxist-Leninist philosophy of dialectical materialism was monopolistically based on the philosophical underpinnings of the theory of proof, which was based on two basic assumptions: first, the primacy of matter, on the basis of which all mental processes are viewed; second, the dialectical nature of all processes (natural and social).

Today, the content of the doctrine of the classical concept of truth, which in law is called the theory of objective truth, has traditionally been regarded as a true correspondence of legal knowledge to objective legal reality. As already noted, this can be explained by the scholasticism of a methodological set up in the mid-20th century, based on dialectical materialism. The fact that for a long time it has been put into our heads as an incontrovertible statement cannot but leave its mark. Thus, it should be noted that today at the beginning of the 21st century, due to the new criminal procedural legislation, quite often on the pages of legal publications, from the stands of dissertation councils, conferences, seminars, round tables, often dogmatic views are expressed, cultivated on Soviet philosophy, there are a lot of complaints against the Criminal Procedure Code of Ukraine of 2012 and calls for the return of previous

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2 A. Golubinskaya, "What is wikipistemology?" in *Philosophical Problems of Information Technologies and Cyberspace*, 2018, vol. 15, no. 2, p. 25-33. 10.17726/philIT.2018.2.15.2

3 Plato, *Works: in 3 volumes,* Musl', Moscow, 1968.Cf. Iuliu-Marius Morariu, "L'androgyne chez Platon et Mircea Eliade," in *Astra Salvensis,* VI (2018), Special Issue, p. 1031.

4 D. Ivanov, "The hard problem of consciousness in the context of philosophy of mind in the twentieth century", in *Philosophical Problems of Information Technologies and Cyberspace*, 2018, vol. 15, no. 2, p. 72–91. 10.17726/philIT.2018.2.15.5; Arstan Akhpanov, Leonid Brusnitsyn, Aydarkan Skakov, Bakitkul Sembekova, Asset Balgyntayev, „Testimonies deposition of the victim and witness in the criminal procedure of the Republic of Kazakhstan," in *Astra Salvensis,* V (2017), no. 12, p. 98.

legal norms. In authors' view, the new law requires overcoming the inertia of scientific thinking. The new ideology embedded in the criminal procedural legislation will still become a legal reality, because law is created not so much at the tip of the legislator's pen as in the minds of people.

In particular, in authors' view, with all the conservatism and pervasiveness of the approach to understanding the essence of truth in domestic law as a correspondence of knowledge to objective reality, it cannot be regarded as the only one correct. Philosophical science has at various times produced other approaches to understanding the truth, which, in authors' view, can today be asserted to have found their normative footing in current criminal procedural law and can be used by modern theory of proof. It is needed to take a closer look at them.

Coherent concept of truth. Proponents of this concept (Kant, Spinoza, etc.) believe that the truth is not the correspondence of a judgment to external reality (which the classical theory of truth assumes), but whether it agrees with other statements, judgments that are part of the system to which this judgment also belongs. The sources of this theory were the difficulties of establishing the correspondence between the knowledge of reality and the criterion of this correspondence that the classical theory encountered.

There are two main options for a coherent concept of truth. One of them introduces a new concept of truth as the coherence of knowledge, which is proposed instead of the previous concept of truth as the correspondence of knowledge to reality. The second option, while maintaining the classical interpretation of truth, nevertheless states that the correspondence of knowledge to reality can only be established through coherence, which is the criterion of truth. The coherent concept of truth was negatively perceived by Soviet science because of its contradictions to the ideas of dialectical materialism. It was believed that a coherent theory of truth in its application to the empirical sciences could not be considered a worthy adversary of classical theory, because it not only overcomes the difficulties of the latter, but, on the contrary, deepens them, facing, in turn, problems that cannot be solved[5]. This is particularly the case when serious, complex logic calculations are required.

However, in authors' view, the conclusion of the Soviet science about the harmfulness and futility of a coherent concept of truth is not substantiated. Certain points based on this concept have found their place in both the science of criminal proceedings and the current criminal procedural legislation. First of all, it concerns the assessment of the totality

[5] E.M. Chudinov, *The nature of scientific truth*, Politizdat, Moscow, 1977.

of the evidence in terms of their sufficiency and interrelation (part 1 of Article 94 of the Criminal Procedure Code of Ukraine, 2012)[6], when in their comparison, identification of the absence or presence of contradictions between them, a conclusion is made whether they are true or false.

The pragmatic concept of truth. Proponents of this concept (James, Pierce, etc.) attach particular importance to the practical activity of the cognitive subject. The focus of pragmatism is not the theoretical problem of the nature of truth, but the practical problem of obtaining and testing true ideas. True idea, according to C.S. Pierce, is one that performs its function that works; not true – one that does not do this[7].

Pragmatism proceeds from the fact that the truth of a statement is in its agreement with the ultimate criterion, which is its usefulness. Human beliefs are not independent of human practice. If beliefs influence actions, determine their direction, indicate the means that contribute to the intended purpose, then these beliefs are true[8]. Thus, pragmatists understand truth, first and foremost, as usefulness. This theory contradicts the classical and coherent concepts of truth. Because there is no guarantee that knowledge that possesses the property of usefulness will not prove to be untrue or other judgments about certain facts.

However, the authors believe that the property of the usefulness of the acquired knowledge in criminal procedural knowledge cannot be rejected. It is primarily present at a purely procedural level – for the use of potentially useful evidence obtained (it should be noted here that the proposals for legislative regulation and practical use of the institution of extreme need for criminal proceedings are spread,[9] which is essentially

[6] Criminal Procedure Code of Ukraine No. 4651-VI, 2012. Available at: http://zakon3.rada.gov.ua/laws/show/4651-17.

[7] A.W. Burks (Ed.), *Collected papers of Charles Sanders Peirce*, Harvard University Press, Cambridge, 1958.

[8] K. Ajdukiewicz, *Problems and theories of philosophy*, Cambridge University Press, Cambridge, 1973.

[9] V.V. Vapniarchuk, *Theory and practice of criminal procedural proof*, Yurait, Kharkiv, 2017; V.V. Vapniarchuk, *Theoretical basis of criminal procedural evidence*, Yaroslav Mudryi National Law University, Kharkiv, 2018; V.V. Vapniarchuk, V.M. Trofymenko, O.G. Shylo, V.I. Maryniv, "Standards of criminal procedure evidence", in *Quarterly*, 2018, vol. 7, no. 37, p. 2473-2482; V.V. Vapniarchuk, O.V. Kaplina, I.A. Titko, V.I. Maryniv, O.V. Lazukova, "Proposals on improvement of system of local elections by open party lists", in *Quarterly*, 2019, vol. 1, no. 39, p. 386-394. Arstan Akhpanov, Leonid Brusnitsyn, Aydarkan Skakov, Bakitkul Sembekova, Asset Balgyntayev, „Testimonies deposition of the victim and witness in the criminal procedure of the Republic of Kazakhstan," in *Astra Salvensis,* V (2017), no. 12, p. 98.

based on the ideas of a pragmatic conception of truth, that is, it can be noted that opinions are expressed about the necessity to expand an application of properties of knowledge usefulness). At the social level, knowledge gained in criminal proceedings is important for preventing the commission of criminal offences in the future. In addition, the state, using criminal procedural law, pragmatically based on the usefulness of the knowledge gained during criminal proceedings, solves a number of political and ideological tasks that it faces (preventing committing crimes against national security, terrorist offences, etc.).

The semantic concept of truth does not reject the classical concept, but refines it. The founder of this concept was Alfred Tarski, who in his work, defining the emergence of the said concept, noted that the main problem is to define the concept of truth, which would be materially adequate (consistent with the understanding of truth in the classical concept) and formally correct (to specify those means on which the formal correctness of this definition depends, that is, to formulate those words or concepts that are desired to be used in defining the concept of truth, and to indicate the formal rules to which it must conform. In other words, it is necessary to describe the formal structure of the language in which the definition will be given)[10]. In addition, according to A. Tarski, the concept of truth, as well as the concept of a sentence, should always be associated with a particular language, since it is obvious that the same expression, which is a true sentence in one language, may be false (incorrect) or not make any sense in another language. The fact that there is an interest in the concept of truth for sentences does not exclude the possibility of further extending the scope of this concept to other types of objects[11].

As for the judiciary, it is based on natural language, which logicians recognise as closed due to internal contradictions. On this basis, the basic tenets of A.Tarski's theory are very important for the formation of a specific area of knowledge at the intersection of linguistics, psychology and law – legal (judicial) linguistics aimed at solving the following tasks: description and study of features of the legal functioning of language; improvement of the theory of proof, which involves the development of problems of truth, proof and evidence on the basis of linguistic (material) problems of criminal procedural cognition, as well as solving other

[10] A. Tarski, *Semantic concept of truth and the foundation of semantics*, 1944. Available at: http://khazarzar.skeptik.net/books/tarski01.htm.

[11] A. Tarski, *Semantic concept of truth and the foundation of semantics*, 1944. Available at: http://khazarzar.skeptik.net/books/tarski01.htm.

problems[12]. On the basis of the semantic conception of truth in the course of criminal procedural evidence in the judicial process in the form of judicial agreement, the parties substantiate the indictment and acquittal thesis, the laws of logic in argumentation are applied.

The referential conception of truth in the philosophical sense is an exact copy of the events or the subject of cognition. In the theory of law, this concept is an information model of the application of law, which is an intelligent decision based on the comparison of information about specific circumstances with the rule of law. In the 20th century, in the process of rapid development of the social sciences and humanities, a lack of understanding of truth as a complete correspondence of knowledge and reality (namely, for the knowledge of human and society) began to be felt. Therefore, in philosophy and the humanities a new attitude to the truth began to form, which prefers the ideals and values of society in the process of knowledge in general, and scientific knowledge in particular, and which can be conditionally called value. For jurisprudence, which considers law as a social regulator, as a form of organisation of society, awareness of their own value-meaning nature, constructive nature of legal knowledge is of particular importance. Changing social value systems fundamentally influences the paradigm shift of any social science[13]. Social values, which are normatively fixed as legal declarations or legal principles of a given society, can be the basis for making specific legal decisions and provided by the whole system of legal remedies, including those having the character of state coercion.

Thus, the referential concept of truth agrees internally with the doctrine of "objective truth" (that is, with the classical concept of truth), proposing, only when corresponding the received information to reality, to take into account the values of society that are socio-legal and socio-political in nature.

To summarise in this section, it should be noted that philosophy has different approaches to explaining such an important category as truth. The above conceptions of truth correspond to the different stages of the historical development of philosophical thought, the different types of thinking, and the social situations of the epochs in which they originated and developed. The authors believe that scientists who are interested in this issue need to have the knowledge of various scientific approaches to

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[12] O.N. Matveeva, *The functioning of conflicting texts in the legal sphere and the peculiarities of its linguistic study (based on texts involved in legal practice)*, Altai State University, Barnaul, 2004.

[13] A.M.Korshunov, V.V. Mantanov, *Traditional and modern technology*, Politizdat, Moscow, 1999.

explain the nature of this category. Including in jurisprudence, where certain provisions of different concepts are already used in science (in particular, the criminal process – as was noted in the article and will be further in detail), and have found their place in the sectoral legislation. In authors' view, this approach is correct and deserves further development.

### *Theories of truth in modern science of criminal process*

A historical excursion into the history of the development of views on the functional and essential characteristics of the category of "truth" in the science of criminal process, provides the opportunity to identify the basic theories, a comprehensive analysis of which, in authors' opinion, will formulate his own vision of truth in the modern criminal process.

Objective truth theory. This theory, as noted above, has long been considered to be only true for quite some time, and now continues to occupy a dominant position in the domestic science of criminal proceedings. Its appearance and persistent existence it owes to the classical conception of truth, as well as to Marxist-Leninist epistemology and the theory of cognition of dialectical materialism. According to the proponents of this theory, objective truth is understood to mean a content of knowledge that accurately reflects objective reality and does not depend on the subject of cognition. To establish objective truth in criminal proceedings means to know all the circumstances which must be established in criminal proceedings, as they have taken place in reality. The criteria for the truth of the knowledge obtained, according to Marxist-Leninist philosophy, are practice in two forms: a) direct – in the form of procedural actions aimed at collecting, verifying and evaluating the evidence by which the truth of the findings of the criminal case is established; b) indirect – in the form of a generalised previous practice, expressed in the provisions of the sciences of criminal process, criminalistics, in professional and life experience.

However, in authors' view, this theory does not fully correspond to both the separate provisions of the current criminal procedural legislation and the proposals made by the science of criminal procedure for the introduction of new institutions, and the newest philosophical ideas about the classical theory of truth. Thus, as P.A. Lupinskaya rightly points out in this regard, it is obvious that the principle of presumption of innocence and the rules that follow from it, the right of an accused to remain silent, the right not to testify against himself or close relatives, other cases of release of persons from testimony may serve as an objective obstacle for establishing the circumstances of the case. In establishing the right to the immunity of a witness, the legislator clearly preferred to safeguard the values underlying that immunity (presumption of innocence, preservation of family relations, etc.) before establishing the truth by any means. A substantive guarantee of the rights of an accused and, at the same time, an obstacle to the establishment of the truth is the consolidated rule of inadmissible evidence[14]. However, the most obvious contradiction to the theory of objective truth in the domestic criminal process is the institutions of agreements envisaged by applicable law (Chapter 35)[15]. In addition, pervading all criminal proceedings, this problem leads to another, more important dilemma: the ratio of private and public principles (interests of participants in the process of protecting their rights and the state on the one hand, society in the fight against crime on the other).

With regard to the inconsistency of this theory with the latest philosophical ideas, the authors note that if earlier classical epistemology believed that the object of cognition exists separately and independently of the subject – so the result of cognition was determined only by the properties of the object, then modern cognitivist proceeds from the fact that that the subject matter is created by a knowing subject, or at least includes certain features of the subject – language, adopted by him theory, instrumentation, culture and epoch embodied in the subject, – so the subject of cognition as if merges with its object. Thus, the object of cognition is generally dependent on the subject, so, knowing the external world, the subject actually knows himself. The subject matter partly embodies some features of the cognisable object and partly is conditioned by the peculiarities of the knowing subject.

Thus, today, speaking of the correspondence of a certain knowledge, it is a question of its correspondence not to an existing object in itself, but to the subject matter. In addition, it is necessary to understand that knowledge corresponds to a subject in a particular ontological model in which a particular subject resides. A new ontology of one or another subject is a change, extension or deepening of an old one, it is capable of explaining why the true knowledge of the previous statements was true. For example, the numbers in the natural series can be either odd or even. But if to expand this ontology by adding fractions, then in it this statement

[14] P.A. Lupinskaya, *Decisions in criminal proceedings: theory, legislation and practice*, Yurist, Moscow, 2006.

[15] Criminal Procedure Code of Ukraine No. 4651-VI, 2012. Available at: http://zakon3.rada.gov.ua/laws/show/4651-17.

becomes false, but retains truth within the old ontology – within integers. In authors' view, this statement and the above example make it possible to explain the change in the legal positions of the subjects of criminal procedural evidence in the course of criminal proceedings, their truth in accordance with the circumstances established at one or another moment of criminal proceedings. Thus, if at the time of entering information about a criminal offence in the Unified Register of Pre-trial Investigations there is one factual data, then an investigator in accordance with them qualifies a committed criminal offence (such an idea of a committing is true according to the ontological model that holds at that moment), however, if later these factual data have changed, then an investigator reports a suspected person for committing another offence (or specifying another qualification) whose submission corresponds to another true ontology model.

Despite the above contradictions of the current state of criminal procedural law and theory under consideration, as well as ignoring the latest philosophical ideas about the essence of the classical concept of truth, in the criminal procedural scientific and educational literature, the opinion dominates about necessity to understand through proving a founding of objective truth its sense as it was a hundred years ago. In authors' view, the necessity to reconsider such an understanding of the essence of truth, to supplement it with new ideas, is ripe for a long time. However, it should be noted that the authors do not intend to reject the achievement of objective truth theory, a position that has been thoroughly researched and tested over time by scientists for decades. The authors only believe that as a result of the evolution of criminal justice, this theory has lost its monopolistic methodological origin in criminal procedural evidence. Indeed, the competitive form of criminal justice is largely incompatible with the requirements of objective truth.

In order to express authors' vision for solving this problem, it would be advisable to consider other theories of truth in criminal proceedings, which may not be as clearly expressed in law and declared and researched in science, but which, in authors' opinion, can be defined as such and the provisions of which may be used to formulate the author's position on the subject under review.

Formal (procedural) theory of truth assumes that truth is the knowledge obtained, which corresponds not to objective reality, but to certain rules, propositions, whose truth is not in doubt, is presumed. Such rules are the prescriptions of the relevant normative acts (in criminal proceedings it is first and foremost criminal procedural and criminal law).

The possibility and necessity of isolating and analysing the formal (procedural) theory of truth is extremely important, since:

– first, the criminal procedural form, the formal issues that must be adhered to in criminal proceedings (for example, the procedure for hearing a case in court, filing a cassation complaint, etc.), and in particular when proving (for example, when deciding the admissibility of evidence, where issues of form, rather than establishing conformity with their content of reality) have always been of primary importance; they have always been, are and should remain;

– second, the legal assessment of an established event correlates the act not with objective reality but with the norm of criminal law. The law also acts as a postulate, the truth of which is superseded. Therefore, there is a correspondence of one not to objective reality, but to another. Thus, the legal qualification of an act committed is clearly formalised and, according to this theory, should be included in the content of the truth attained in criminal proceedings. If this qualification is incorrect, then the truth is not established.

It is worth noting that in recent times, both in the current legislation and in procedural science, more and more attention is being paid to the regulation and research of provisions that can quite clearly be considered as the content of the formal (procedural) theory of truth, or, in other words, show the formal nature of truth in truth. This, in particular, the norm: Part 2 of Art. 23 of the Criminal Procedure Code of Ukraine, 2012 (information contained in testimonies, things and documents which were not the subject of direct court investigation cannot be recognised as evidence, except as provided by this Code); Art. 90 of the Criminal Procedure Code of Ukraine (establishes the preliminary value of certain decisions of a national court or an international court agency for a court that decides the admissibility of evidence)[16], etc. As for scientific research, it is worth mentioning I. Titko, who also emphasising such a theory of truth, states that these opposing approaches (theories of objective and formal truth) often find an organic combination within the legislation of one state, ensuring its maximum efficiency in achieving the set goals[17].

A coherent theory of truth means the consistence, connectedness of a certain statement with the general system of knowledge. This theory

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[16] Criminal Procedure Code of Ukraine No. 4651-VI, 2012. Available at: http://zakon3.rada.gov.ua/laws/show/4651-17.

[17] I. Titko, "The unity of the legal nature of the institute of agreements in the private and public subsystems of the law of Ukraine", in *Bulletin of the Academy of Legal Sciences*, 2014, vol. 3, no. 78, p. 144-154.

of truth in criminal proceedings is manifested in the belief that knowledge of particular circumstances or facts of a criminal offence must be consistent and correspond to the system of knowledge about them in general. To verify truth means to test the relationship that this judgment has to others. The normative basis for the separation of elements of a coherent truth theory in modern domestic criminal proceedings is, in particular, the provisions of Part 1 of Art. 94 of the CPC[18], which prescribes the assessment of evidence in terms of sufficiency and interconnection for the appropriate procedural decision. Conventional theory of truth.

Proponents of this theory[19] consider such position true, which is recognised as such by an agreement (convention) of parties, and have found its place in the final outcome of the criminal proceedings. Judgment according to this theory is true (not true) not because it does (not) correspond to reality, but only because the subjects have agreed to believe it to be true. Examples of implementation of this theory in the domestic criminal process are: criminal proceedings based on agreements (Chapter 35 of the CPC of Ukraine); release from criminal liability in connection with reconciliation of the accused with the victim (Articles 285-289 of the CPC of Ukraine, Article 46 of the Criminal Code of Ukraine)[20]. Despite the lack of objective truth, the legal consequences of such decisions are undeniable. They are based on a voluntary agreement between the parties to the prosecution and defence, which is acceptable to them both and which resolves a criminal dispute. The result is a judgment given in terms of means, time and cost savings by the parties.

## *Formation of truth in criminal proceedings*

What is the significance of truth in criminal proceedings and is it possible to speak of its formation during criminal proceedings? In authors' opinion, the truth category gives an opportunity to answer one of the most debated questions in the science of criminal proceedings regarding the purpose of criminal procedural evidence. It is worth noting that interest in this issue has always existed and is not waning now. Almost all its

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[18] Criminal Procedure Code of Ukraine No. 4651-VI, 2012. Available at: http://zakon3.rada.gov.ua/laws/show/4651-17.

[19] Yu.K. Orlov, *Fundamentals of the theory of evidence in criminal proceedings*, Prior, Moscow, 2000; E.A. Karyakin, *Formation of the truth of a sentence in an adversarial judicial proceeding: questions of theory and practice*, Publishing House "Yurlitinform", Moscow, 2007

[20] Criminal Procedure Code of Ukraine No. 4651-VI, 2012. Available at: http://zakon3.rada.gov.ua/laws/show/4651-17.

researchers, seeking an answer to him, turned to the analysis of the concept of "truth". And this is understandable, since criminal procedural activity is inherently epistemological, and the purpose of any cognitive activity, as claimed in philosophical science, is to establish the truth itself.

Which of the theories of truth analysed above is the most truthful and that can be used in modern criminal proceedings to understand truth as a purpose of proof? In authors' view, all the theories of truth analysed above in criminal proceedings have a right to exist. However, the authors believe that none of them alone can cover all criminal proceedings. All of them (both factual findings of fact and compliance with regulations and other results of evidence and contractual principles) are involved in criminal proceedings in one way or another. Therefore, the authors believe it would be correct to consider the position of the theories of truth presented above in the criminal process as constituent components of a single concept of "truth". In this case, truth, through the components that make up its content, will combine the following: a) reality – the ability in the course of knowing the actual circumstances to reflect its objects in accordance with reality; b) procedural nature – the ability of the subject of cognition to fully reflect its results in the statutory procedural form and to establish their compliance with regulatory requirements; c) systematicity – the ability to relate to and co-ordinate with other knowledge gained in criminal proceedings; d) conventionality – the ability to resolve a criminal dispute through arrangements.

The extent of the combination of these components of truth may vary depending on the type of criminal process, the form and stage of criminal proceedings. They may find their manifestation to varying degrees, both in individual procedural actions and be present throughout the course of criminal proceedings. However, according to the current criminal procedural legislation, in order to make the final decision in a criminal case, to resolve it in essence (i.e., to answer the basic question of criminal proceedings – the guilt of a person in committing a criminal offence), it is necessary to form a judicial truth, which will find expression in the final act of a judgment.

Previously, the researchers of the essence of truth came to believe that it is being known, established during the proceedings. However, given the authors' understanding of the content of truth in criminal proceedings as a combination of components of different theories (some of which are not only recognisable but also attainable), the essence of proving not only as cognitive, but also as design and implementation activity, as well as assigned to the state the obligation to give a legal assessment of an event that has taken place and to resolve a criminal dispute against it, the authors believe that it is not a matter of knowing the truth, but of its formation (construction). Indeed, in criminal proceedings, the truth is the result not of some research work (thus knowing the scientific truth), but of the activities of a court and participants of criminal proceedings, who are on different procedural sides with opposite functions and interests, in an order clearly regulated by law, and using legal remedies provided and not prohibited by law. The process of truth-formation takes place at every stage of the criminal process, beginning with the pre-trial proceedings and ending with the trial.

On the basis of the above, without claiming the exclusive correctness of the position, the authors believe that one can give the following definition of truth as the purpose of proving in criminal proceedings: truth is formed (constructed) in the course of criminal proceedings in the manner prescribed by law, a credible, consistent knowledge of the circumstances to be demonstrated, reflecting those circumstances in minds of people in exact accordance with the reality and/or knowledge recognised as such by an agreement (convention) of parties.

If to understand the truth as authentic knowledge, the question of the relation between the concepts of "truth" and "reliability" needs attention. In the legal literature, the term "probability" is used as a synonym for "reliability". In the explanatory dictionary of the Ukrainian language reliable is one that is beyond doubt, quite true, accurate[21] as credible as one that is beyond doubt; authentic[22]. It can be concluded that in lexicology these terms are indeed used as synonyms. However, it should be noted that in literary sources, on the basis of the analysis of the etymology of these words, opinions are expressed about the necessity to distinguish them, and even in general, to refuse their use in the Ukrainian language. Without going into the analysis of the views expressed (leave it to the philologists), in this work the authors will use the term "reliability", given that it is also used by the legislator (see, in particular, Articles 85, 225, 415, 433 of the Criminal Procedure Code of Ukraine)[23]. In legal sources, reliability is understood as grounded, proven knowledge, the truth

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[21] I.K. Beloded, *Glossary of Ukrainian language: in 11 volumes (vol. 2)*, Naukova dumka, Kyiv, 1971; I.K. Beloded, *Glossary of Ukrainian language: in 11 volumes (vol. 4)*, Naukova dumka, Kyiv, 1973.

[22] I.K. Beloded, *Glossary of Ukrainian language: in 11 volumes (vol.1)*, Naukova dumka, Kyiv, 1970.

[23] Criminal Procedure Code of Ukraine No. 4651-VI, 2012. Available at: http://zakon3.rada.gov.ua/laws/show/4651-17.

of which is beyond doubt. Thus, it can be concluded that any reliable knowledge is true. However, the question of whether any true judgment is true is considered to be in the negative. After all, in criminal procedural evidence, there are many cases where the subject of proof produces a certain version, which only then finds its confirmation, that is, it is true from the beginning, but becomes later.

Another difference between truth and reliability is that the even category of truth is falsehood. There are no intermediate links between truth and falsehood: judgment can be either true or false (false, false). Probability is the same category of reliability. These concepts are different in nature, but are interconnected as a result of knowledge and its means. The whole process of obtaining true knowledge in its logical aspect can be seen as a mechanism of turning probable knowledge into reliable. More about the concept of the process of attaining authentic knowledge from the standpoint of probability theory and probabilistic logic, explaining the mechanism of the transition of probable knowledge to authentic[24].

To summarise the consideration of this issue, the authors note that the opinion expressed about the essence of truth in criminal procedural evidence leaves unanswered the question of the possible multiplicity of truths in different subjects of proof in one criminal proceeding. The authors believe that this may indeed be the case (this has already been mentioned above when characterising objective truth theory in criminal proceedings). An explanation of this approach is found in philosophical science, in particular when familiarising with the works devoted to the study of the multiplicity of truths. Thus, O.M. Knyazeva, considering the understanding of truth in evolutionary epistemology, notes that each person in one way or another seeks to find the meaning of life, to realise themselves in the world, to defend their life truth. Human studies the world through idealisations, abstractions, models, which are determined by his ability to know here and now. This means that everyone has their own reality and therefore their own truth[25].

Different perceptions of reality (truth) are conditioned by various bodily (depends on the psychomatics of a certain person, structure of his body, specific functional features to see, hear, feel) and situational (in particular, territorial-temporal) determinants of cognition that are inherent in each person (in this case – to each subject of criminal procedural activity). Thus, each subject of knowledge creates (selects, "carves out") from the world its environmental reality, which corresponds to its

[24] V.V. Vapniarchuk, *Theory and practice of criminal procedural proof*, Yurait, Kharkiv, 2017.
[25] E.N. Knyazeva, *Understanding the truth in evolutionary epistemology*, Alfa-M, Moscow, 2010.

cognitive properties and attitudes. Another decisive argument for the defence of the multiplicity of realities and, accordingly, the multiplicity of truths is based on the cognitive notion that a person is not simply reflecting the world, but actively building it, constructing it.

As already noted, in modern domestic criminal procedural science devoted to the study of the nature of proof, such epistemological constructivism has also found support. Thus, according to V.P. Gmyrko, a new concept of proof is the cognitive and research and design and implementation activities of the prosecution and the judiciary, aimed at replacing legally relevant events with legal structures based on factual sets made according to procedural rules; vice versa proof can still be called constructionism carried out in the criminal procedural field[26].

Based on the above, the authors find it necessary to emphasise that there is no reason to speak of one objective reality for all. This applies first and foremost to the component of objective truth theory, as a component of proposed by authors general notion of truth. And this is not only because no one knows what it is for others, but also because at the level of consciousness no one knows what it is for themselves. Human knows of it only in the part perception of aspects of which is fixed by the consciousness, but human does not know what it is in the part that is beyond it. Therefore, objective reality is always individual, its parameters are determined by: a) what is accessible to perception in general; b) what is accessible to the perception of the individual; c) the individual characteristics of the functioning of the cognitive system of a person, which determine what kind of effects that actually took place, will be recognised by it, and which will remain in the field of the unconscious, and it will be convinced that there was no influence in this range[27].

Based on the use in the scientific research of a methodological approach, a critical analysis of different views on the essence of the category "truth" both in philosophy and in the science of criminal procedure, the current criminal procedural legislation and the practice of its application, the opinion is expressed that the truth (as the purpose of criminal procedural evidence) is necessary to be understood as the formed (constructed) during the criminal proceedings in the procedure prescribed by law reliable, consistent knowledge of the material to be proved that reflects these circumstances in the minds of the people in exact accordance

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[26] V.P. Gmyrko, "Retrospective analysis of ideas about the nature of evidence in the criminal process of Ukraine", in *Bulletin of the of the Customs Service of Ukraine Academy*, 2011, no. 2, p. 112-119.

[27] I.A. Beskova, *The phenomenon of truth: pitfalls of methodology*, Alfa-M, Moscow, 2010.

with the reality and/or knowledge recognised as such by the agreement (convention) of the parties.

The material in this article may be useful for scholars who investigate theoretical and practical problems of criminal procedural evidentiary activity, as well as for persons involved in criminal proceedings.

In the process of research, issues have been raised that require further elaboration and resolution. It is necessary to continue the scientific study of the category of "truth" in order to improve the theoretical understanding of its essence, legislative regulation and enforcement application.