

Investigative and the Rule of Law: A Cameroonian and Ukrainian Criminal Proceedings Law Understanding*

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Abstract

There is no instance in a given society that can successfully operate and function without respecting existing standards and principles set in place in ensuring the respect of fundamental human rights and dignity. Cameroon and Ukraine have engaged huge steps in establishing credible laws, all in the preservation and protection of the fundamental human right of those presumed of the crime commission. This article establishes that the only way the rule of law can be respected during the investigative stage, will only when those responsible for investigation respects the due process of the law in the course of its investigation so that them act should not contravene the right of the suspect or accused in question. It provides that when issues of investigation are carried out by Ukraine and Cameroon police, gross violations of the criminal process are always experienced, and this greatly affects the objective of criminal law is that of protecting the right and dignity of everyone irrespective of the status quo acquired during the criminal proceedings. The results of this gross violation of the accused rights and status during the investigative stage will affect the rationale and objective of the criminal law system which is to ensure that all criminal processes should respect human standards and dignity. The reason for this is that, during the investigative process and procedure, the law enforcement officers must be able in detaching their various duties assigned with due diligence and respect to the various criminal standards of investigation. To ensure that this is done, there is that need of those enforcing the judicial process and trial should that all evidence, searches, seizures, recording done by the investigative police officials should be done in accordance of the free will of the presumed criminal.

Keywords: investigative police, pretrial proceedings, observation, rule of law.

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Investigasi dan Rule of Law: Pemahaman Hukum Acara Pidana Kamerun dan Ukraina

Abstrak

Tidak ada contoh dalam masyarakat tertentu yang dapat berhasil beroperasi dan berfungsi tanpa menghormati standar dan prinsip yang ada yang ditetapkan dalam memastikan penghormatan terhadap hak asasi manusia dan martabat yang mendasar. Kamerun dan Ukraina telah melakukan langkah-langkah besar dalam menetapkan undang-undang yang kredibel, semuanya dalam pelestarian dan perlindungan hak asasi manusia yang dianggap sebagai komisi kejahatan. Pasal ini menetapkan bahwa satu-satunya cara penegakan hukum dapat dihormati selama tahap penyidikan, hanya jika mereka yang bertanggung jawab atas penyidikan menghormati proses hukum dalam proses penyidikannya sehingga tindakan mereka tidak boleh bertentangan dengan hak penyidik atau tersangka yang bersangkutan. Hal ini mengatur bahwa ketika masalah investigasi dilakukan oleh polisi Ukraina dan Kamerun, pelanggaran berat proses kriminal selalu dialami, dan ini sangat mempengaruhi tujuan hukum pidana adalah melindungi hak dan martabat setiap orang terlepas dari status quo diperoleh selama proses pidana. Akibat dari pelanggaran berat terhadap hak dan status terdakwa selama tahap penyidikan akan mempengaruhi dasar pemikiran dan tujuan dari sistem hukum pidana yaitu untuk menjamin bahwa semua proses pidana harus menghormati standar dan martabat manusia. Pasalnya, selama proses dan prosedur penyidikan, aparat penegak hukum harus mampu melepaskan berbagai tugas yang diberikan dengan kehati-hatian dan menghormati berbagai standar pidana penyidikan. Untuk menjamin hal itu dilakukan, maka perlu bagi para penegak proses peradilan dan persidangan bahwa semua barang bukti, penggeledahan, penyitaan, pencatatan yang dilakukan oleh penyidik polisi harus dilakukan sesuai dengan kehendak bebas dari tersangka pidana.

Kata Kunci: Penyidik Kepolisian; Proses Praperadilan; Pengawasan; Supremasi Hukum

Розслідування та верховенство права: розуміння камерунського та українського кримінального процесу

Анотація

У суспільстві не існує жодного прикладу, який міг би успішно оперувати і функціонувати без дотримання існуючих стандартів і принципів, встановлених для забезпечення поваги основних прав і гідності людини. Камерун та Україна зробили величезні кроки у створенні надійних законів щодо збереження та захисту основних прав людини, в тому числі для осіб, які скоїли злочин. Встановлено, що єдиним способом дотримання верховенства права на стадії розслідування є належне додержання особою, яка здійснює розслідування, процесуального права. Однак, як свідчать практичні реалії, під час розслідувань спостерігаються порушення поліцією процесуального закону, що значною мірою впливає на мету кримінального процесу, яка полягає в захисті права та гідності кожного, незалежно від статус-кво, отриманого під час кримінального провадження. Результати грубого порушення прав на стадії розслідування також можуть впливати на логіку та завдання кримінального процесу, яка полягає в тому, щоб усі системи кримінального судочинства поважали людські стандарти та гідність. Причина цього полягає в тому, що під час кримінального процесу працівники правоохоронних органів повинні мати можливість відокремити свої різні обов'язки, покладені на них, з належною ретельністю та дотриманням різних кримінальних стандартів розслідування. Для забезпечення цього необхідно, щоб особи, які забезпечують виконання судового процесу та судового розгляду, усі докази, обшуки, виймки, записи, зроблені працівниками поліції, досліджували незалежно від волевиявлення підозрюваного, обвинуваченого.

Ключові слова: слідча поліція, досудове провадження, спостереження, верховенство права.

A. INTRODUCTION

In the investigative process, every crime contains a progression of activities or steps that is always moving from the gathering of evidence to that of information, developing the evidence acquired so as informing reasonable grounds for everyone in believing that the suspect or accused in question is really responsible for all the allegations made against him or her. Such a process of determining the nature of the investigation setup can be done through evidence collected. In this regard and position, it is the role of the criminal investigator in looking at the clues and acquired evidence at disposition in order to determine or ascertain that the crime has really taken place, and the suspect or accused in question is responsible for all the allegations made towards him. The criminal investigator in place before establishing that someone has really committed an offence or crime must be in the consciousness of his or her thinking, and such thinking put in place must always be in an intentional process. The aspect of a criminal investigation does not entail that the investigative police or official in question possessed the acquired skills; it will also depend on the thinking skill of the said officer. Absolutely, opposing to the process of analysing crimes every day, the role of the investigative police, the process of discovery, interpreting and even determining the validity of information most of the time becomes a complex and critical platform. It becomes a must supposed obligation of every investigator is not just to make a presumption about the validity and truth of information based on a personal confirmation of belief, but rather ensuring that he or she is responsible and empowered under the law in making relevant and justifiable proof so that it should not affect the lives and even the right of those investigated upon (Gehl, Plecas, 2016, p. 1-2). It is therefore understandable that anyone qualified as a police investigator should have both the task and the thinking skills in collecting and analysing evidence at all levels that will be accepted to the criminal justice system. The said person must carry out the investigation in such a way that it abides to the legal rules and appropriate processes of the evidence collected.

In its obligation of identifying the investigative system, a series of legal dispositions and criminal laws has been enacted by both Ukrainian and Cameroonian laws empowering the judicial or investigative police with the necessary competence and powers in effecting and engaging in matters of investigation from the crime commission to the trial process. In every matter referring to investigation, the investigative police is responsible for the investigation of offences, collection of evidence, identifying offenders and accomplices and bringing them before the court of law (Section 82 of the

Cameroon Criminal Procedure Code 2005). This policy in both countries are also responsible for receiving complaints and reports from persons and the said person must make all investigations in accordance with all the conditions and procedures prescribed or lay down by law. It is by large understandable that, for every act carried by this investigative police, such an act must be prescribed by the law, if not any act engaged by these officials with be regarded as illegal and unacceptable. The question one needs to be posing is in determining the law that gives these persons the capacity and status in engaging in any act of investigation of a criminal portfolio.

B. METHODS

In this article, the authors use general and special methods of scientific knowledge, which made it possible to draw reliable conclusions based on the results of the study. In particular, it was found that in both countries, Cameroon and in Ukraine during the investigation, the tendency remains that the police always violate human rights and freedoms of the suspect and accused when carrying out aspects of the investigation. In order to provide the author with objective information, specific court decisions were used.

The authors used a philosophical (universal) method of cognition, which allowed to emphasize the importance of observance of human rights and freedoms in the investigation. The method of analysis and comparison made it possible to show how the rights and freedoms of a suspect of their violation are protected at the legislative level of the two countries. The selection of scientific literature, laws, regulations and judicial practice was carried out using the bibliographic method. It is really true that the paper in question is analytical in confirming that there are continuous violations of the right of the suspect during the Investigative phase of the criminal law system. It becomes really clear that in both countries, the criminal law texts are established that during the Investigative phase of the criminal trial, it remains the responsibility of the Investigative police in respecting the due process of the law by respecting the fundamental right of the accused during the process. The issue here that one need to establish here is that it is a good philosophy that criminal texts should exist in ensuring rights of persons, but the problem remains that during the Investigative phase, there is accused experiences violations on its fundamental human right by the so-called those who were supposed to ensure and guarantee such rights. There is always the due process of the law which everyone especially the law enforcement officers must respect in carrying out their responsibilities during the Investigative phase of the criminal proceedings.

Establishing Penal or Criminal Codes are laudable initiatives that the Criminal Procedure has entailed in both countries, but ensuring that these put place should be respected to the latter irrespective of the person implementing in which the organs of the police are highly concerned here. The criminal procedure phase, from the commission of the offences, the search phase, preliminary inquiry, arrest and other procedures must be able in following the relevant rule of law in the criminal process itself.

C. RESULTS AND DISCUSSION

1. Recognising and Determining the Place of an Investigative Police under Cameroonian and Ukrainian Law

Dignity is the recognition by society of the social value and uniqueness of a person, of each individual as a part of human society. The exercise of political, social, economic, cultural and other rights is an important condition for ensuring the honor and dignity of the individual. In this regard, the protection of human dignity and honor is a criterion, a principle, which must be followed in law-making and law enforcement activities. Respect for the honor and dignity of the individual is the duty of all state bodies and public organizations, officials and citizens (Ablamskyi, Tadjibaeva, 2021, p. 61).

Both the Cameroonian and Ukrainian Criminal Procedure Code are the main laws that grant and recognise the status under which the investigative police officers are operating. These laws in effect governed and identified their various activities in such a way that, these officials cannot carry out any act in effecting criminal issues unless these activities or competence are highly recognised by the various criminal laws. The updated provisions of the CPC of Ukraine have become a prerequisite for the improvement of the concept of protection of human rights and fundamental freedoms during the pre-trial investigation and trial. These changes concern the specificity of assessing evidence by a court in terms of its admissibility, determining the grounds and procedure for finding evidence inadmissible, determining the list of acts considered substantial violations of human rights and fundamental freedoms during procedural actions of obtaining evidence (Ablamskyi, Havryliuk, Drozd, Nenia, 2021, p. 48).

a. Legal Recognition of the Investigative Police under Cameroonian Law

The Cameroon Constitution (Law no.96/06 of 18 January 1996 to amend the Constitution of 2nd June 1972. Article 65 of this Constitution is to the effect that the preamble is an integral part of the constitution) considered as the

highest law of the law has established that all acts done within the territory of the country must be carried out in accordance with the law. It's stipulated in its Preamble that; *no person may be prosecuted, arrested or detained, except in the cases and according to the manner determined by law.*

The position under the Cameroon Criminal Procedure Code is not an exemption as it comes in complementing the lubrication and flavour established and made provided under the Cameroon Constitution. This law inspired and breaths more air into the marrows and crones of the country's highest fabric of law by providing in its Section 1, that;

The law instituting the Criminal Procedure Code stipulates the rules which deal particularity with: (a) the investigation of offences;
(b) the search and identification of offenders;
(c) the method of adducing evidence;
(d) the powers of those charged with the prosecution;
(e) the organization, composition and jurisdiction of courts in criminal matters.

Code in question being the main criminal code of the country has made it clear in all manner that concerned the jurisdiction and the scope of all those vested with the powers in engaging criminal matters and investigation in the country in which police investigator is participating? In complementing the provision of the Criminal Procedure Code, the Penal Code, otherwise considered as the Criminal Law of the Republic stipulates in its Section 17 that; *no penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined.*

As far as the Police Investigator is concerned, there is a special code of 2012 that governs the ethic and deontology of the police force (Decree no. 2012/546 of 19th November 2012 dealing with the code of conduct for the forces of the National Security) in all aspects of the police operation including those dealing with police investigations especially during their process of engaging in matters of investigation. The code provides in Article 17 that;

“Every National Security agent shall respect the law, ensure that the law is respected, and obey the law; defend and protect the fundamental human rights; banish tribalism, favouritism, nepotism, discrimination and corruption; serve the community according to the law, and not use it or supersede it”.

The code continues in providing that it is the responsibility of every agent or officer of the Cameroon National Security in ensuring and respecting and protecting the rights of all persons in all aspects of operation (Decree no.

2012/546 of 19th November 2012 dealing with the code of conduct for the forces of the National Security). In conforming with these relevant dispositions and prescription, it further explains that during every criminal operation of the police officer in carrying out his or her duties, they have to respect the right of freedom, individual security, private and family life, the inviolability of the home, and even that of confidentiality of correspondence. This is a clear indication that investigating police must respect and comply with when carrying out their investigation and under no circumstances should they breach the rights of the suspect or accused when meeting their function of an investigator. It is thus their fundamental and judicial duty in respecting this fundamental human right of the suspect or accused under their custody (Gross, 2014, p. 24). We are not saying that they should exercise their investigative skills in executing their function imputed on them by the law; our worry is always at the level of performance where they want to use everything within their capacity and competence in adducing evidence from the suspect or accused, and as result violates their human right. To this regard, the law provides that, the police officer in carrying out his/her duties, should be guided by principles of impartiality and scrupulous respect for fundamental human rights, in particular the right to freedom of thought, conscience, religion, expression, opinion, peaceful assembly, free circulation and respect for the properties of all persons. In matters of criminal performance, the officer shall refrain from any discrimination based on sex, race, ethnic origin, language, religion, education, political affiliation, opinion, disability, social position and other reasons prohibited by the Constitution and by international treaties and agreements. The application of the various laws posed above has been very unreasonable and infallible as we continue to experience violations of these laws on the part of the police who has sworn of always ensuring the human rights of all during the arrest and investigation process.

b. Legal Recognition of the Investigative Police under Ukrainian Law

As for Ukraine, the clear powers of pre-trial investigation bodies, which include, inter alia, the investigative units of the National Police of Ukraine, are also defined at the legislative level. First of all, it should be noted that Article 19 of the Constitution of Ukraine requires that: «*Public authorities and their officials are obliged to act only on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine*».

Therefore, the Basic Law of the state emphasizes strict compliance with the requirements of current legislation, including during criminal proceedings. The detail of this regulatory requirement is reflected in the current Criminal

Procedure Code of Ukraine of 2012. Thus, Article 8 of the Criminal Procedure Code of Ukraine provides that:

Criminal proceedings are carried out in accordance with the principle of the rule of law, according to which a person, his rights and freedoms are recognized as the highest values and determine the content and direction of State activities.

The principle of the rule of law in criminal proceedings is applied taking into account the case-law of the European Court of Human Rights.

As we can see, the legislator not only emphasized the priority of the rule of law, but also pointed out that this principle should be applied through the prism of the case law of the European Court. This is due to the fact that today the decision of this Court is a source of law, because, having ratified the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Government of Ukraine has taken on obligations to implement the decisions of the European Court of Human Right. Nowadays, the decisions of the European Court are important for the protection of human rights and freedoms, and especially for criminal proceedings, because it is in this area is most characteristic of the restriction of universally recognized human rights. Thus, the prosecution is obliged to use all opportunities provided by law to respect the rights, freedoms and legitimate interests of persons involved in criminal proceedings, in particular, the right to liberty and security of person, protection, access to justice, privacy of communication and even non-interference in private life.

2. Examining the Role and Place of the Investigative Police in Criminal Proceedings

Ukraine and Cameroon have ratified a good number of international and regional treaties that impose an obligation on the government through its law enforcement officials in investigating all allegations of human rights violations and bring the alleged perpetrators to justice. One of the fundamental treaty in which Ukraine and Cameroon has ratified are the International Covenant on Civil and Political Rights, the United Nation Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and the African Charter on Human and Peoples' Rights. Article 6(1) of the International Covenant on Civil and Political Right states that; *Every human being has the inherent right to life. This right shall be protected by law, and no one should in any circumstance or situation be arbitrarily deprived of his right to life.*

It continues in providing and stipulating in its Article 7 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In respecting this both countries have been able in performing criminal proceedings through their investigative or judicial police (Brandl, 2006, p. 34).

These international norms-requirements have found their direct consolidation at the level of criminal procedural law. For example, Article 11 of the Criminal Procedure Code of Ukraine stipulates that respect for the human dignity, rights and freedoms of every person must be ensured during criminal proceedings. It is prohibited to subject a person to torture, cruel, inhuman or degrading treatment or punishment, to resort to threats of such treatment, to keep a person in degrading conditions, to force him to actions that degrade his dignity. In order to implement these provisions in practice, the legislator provided for judicial control during the application by the prosecution (investigator, prosecutor) of restrictive measures, in particular, the choice of preventive measures against the person, compulsory attendance, interference with privacy.

In addition, an essential guarantee of the protection of person's rights and freedoms is that evidence obtained as a result of torture, cruel, inhuman or degrading treatment or threat of such treatment is declared inadmissible by the court. That is, evidence obtained as a result of a substantial violation of human rights and freedoms will inevitably be declared inadmissible by the court.

a. The Cameroonian Criminal Law and the Judicial Police

In every aspect concerning the investigative euphoria, it is the general rule and principle that during the process of investigation, it is the role of the police to question, conduct service, make arrest as far as the necessary evidence acquired in the course of the investigation is weighty and can be convincing. It is but normal that the investigative police in the course of carrying its duties must ensure that such duty carried should respect the necessary provision prescribed by the law, if not any act or activities carried out will considered as null and automatically illegal.

b. Search Arrest, a prerequisite Function of the Police under the Cameroon Criminal Procedure Code

The Cameroon Criminal Procedure Code in its Section 30 has made provisions when issues of arrest are concerned. It provides that it is the responsibility of the judicial police officer when empowered with the authority and competence in effecting arrest on the suspect, should do so without plaguing or using methods that randomly affect the human rights of the

accused in question. The general rule is that in every criminal aspect under Cameroonian criminal law, the accused is presumed to be innocent until proven guilty by the prosecuting party who is bringing allegations that the accused or suspect really committed the offence. The code states in Section 30 that;

A judicial police officer, agent of judicial police or any officer of the forces of law and order affecting an arrest shall order the person to be arrested to follow him and in the event of refusal, he shall use reasonable force necessary to arrest the person. That any individual may in case of felony or misdemeanour committed flagrant delicto arrest the author of such an offence.

The fact that the code has offered or vested the judicial police with this power as to arrest, the official in question has no authority during the arrest in causing any bodily or psychological harm on the person arrested. The said police officer must respect the fundamental human right of the arrested person. The question one need to ask is in determining whether during moment of arrest, it is the duty of the police officer to touch the body of the criminal (WesDenham, 2010, p. 21).

Article 12 of the Criminal Procedure Code of Ukraine also stipulates that during criminal proceedings no one may be kept in custody, detained or restricted in the exercise of the right to free movement in any other way on suspicion or accusation of committing a criminal offence other than on the grounds and in the manner prescribed by this Code. Anyone detained on suspicion or charge of a criminal offense or otherwise deprived of his liberty shall be brought before an investigating judge as soon as possible to decide on the lawfulness and justification of his detention, other deprivation of liberty and further detention. A detainee shall be released immediately if he or she has not been served with a reasoned detention order within seventy-two hours of his or her detention.

c. Extent of Functioning of the Search System

Unfortunately, there is a negative practice regarding violations of procedural requirements of the law during detention. For example, the Supreme Court found the detention of a person without drawing up a detention record and without explaining his rights as a significant violation of human rights and freedoms. Thus, having examined as evidence the scene inspection record, according to which the accused provided psychotropic substance to police officers, the Court concluded that the document was not an admissible source of evidence, as the facts were obtained with significant violations of criminal procedure. The circumstances of the case indicate that the

suspect was actually detained, but contrary to the requirements of Part 5 of Art. 208 of the Criminal Procedure Code of Ukraine, a record on his detention was not drawn up and procedural rights were not clarified. In addition, the violation was recognized by the court as significant and without the search record of the detained person confirmed in accordance with Part 3 of Article 208 of the Criminal Procedure Code of Ukraine (Case № 756/8425/17).

d. Explaining other aspects of the Investigative Trial

In another criminal proceeding, the Court found the allegations of the prosecution about the voluntary participation of the accused in the investigative actions carried out immediately after his actual detention baseless - examination and inspection of the area, premises, things and documents, since in understanding of Article 209 of the Criminal Procedure Code of Ukraine, he was detained, which obliged the investigator to inform the detainee about his procedural rights provided by Part 4 of Article 208 of the Criminal Procedure Code of Ukraine. However, such requirements of the procedural law were not complied with, the record of detention of the person and evidence of explanation of his rights in the materials of the criminal proceedings are missing. Thus, the panel of judges of the Supreme Court found both violations of the form of criminal proceedings and such general principles of criminal proceedings as legality and protection of the right to defense, which became the basis for declaring this evidence and its derivatives inadmissible (Case № 588/1199/16-k).

Other examples of violation of the right to defense are the failure to involve a defense counsel immediately after the detention of a person and the conduct of investigative (search) actions before his appointment. Thus, the Supreme Court found a violation of the detainee's right to protection, as in violation of Part 4 of Article 213 of the Criminal Procedure Code of Ukraine, the Regional Center for Free Secondary Legal Aid was not immediately informed about the person's detention. This is confirmed by the information specified in the detention report of the person suspected of committing the crime. Also, it is a violation of the right to defence to conduct such investigative actions as presenting a person for identification before drawing up a record on his detention and before appointing a defence counsel (Case № 686/19218/17).

Summarizing the case law, it can be noted that the most common violations of the rights of persons detained on suspicion of committing crimes are: detention by an authorized official without legal grounds or failure to notify the detainee of the relevant grounds for detention; violation of the terms of detention, in particular, discrepancy between the moment of actual detention

and the time of detention reflected in the detention record; violation of the right to protection; detention without drawing up a detention record and others. It is inadmissible to commit such violations, as it is an integral part of the whole detention process, therefore non-compliance with one of the parts leads to the recognition of detention as illegal, and the evidence collected in the course of it is inadmissible. And in this perspective, we should take into account the case law of the European Court of Human Rights, which emphasizes in its decisions that the fixation of accurate data on detention, including grounds, is a necessary condition for lawfulness of detention for the purposes provided by Article 5 of the European Convention on Human Rights and Fundamental Freedoms.

e. Justifying the position of Reasonably Force in Aspect of Investigation

The Cameroon Criminal Procedure Code has been able to respect these international instruments as it makes clear that, an arrest, ordinarily, should be conducted by simply ordering the person to be arrested to follow the judicial police officer or any person authorized to perform the arrest to the Police Station or any other specified legal ground of investigation or detention. In other words, unless the person to be arrested offers some physical resistance the arresting officer should not use any force intended to cause bodily or psychological harm in carrying out the arrest. However, a judicial police officer, agent or persons authorized to carry out the arrest may use “reasonable force” whenever the person to be arrested refuses to follow him peacefully. Indeed, the worry here is that the code did not make mention of what would amount to a reasonable force, thereby given the authority the power to enforce what they actually think is sufficient for and most often, violates the rights of the suspects (David, 2012, p. 34). To ensure that the force however use in carrying out the arrest is a reasonable one, the code provides that no bodily nor psychological harm may be inflicted on the arrestee upon arrest. The code further ensures the safety and security of the person arrested by providing that, the arrested officer if so required by the arrestee or where the Judicial Police Officer intends to remand the arrestee, shall allow a third party to accompany the suspect or arrestee in order to ascertain the place in which he being detained. Where this was the case in an arrest, it shall be mentioned in the police reports for tranquillity.

f. Establishing Police Restriction in Justifying the Investigative Process

Restrictions on the use of police force, including those during detention, are also enshrined in Ukrainian law. Thus, according to Article 29 of the Law of Ukraine “On the National Police”, all police measures must be used exclusively to perform the powers of the police during the detention of a person. The measure chosen by the police must be lawful, necessary, proportionate and

effective. The police officer is prohibited from taking any measures other than those specified by the laws of Ukraine. In this case, the principle of legal certainty is applied, according to which the rules of law must be high quality and clear for understanding and law enforcement. In this context, a police officer, as a public official, must act exclusively in the manner prescribed by current law during his activity.

In addition, the applied police measure is proportional if the harm caused to the legally protected human rights and freedoms or the interests of society or the state does not exceed the good for which it is used or the created threat of harm. However, the chosen police measure is effective if its application ensures the fulfillment of police powers.

g. Ukrainian Criminal System and the Enforcement of the Trial Process

We should also pay attention to the fact that in order to effectively perform the tasks assigned to the police, the legislator made it possible to apply such a preventive measure as a superficial inspection, which conditions and procedure are enshrined in Article 34 of the Law of Ukraine "On the National Police". The superficial inspection is that the police officer has the right to carry out a visual inspection of the person, to touch the surface of the person's clothing by hand, a special device or means, as well as visually inspect things or vehicles. In addition, according to Part 5 of Article 34 of the Law of Ukraine "On the National Police" a police officer during the surface inspection has the right to require to open the trunk lid and / or cabin door. Regarding the application of this preventive measure, O. Banchuk and I. Dmytrieva noted that such powers bring this police measure closer to inspection, but there is no requirement to obtain a court permit. They believe, this contradicts Article 30 of the Constitution of Ukraine, according to which it is not allowed to enter a house or other property of a person, carry out the inspection or search there other than by a reasoned court decision. Scientists believe that since the vehicle is recognized as "another person's possession", the grounds and conditions of the surface inspection should be similar to those used during the inspection. They also noted that the grounds for a surface inspection are broader than those provided for in Article 30 of the Constitution of Ukraine and Part 3 of Article 233 of the Criminal Procedure Code of Ukraine. In this regard, scientists propose to exclude from the text of the law such cases as: 1) the existence of sufficient grounds to believe that there is a thing in the vehicle, the circulation of which is prohibited or restricted; 2) there are sufficient grounds to believe that the thing or vehicle is an instrument of the offense and / or is in the place where a criminal offense may be committed, to prevent which it is necessary to

carry out the superficial inspection (Banchuk, Dmytrieva, 2015). However, in our opinion, it is difficult to fully agree with such a statement, because the superficial inspection and inspection of a person, things or documents are different legal institutions. In view of this, the grounds and conditions of their use should not be confused. However, the analysis of the content of these provisions really indicates possible violations of human rights and freedoms during the implementation of the investigated measure. This conclusion is based on the fact that there is no clear mechanism for implementing these norms in the Law.

h. Posing the position of the Presumption of Innocence

What about the situation where there is presumption of escape on the side of the accused, or in situation where restrain is necessary for the safety of the person arrested? Section 31 of the Cameroon Criminal Procedure Code has made it clear that in every circumstances in which arrest is effected, the person arrested should be informed of the reason of his or her arrest, and even allow a third party in accompanying the person arrested son as in ascertaining the place to which he or she is being detained. This has not been the case cause many people were arrested and brought to trial unusually swiftly, with little or no time to prepare their defence. Many of the defendants had no legal counsel; while others were denied time to consult their lawyers. The trials were summary in nature. Hundreds of defendants were sentenced to between three months and two years in prison (Section 221 of the Code that emphasized on the time limit of detention of the accused which must not exceed six months).

Even with the arrest of suspects and defendants in question, there continues to be prolonged pre-trial detention which constitutes a serious problem and affects the right of the accused (CAMEROON NGO REPORT). According to Article 221 of the Cameroon Criminal Procedure Code, the time limit for detention pending an investigation cannot exceed six months and can only be extended by an order from a judge giving grounds by 12 months for serious crimes and six months for lesser crimes. When the time limits expire, the suspect must proximately be released. The Code requires police and gendarmes to obtain an arrest warrant except when a person is caught in the act of committing a crime, but the police often do not respect this requirement in practice. The law provides that detainees must be brought promptly before a magistrate, but this frequently does not occur.

i. Ukrainian Criminal law and the Notion of Detention

The Criminal Procedure Code of Ukraine also provides for the period of detention of a person without the decision of the investigating judge, court, however, compared to the legislation of Cameroon, such a period is shorter. In particular, in Article 211 of the Criminal Procedure Code of Ukraine, it is established that the term of detention of a person without the decision of the investigating judge, the court may not exceed seventy-two hours from the date of detention, which is determined in accordance with the requirements of Article 209 of the Criminal Procedure Code. In particular, the latter stipulates that a person is detained from the moment when he or she by force or through submission to the orders has to stay with the authorized officer or in the room defined by the authorized official.

j. The Power of Questioning the Suspect

The police in its course of acquiring the necessary evidence needed for the criminal proceedings in question, has the power in questioning the suspect during aspect of investigation so as to acquire statements from the suspect. The issue here is that, even though the police has this prerogative disposition in their disposal, it must be done in a voluntary manner, cause the law will frown on any statement gotten from the suspect using oppressive methods all in the aim of getting the suspects to confess their guilt and even implicates others (Stone, 2012). The use of torture, threat, intimidation, undue influence is prohibited by the law in the extraction of evidence which can still be gotten even during the trial proper. So, for evidence of the accused to be admissible in a court of law, the confession must be carryout voluntarily. This has not been the case in question. Section 315 of the Cameroon Criminal Procedure Code provides that;

A confession is a statement made at any time by an accused in which he admits that he committed the offence with which he is charged. The confession will not be admissible in evidence if it was obtained through duress, violence, or intimidation in exchange of a promise for any benefit whatsoever or by any other means contrary to the free will of the maker of the confession.

From the intent of this provision, it is clear that all confession or evidence adduced from the accused by be voluntary before it can admissible in the court of law, anything outside of this will be considered illegal and inadmissible. The question one needs in finding out is as to whether this has always been the case when carrying out investigation by the competent authority especially the judicial police vested with this power. We continue in

experiencing violation of this fundamental human right of the accused by the country's police force were they continue in using excessive force and punishment on the accused which is against the provision of Section 132 of the Penal Code that deals with torture.

k. Assessing a Suspect in Ukraine Criminal Law

The Criminal Procedure Code of Ukraine also prohibits the torture of a person, his or her cruel or inhuman treatment. Of course, such requirements are also applied during the interrogation of a person, including a suspect. If the suspect has been subjected to physical, psychological influence or other actions that degrade his honor and dignity, he has the right to record it in the protocol of interrogation, as well as to state any other remarks and objections concerning the procedure of the investigative action. Therefore, compliance with the procedural requirements regarding the implementation of procedural actions in criminal proceedings, first, ensures compliance with the procedural form of criminal proceedings; secondly, it is a guarantee of the admissibility of evidence obtained as a result of procedural actions; thirdly, it promotes the fulfilment of the tasks of criminal proceedings and respect for its basic principles.

1. Placing the Police Power of Search and Seizure in Issue of Acquisition of Evidence

The police officer in carrying out an arrest has the right to search the suspected person, or cause the person to be searched upon. This power in exercising search is provided by Section 87 of the Cameroon Criminal Procedure Code which provide that;

A judicial police officer may, whether in a public place or a place open to the public, search, cause to be searched, any person suspected of being in possession of arms or any other object likely to be used in the commission of an offence. Also, that the bodily search shall be carried out only by a person of the same sex on the suspect.

From the words of code, the general rule is that all aspect of search must be done in public or a place recognised as a public place. This therefore means that any search done in the private by the Judicial Police will be considered as illegal, and why not issue of harassment rose. What is of prime interest again goes at the disposition of the code which talks those who are supposed to carry out the search. It is clear from the provision of Section 87(2) that bodily search should be carried out only by person of the same sex on the suspect which is fundamental in the respect of the right as to privacy and that

of indecency as stipulated under Section 295 of the Cameroon Penal Code which talks on aspect of private indecency. The issue here is not the person carrying out the search whether a male on a male, or female on female. Our concern here will be based on the manner in which such search is done on the suspect or accused in question (Creamer, 1980, p. 47). In most circumstances there exists some use of force which is considered as per Section 292 of the same Penal Code as a Sanction. The Section provide that anyone for his or her personal advantage compels someone to do any work or render any service which the person has not done of his own free will shall be punished with imprisonment term as from one year to five years. This law applies to everyone irrespective of the status acquired. There is always the use of force on the suspect in question when effecting search by the investigating police, and as if this is not enough the situation become appalling when we see police officer searching private homes. According to Section 16 of the Criminal Procedure Code, a search warrant shall be an order given to a judicial police officer, by the State Counsel, an Examining Magistrate or a trial court to enter any public or private place and search it for the purpose of seizing any article or documents used in committing an offence or which appear to be the product of an offence.

m. Enforcing the Suspect Right during Investigation

Therefore, the Judicial police are of no right to enter houses or premises to conduct a search for it will constitute a violation of the Cameroon Constitution in its Preamble which states that the home is an inviolate residence (Section 65 of the Cameroon Constitution is to the effect that the Preamble is considered as an integral part of the constitution.). Even the Cameroon Penal Code in its Section 299 punishes aspects of invasion of residents, and we can say that any forceful entering into someone residence without a search warrant can be sued for the action of trespass. As it this is not exhaustive it is the responsibility of those around in searching the police officer so as in ensuring that the police officer should not plant any incriminatory evidence that can affect the suspect. This becomes complicated in carryout the act in question, most of the time, the suspect is intimidated, threatening and even place under duress, making it impossible in effecting this act.

The Criminal Procedure Code of Ukraine also stipulates requirements for both a search of a detained person and a search of a person's home or other property. At the same time, it is worth focusing on the fact that the Criminal Procedure Code does not provide for a separate article on the basis of which a police officer may carry out a personal search of a person. That is, according to the current Criminal Procedure Code of Ukraine, the personal search may be

carried out only during a person's detention (part 3 of Article 208 of the Criminal Procedure Code or during a search of a person's home or other property. But in each case, the search of a person must be carried out by a police officer, taking into account the following requirements:

- 1) mandatory participation of at least two witnesses, regardless of the use of technical means of fixation;*
- 2) carried out by persons of the same sex;*
- 3) the course and results of the personal search are subject to mandatory recording in the relevant protocol.*

In addition, if the personal search is carried out during a search of a person's home or other property, a lawyer or representative must be invited at the request of the person being searched. At the same time, in accordance with part 5 of Article 236 of the Criminal Procedure Code of Ukraine, the non-appearance of a lawyer, a representative to participate in the search of a person within three hours does not prevent the search.

3. Judicial Police Investigation and the Inadmissibility of Evidence

The introduction of the system of examination by the Cameroon Criminal Procedure Code makes it possible for the Judicial Police officer who sends his report to the court or to the examining magistrate to be cross-examined in court though this is at the discretion of the court. This enables the judge or the examining magistrate to enjoy considerable authority, even in relation to senior police officers whose reports can be criticized in open courts. This system of procedure is Common Law oriented, giving the judge the opportunity to personally interrogate the Judicial Police officers about the course of police investigation and the circumstances of the confession. The police experience the judicial power to control and sanction their behavior in a public trial. The public sees for itself, that police officers have limited powers and that there is a controlling authority strong enough to protect individual rights against abusive State power. Unfortunately, the fact that cross examination is optional still makes it possible for the practice in Francophone Cameroon to prevail whereby a written report of a police officer about his interrogation of the accused can be substituted for his personal appearance at the trial.

The Ukrainian legislator chose another way, providing in Article 94 of the Criminal Procedure Code of Ukraine the following provision:

Investigator, public prosecutor, investigating judge, court evaluates evidence based on his own moral certainty grounded in comprehensive, complete, and

impartial examination of all circumstances in criminal proceedings being guided by law, evaluates any evidence from the point of view of adequacy, admissibility, and in respect of the aggregate of collected evidence, sufficiency and correlation, in order to take a proper procedural decision. No evidence shall have any predetermined probative value.

Thus, the indictment should be based exclusively on the evidence that the court directly examined during the trial. However, such evidence must be appropriate and admissible. If necessary, the witness may be interrogated about previous testimony that does not agree with each other.

4. Controlling the Legality of the Police Power in the Investigative Process

The Cameroon Penal Code in its Section 17 has emphasized on the aspect or principle of legality, where all acts must be done in accordance with the provision of the law, in which those of the police or investigative officers are not an exception. The law provides that all acts of the police must be checked in order to avoid abuse of power on the part of these police officers.

Similar provisions are enshrined in the current legislation of Ukraine. In particular, for more effective ensuring the rule of law in criminal proceedings, the provisions of Article 9 of the Criminal Procedure Code of Ukraine are quite important, which states that:

During criminal proceedings, a court, investigating judge, public prosecutor, chief of pre-trial investigation agency, investigator, other officials of state authorities shall be required to steadfastly comply with the requirements of the Constitution of Ukraine, the Criminal Procedure Code of Ukraine, and international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by, and requirements of other laws.

It is also worth paying attention to the fact that the Cameroon Penal Code in its Section 291 talks about the concept of false arrest on someone which will deprive that person of his liberty. The code continues in its Section 132 to talk about aggravation for public servants who use force on anyone, and the police is not an exception. Following sections 5 and 9 of the Universal Declaration of Human Rights, Section 7 of the International Covenant on Civil and Political Rights, Preamble of the Cameroon Constitution, Ukraine Constitution and other international instruments which are all to the effect that, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Cameroon Criminal Procedure Code has been able to respect these international instruments as it makes clear that, an arrest,

ordinarily, should be conducted by simply ordering the person to be arrested to follow the judicial police officer or any person authorized to perform the arrest to the police station or any other specified legal ground of investigation or detention. In other words, unless the person to be arrested offers some physical resistance the arresting officer should not use any force intended to cause bodily or psychological harm in carrying out the arrest. However, a judicial police officer, agent or persons authorized to carry out the arrest may use “reasonable force” whenever the person to be arrested refuses to follow him peacefully. What about the phenomenon of invasion of residence which is the police are also criminally liable for such act? Upon receipt of an application the judge shall make the order which will specify the date and time for a hearing. After the hearing, if the judge determines upon the facts of the case that the arrest or detention is illegal, he shall order the immediate release of the detainee. That decision may be subject to appeal. However, the detainee shall be immediately released pursuant to the decision, irrespective of any appeal. Again, this is a significant feature of the law as it underlines the Criminal Procedure Code emphasis on the liberty of the citizen, since it goes against the general trend of the law in Cameroon under which an appeal has the effect of suspending execution of the judgment below. Worthy of note is section 585(5) which states that in the event of non-appearance of the detainee in court, the judge shall consider the reasons for this and make a decision on the basis of the documents presented in the application. Thus, the non-appearance of the custodian or the detainee does not preclude the judge from deciding on the legality of the detention. However, a major flaw in the new law is that it does not go as far as to provide for penalties or any sanctions against a custodian who refuses to comply with a court order to produce the detainee in court and explain the basis of the detention (Enonchong, 2014, p. 55).

D. CONCLUSIONS

The application of every law, especially criminal law is instrumental and imperative for the machinery of justice to be effective. The commission of crimes is an inevitable aspect that is plaguing every society whether with bonded principles or not. The investigating police otherwise known as the crime implementation police is not vested with powers in ensuring the protection of the fundamental human rights of the accused before, during, and even after crime commission, but it is embedded with the responsibility of respecting and safeguarding the rule of law in the executing and enforcement of justice. Cameroon and Ukraine as countries binded under the auspices of recommended

and recognised criminal disposition ensures that the right of the accused during the pre-trial process should be respected and enforced by the investigative police in the course of collecting evidence from the presumed accused. It is experienced that, even though with all these methods exercised by the investigative police in these countries, enforcement of justice by these law abiding officers has been problematic and questionable.

REFERENCES:

- Ablamskyi, S. Ye., Havryliuk, L. V., Drozd, V., G. & Nenia, O. V. (2021). Substantial Violation of Human Rights and Freedoms as a Prerequisite for Inadmissibility of Evidence. *Justicia*, 26(39), 47-56. <https://doi.org/10.17081/just.26.39.4819>.
- Ablamskyi, S., & Zaxitovna, T. G. (2021). The Right to Privacy is a Supreme Blessing. *International Journal of Discoveries and Innovations in Applied Sciences*, 1(3), 61-63. Retrieved from <http://openaccessjournals.eu/index.php/ijdias/article/view/140>
- Banchuk O., & Dmytrieva I. (2016). *The right to a fair trial in criminal proceedings*. Ukrainian Helsinki Human Rights Union. Retrieved from <http://helsinki.org.ua/pravo-na-spravedlyvyj-sud-u-kryminalnomu-provadžhenni-o-banchuk-i-dmytrijeva-tsentr-polityko-pravovyh-reform/>.
- Brandl, S. G. (2006). *Criminal Investigation*. University of Wisconsin-Milwaukee Press.
- CAMEROON NGO REPORT. On the implementation of the ICCPR (Replies to CCPR/C/CMR/Q4) Report presented by Gender Empowerment and Development, Bamenda, June 2010. Retrieved from https://www2.ohchr.org/english/bodies/hrc/docs/ngos/geed_cameroon_hrc99.pdf.
- Case № 588/1199/16-k: Resolution of the panel of judges of the Third Judicial Chamber of the Criminal Cassation Court of the Supreme Court of 18.12.2019 (proceedings № 51-3127кМ19). Retrieved from <http://www.reyestr.court.gov.ua/Review/86505861>.
- Case № 686/19218/17: Resolution of the panel of judges of the Third Judicial Chamber of the Criminal Cassation Court of the Supreme Court of 15.07.2019 (proceedings № 51-3118 кМ 19). Retrieved from <http://reyestr.court.gov.ua/Review/86035312>
- Case № 756/8425/17: Resolution of the Board of Judges of the Criminal Cassation Court of the Supreme Court of 21 January 2020 (proceedings

- № 51-859 km19). Retrieved from <http://www.reyestr.court.gov.ua/Review/87053575>.
- Creamer, J. S. (1980). *Law of arrest, search and seizure*. Holt, Rinehart and Winston United States of America, 3rd Edition.
- Criminal Procedure Codes of Ukraine (April 13, 2012). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651>.
- David, C. O (2012). *Criminal Practice*. Justice Institute of British Columbia New Westminster, Bc.
- Enonchong, L. S. (2014). Habeas corpus under the new Criminal Procedure Code of Cameroon: progress or status QUO? *Oxford University Commonwealth Law Journal*. J, 14(1), 47-72.
- Gehl, R., & Plecas, D. (2016). *Intro to Criminal Investigation: Processes, Practices and Thinking*. Justice Institute of British Columbia New Westminster, Bc. Retrieved from <http://solr.bccampus.ca:8001/bcc/file/0c9b47a1-9309-470c-b83c-ed55f5e2a9ea/1/Introduction-to-Criminal-Investigation-Processes-Practices-and-Thinking.pdf/>
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976). Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
- Law No.°2005 of 27 July 2005 on the Criminal Procedure Code, Cameroon. Retrieved from https://www.policinglaw.info/assets/downloads/2005_Criminal_Procedure_Code.pdf
- Law No. 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972. Retrieved from <http://confinder.richmond.edu/admin/docs/Cameroon.pdf>.
- Ratified by Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR No. 2148-VIII of October 19, 1973. Retrieved from https://zakon.rada.gov.ua/laws/show/995_043.
- Ratified by the Law of Ukraine "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention" of 17.07.1997. Retrieved from <https://zakon.rada.gov.ua/laws/show/475/97-%D0%B2%D1%80>.
- Stone, R. (2012). *Civil Liberties and Human Rights*. Oxford University Press, 10th Edition.
- Wes Denham (2010). *Arrest: What to do when your loved one is in Jail*. Chicago Review Press.