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LEGISLATIVE ACTIVITY IN UKRAINE ABOUT POSSIBLE CHANGES TO THE CPC

The paper investigates the problem of legal regulation, proposed by the Law of Ukraine «On Amendments to the Criminal Procedure Code of Ukraine (on improvement of the mechanisms to ensure the tasks of criminal proceedings)». Based on the analysis, it was found that some change in the bill is irrationality. So according to this we had presented a number of proposals to perfecting of the certain provisions of the bill.

***Key words**: the bill, the Criminal Procedure Code of Ukraine, materials pre-trial investigation, indictment, terms of pre-trial investigation, agreement about confession of the guilt.*

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Законодавча діяльність в Україні щодо можливих змін у КПК

У статті досліджуються проблеми правового регулювання, запропонованого проекту Закону України «Про внесення змін до Кримінального процесуального кодексу України (щодо удосконалення механізмів забезпечення завдань кримінального провадження)». На підставі проведеного аналізу законопроекту було встановлено підстави недоцільності деяких запропонованих змін, а також представлено ряд пропозицій щодо окремих положень законопроекту.

***Ключові слова:** законопроект, Кримінальний процесуальний кодекс України, матеріали досудового розслідування, обвинувальний акт, строки досудового розслідування, угода про визнання винуватості.*

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Законодательная деятельность в Украине о возможных изменениях в УПК

В статье исследуются проблемы правового регулирования в представленном проекте Закона Украины «О внесении изменений в Уголовный процессуальный кодекс Украины (относительно усовершенствования механизмов обеспечения задач уголовного судопроизводства)». На основании проведенного анализа законопроекта была установлена нецелесообразность некоторых предлагаемых изменений, а также представлен ряд предложений относительно отдельных положений законопроекта.

***Ключевые слова:** законопроект, Уголовный процессуальный кодекс Украины, материалы досудебного расследования, обвинительный акт, сроки досудебного расследования, соглашение о признании виновности.*

Problem definition. Project of the Law of Ukraine «On Amendments to the Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine) (on improvement of mechanisms to ensure the tasks of criminal proceedings)» (hereinafter - bill) number 5490 date of registration bill was on 12/06/2016 amends the CPC of Ukraine. Accordingly to the project it proposed to amend the number of articles of the CPC of Ukraine. The relevant scientific article had reviewed each proposed disposition by legislator and conduct analysis on the feasibility of certain provisions of the bill.

Analysis of the latest research and publications. Various aspects of scientific research that considered in the paper covered in the scientific works of Alenin Y. P., Drozdov A., Mitrofanov E. V., Boyarova V. I., Groshev Y. M., Kaplin O. V., Malyarenko V. T, Tatsiy V. Y., Pysmennuy D. P., Udalova L. D., Szymanowski V. V. etc.

Statement of the base material. The criminal procedural legislation of Ukraine is the set of legal rules that regulate the criminal proceedings and direct it to ensure the tasks of criminal trail.

The CPC of Ukraine in the article 2 specifies that the task of criminal proceedings is to protect individuals, society and the state from criminal offenses, protection of rights, freedoms and legitimate interests of the criminal proceedings and ensure quick, full and impartial investigation and trial of those that whoever committed a criminal offense, was prosecuted as guilty, not innocent none was charged or convicted, no one had been submitted to unwarranted procedural compulsion and to each member of the criminal proceedings was applied due process [1].

The bill amends to the CPC of Ukraine, which opening the documents of the criminal proceedings to the sides of the pre-trial investigation in the preparatory court proceedings [2]. The main point of this is to harmonize the rules of articles CPC of Ukraine making impossible to abuse of the right by the defense side.

Thus, the bill proposed to amend the part 14 ch. 3 the art. 42; p. 11, ch. 1, the art. 56; p. 2 ch. 4 the art. 61-1; ch. 1 the art. 254; ch. 2 the art. 333 the number «290» with the numbers «314-2».

It should be noted that the relevant change in CPC of Ukraine wouldn't solve the problems with abuse of rights by the defense side according to familiarization of the documents with the pre-trial investigation in the context defender absence, changes defender or a hospital stay, although changes have included provisions provided for in the article 296 of the CPC of Ukraine. But we have to take into account the provisions of p. 3 the art. 22 of the Constitution of Ukraine which is noted that the adoption of new laws or amending existing laws shall not be diminished content and scope existing rights and freedoms [3]. Therefore, the proposal in the bill prevents the defense to prepare for trial and receive adequate legal assistance or consult a lawyer without possibility of familiarization with the pre-trial investigation until its ends.

However it should be noted that even in the case were amended to the CPC of Ukraine, the CPC of Ukraine the article 221 also needed to change, because according to the last one «investigator, prosecutor shall give material of pre-trial investigation for familiarization to the victim, a representative of a legal person, defense side at they request» but instead of a bill the paragraph 14 said that «the head of the court decides to open material of pre-trial investigation for the parties. The court in this case takes the appropriate decision». So, for example, the defense side will use its right to review material of pre-trial investigation not by they request, but only by the court order. The court in this case would take the decision in the preparatory stage of the proceedings.

It should also pay attention to the very title of the article 221 CPC of Ukraine, because the right to familiarization with the pre-trial investigation material decides in the end of the preliminary investigation but not at the preparatory stage of the proceedings in the court.

Also consider that in part. 14 paragraph 1 of the bill which says that the second sentence ch. 2 the art. 314 CPC of Ukraine have to add with the words «and decides the question about to open …» should be replaced by the word «must take the decision about opening …» because otherwise it is ambiguous, and the court will refuse to familiarize with materials of pre-trial investigation.

The requirements of quick investigation and trial means that establish the terms of a criminal offense and those responsible should be possible to approach the time of the crime.

The bill in paragraphs 5, 10, 11 proposed amendments to the Code of Ukraine in the context of increasing to 18 months the maximum permissible period of detention for cases where it is a question of especially difficult criminal proceedings concerning the particularly serious crime committed by organized groups, criminal organizations and increase of term of pre-trial investigation for the same period as a result of exceptional complexity of the proceedings and the presence of exceptional circumstances. We consider it quite fair appropriate changes, as the investigation especially difficult criminal proceedings that require significant resources from authorities exercising pre-trial investigation not to mention their workload, and therefore changes in such articles 197, 219, 294, 295 CPC of Ukraine is currently relevant and necessary.

The bill in art. 14 proposed to avoid delaying execution of the criminal proceedings to disallow the court to return the indictment, which the prosecutor filed again, and introduce appropriate changes to the article 314 of CPC of Ukraine. The relevant procedure is necessary but in cases where the indictment doesn't conform to the art. 291 CPC of Ukraine. Particularly when the document contains provisions which contradict

Particularly when the document contains provisions which contradict each other, the document isn't signed by the investigator (unless the prosecutor has done it by himself) or isn't approved by the prosecutor or to the indictment act is not required by law added applications. Also, if during the preparatory court hearing will be found that the indictment was not handed to the accused, the court returns it to the prosecutor.

Under these conditions there is a question of expediency of such changes in the CPC of Ukraine, because quite probably that the indictment couldn't be conformed to the requirements of Art. 291 Code of Ukraine in a second time by prosecutor filed. So if there are rules that prohibiting the court to return indictment again it have to take unlawful decisions by the appointment of the trial on the basis of a indictment act, which doesn't conform to the CPC of Ukraine. Moreover, when the court would adopt the decisions it should guided to the principles of supremacy of law and the legitimacy, and therefore the court couldn't actually assign hearing on the basis of an indictment act. So we consider doubtful of the need for these changes to the art. 314 CPC of Ukraine.

We supported opinion about part 18 of the bill. It said that if in special judicial proceedings took place other defendants the prosecutor had the right to submit the request and hearing in the trial would be in the same criminal proceeding.

Next one that we have to discuss is the part 2 of the bill. The bill in p. 2 amends to the art. 135 CPC of Ukraine, in this context, that if any information about that the person is abroad (not in Ukraine), so such person shall take summon to the last known place of his/her residence or his/her last stay and information must be published in the official newspapers: «Voice of Ukraine», «Uriadovy Courier» and on the official website of the authority conducting the pre-trial investigation. In part 3 of the bill say that a person sourcing properly acquainted with the contents of summons from the date of its publication in the media nationally distributed. In such circumstances, the question arises if the person according to the part 2 of the bill and consider the position of the part 3 of the bill will be properly informed with the contents of summons from the date of its publication in the media nationwide distribution. Then why such categories of persons summons must be sent at the last place of his/her residence or his/her stay, if they in any case will still be properly informed with it only after its publication.

It is quite reasonable proposal to amend the art. 190 CPC of Ukraine according to part 4 of the bill, for acceptance losing power court resolution to permit the arrest for compulsory transportation of the person in case of voluntary appearance of a suspect to an investigating judge or defendant in court. The investigating judge informed about this the prosecutor.

The bill in part 5 proposed amendments to the art. 219 CPC of Ukraine providing part 4. This part would establish procedure for calculating the terms of pre-trial investigation in the case of unification of criminal proceedings.

The bill in part 22 proposed amendments to the part 4 of the art. 469 CPC of Ukraine by supplementing follows: «especially grave crimes committed by an organized group or criminal organization or terrorist group or terrorist organization, but in the case if suspect who isn't the organizer of the group or organization, to exposure the criminal actions of other group members or other committed by a group or organization offenses if the notified information is confirmed by the evidence».

Next that the bill proposed the second sentence after the words «not allowed» add the words «except with the written approval to the prosecutor by the victim to conclude his agreement under paragraph 4 of this article».

It should be said that the appropriate changes to the current CPC of Ukraine would positively affect to conclusion the agreement on the recognition of guilt as differentiation of criminal procedural form. Instead, we should more pay attention to the fact that the current CPC of Ukraine in according to the art. 468, 469 clearly indicate that it should be un-

derstood by the term «agreement on the acceptance of the guilt». Thus, the agreement on the acceptance of the guilt can be concluded between the prosecutor and the suspect or the accused (with it the initiative of a both sides).

In this way, the agreement on the acceptance of the guilt is an agreement between the prosecutor and the suspect, accused, which named parties of agree on the conditions of responsibility of the suspect or accused, but of course it is depending on they helpful actions after the criminal proceedings start or after receiving written notification of suspicion on cooperation in exposing criminal proceedings.

It is necessary to mention that according to civil law – agreement is a legal fact, willful and lawful action of an individual or a legal person, as provided by the law and that which isn't stipulated, but didn't contradict to it, and is aimed at emergence, modification or termination of civil rights or duties.

The legislation and legal practice, the term «agreement» is usually used as a synonym of the contract, but in civil science they aren't identified.

The agreement is unilateral, if it is done on own will of the one person and bilateral or multilateral, which involves the participation of the two or more persons. The parties are free to choose the counterparty and defining its terms with the requirements of the Civil Code of Ukraine, other acts of civil law, business traditions, the requirements of reasonableness and fairness.

Thus, according to that we had just mentioned agreement could be bilateral or multilateral, when it is expected the participation of two or more persons, but the agreement of the acceptance of guilt, the legislator took into account the specifics and peculiarities of criminal proceedings. So the legislator clearly defined circle of persons between who could be concluded the agreement on the acceptance of guilt, on whose initiative and under which conditions. The relevant peculiarities distinguished the agreement about acceptance of guilt from agreement of reconciliation.

Therefore, in the case when the victim have the right to give the consent to an agreement on the acceptance of guilt according to the part 22 of the bill actually gives reason to believe: that the initiative to conclude the agreement under these conditions will belong to the victim, which is inherent at the conclusion the agreement of the reconciliation; there is a new subject of agreement to conclude the acceptance of the guilt, and this is contrary to the art. 468, 469 CPC of Ukraine; if the victim gives written consent, there is also a logical issue of compensation for damages. Here we have to say that such compensation didn't exist in the bill and in the CPC of Ukraine and also the same situation in the context of an agreement on the acceptance of the guilt.

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