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DISCUSSION QUESTIONS AFTER THE PRETRIAL STAGE THE INVESTIGATION IN THE CRIMINAL PROCESS OF UKRAINE

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The article considers the features of legal regulation of the stage after the pretrial investigation in criminal proceedings Ukraine.

Key words: criminal process, the stage of preliminary investigation, opening to the other side, the indictment, the register materials of pre-trial investigation.

Войтович Є.М. ДИСКУСІЙНІ ПИТАННЯ СТАДІЇ ЗАКІНЧЕННЯ ДОСУДОВОГО РОЗСЛІДУВАННЯ В КРИМІНАЛЬНОМУ ПРОЦЕСІ УКРАЇНИ / Запорізький національний університет, Україна

У статті розглянуто особливості законодавчого врегулювання стадії закінчення досудового розслідування в кримінальному процесі України.

Ключові слова: кримінальний процес, стадія досудового розслідування, відкриття матеріалів іншій стороні, обвинувальний акт, реєстр матеріалів досудового розслідування.

Войтович Е.М. ДИСКУССИОННЫЕ ВОПРОСЫ СТАДИИ ОКОНЧАНИЯ ДОСУДЕБНОГО РАССЛЕДОВАНИЯ В УГОЛОВНОМ ПРОЦЕССЕ УКРАИНЫ / Запорожский национальный университет, Украина

В статье рассмотрены особенности законодательного урегулирования стадии окончания досудебного расследования в уголовном процессе Украины. Для этого исследовано определение «досудебное расследование», обращено внимание на неопределенность момента окончания этой стадии. Исследованы действия участников процесса в момент окончания стадии досудебного расследования, в частности, процедура открытия материалов другой стороне. Уделено внимание теоретическим и практическим проблемам реализации прав участников указанной процедуры, в частности, отсутствие установленного законом механизма ее осуществления и документирования; обосновано несогласие с требованиями закона о необходимости открытия материалов со стороны защиты и несоответствие этих требований принципам уголовного процесса. Исследованы обвинительный акт и реестр материалов досудебного расследования как итоговые документы стадии досудебного расследования. Рассмотрены возможные действия стороны обвинения в случае принятия судом решения о возврате обвинительного акта прокурору в случае, если обвинительный акт не соответствует требованиям закона. Рассмотрен вопрос о потенциальной возможности возобновления стадии досудебного следствия после принятия решения о составлении обвинительного акта и направления производства в суд.

Ключевые слова: уголовный процесс, стадия досудебного расследования, открытие материалов другой стороне, обвинительный акт, реестр материалов досудебного расследования.

Modern legal proceedings of Ukraine is in the process of reform. Message of the President of Ukraine to Verkhovna Rada of Ukraine “European the choice. Conceptual foundations of economic and social development strategy Of Ukraine for 2002-2011” [1, 2] found that judicial reform has not only confined to the improvement of the activity of judges and courts, and inwidest sense to create conditions for strengthening protection of the rights and freedoms of man and citizen. Of course, powered directly true for the sphere of criminal proceedings, since the Institute criminal liability is the most difficult kind of legal responsibility and is applied to a person who committed a crime state coercion in the form of punishment [2, 128]. It should also be mentioned one of the objectives of the judicial reform is to simplify the access of citizens to justice. This is the epitome of the constitutional provisions concerning the right of everyone to appeal in court the decisions, actions or inactivity of bodies of state power, bodies of local self-government, officials and officers,enshrined in article 55 [3, 4]. Specified reform continues; the most importantevent in reforming exactly the criminal proceedings is, certainly, the adoption of the Criminal procedure Code of Ukraine [4, 11], which entered into force on 19 November 2012.

This normative act can be regarded as an important step in the direction of the realization of the constitutional rights of citizens; improved legal regulation in the sphere of criminal proceedings brought him European values and principles, established attempt to transform steady observance of human rights in the key idea of the entire criminal process and provide real, not declared equality of procedural possibilities of the parties to the criminal proceedings and to approve the competitiveness process.

However, the time which has elapsed since the entry into force of the Code, found a number of problems both practical and theoretical particular at the stage of after the pretrial investigation, which require research and a practical solution. This is due to the relevance of the topic this work.

The acting criminal procedural legislation defines pre-trial investigation as a stage of criminal proceedings, which starts with the recording of the information about the criminal offence in a Single register of pre-trial investigations and ends with the closing of the criminal production or direction of the court indictment, request on the application of compulsory measures of a medical or educational nature, request for release from criminal liability In such a the law explicitly associates the end of the stage of pretrial investigation with a certain action of the Prosecutor, who takes the final procedural decision - approves the indictment and submit it to the court; approves the corresponding request of the investigator and submit it to the court. On the basis of a literal understanding of the law after the pretrial investigation matches in one case with the effect of the direction of the corresponding procedural document in court, and in the other case with the adoption of the decision - making a decision about termination of the proceedings.

In case, when the stage of preliminary investigation ends a decision on the closure of production, theoretical or practical no issues.

Case of completion of pre-trial investigation committing an action requires a more detailed study, because the mechanism of implementation of the decision, the parties relative to the direction of the respective document to the the court is quite complex, and according to the author, his legislative regulation no is perfect. This mechanism is stipulated in the § 3 of Chapter 24 of the criminal code of Ukraine «Appeal to the court with an indictment, a petition on the application of compulsory measures of a medical or educational nature». For the sake of the objectives of the work mechanism of realization of the decisions of the prosecution of directions to the court a motion to release a person from criminal responsibility will not be explored.

After the decision about the direction of the production to the court parties should open each other materials that is provided by the senior CPC 290 Ukraine. This discovery is a necessary condition for the admissibility of evidence in stage of the trial due to the requirements of ч.12 of this article. At first glance, these requirements correspond equality of the parties to the criminal proceedings before the law and court, however, certain theoretical inconsistencies impression distort.

So, the Prosecutor when deciding on the sufficiency of the evidence collected must inform the defense about the end of the pre-trial investigation and provide access to materials of criminal proceedings, right defined by part 1 tbsp. 290. However, as follows from the terminology of the Code, above, the pre-trial investigation ends the action - direction to the court of the procedural document. By the moment when the Prosecutor decides on the sufficiency of evidence and formulating such a document, this act of directing the document to the court is not perfect, therefore pre-trial the investigation is not completed. In such circumstances, notification, parties shall protection about the end of the pre-trial investigation is inconsistent with the facts and is an introduction to the defense misleading. If to adhere to the point of view that certain inconsistencies law still allow come to the conclusion that the moment of completion of pre-trial investigation of all associated with the adoption of the Prosecutor of the decision on the sufficiency of evidence, the question of the legitimacy of the procedural steps a Prosecutor, an investigator in the final pre-trial investigation. Because the procedure opening of materials is quite procedural action.

You should give a reason. The requirement of the law regarding the need the prosecution open to the defense, the materials of the investigation, quite reasonable, because these parties are in advance categories, due to of opportunities evidence collection, impact on other social processes, accompanying the procedure of criminal prosecution, the possibilities of application of measures provision of criminal proceedings, etc. moreover, party the charge is essentially the initiator of the criminal proceedings, therefore, it is logical, that one of the elements of the right to protection is the right to hand protection to know on what evidence informed the charges. However, the requirement of the law about the necessity of opening of materials the defense should be subjected to some criticism. So, it is a question about the expediency of such a discovery by the protection given to the achievement of objectives of the criminal proceedings.

Them in due to the requirements of article 2 of the CPC is the protection of individuals, society and the state from criminal offences, protection of rights, freedoms and legitimate interests participants of criminal proceedings, as well as ensuring a rapid, a full and impartial investigation and trial to everyone who has committed a criminal offence, was attracted to responsibility to the degree of his guilt, no one innocent has not been accused of or convicted, no person has been subjected to

unjustified procedural coercion and to each participant in the criminal production was applied proper legal procedure. If we assume that the charges wrong, and the efense's arguments about the absence or criminal an offence is convincing, we can assume that this familiarization can be the ground for making a decision on the Prosecutor closure of criminal proceedings. However, the above-mentioned theoretical problems, which are incorporated in the body of the code formally deprived of the Prosecutor the capacity to do so; moreover, that the requirement of part 1 tbsp. 290 of the code of Ukraine they have already committed a message about the sufficiency of evidence and directions production in court. In practice, such a discovery materials from the defense will lead to the destruction of evidentiary value of certain evidence, opens wide possibilities of abuse of their authority by guests the prosecution.

Another problem is the lack of a mechanism for documenting the procedure of opening an investigation materials.

So, in practice, investigators and prosecutors continue to draw up minutes of the procedural action, on the the author's opinion does not meet the requirements of the law. For example, part 1 tbsp. 104 of the code of Ukraine determine unequivocally: the progress and results of the procedural actions are recorded in Protocol in cases envisaged in this Code. As senior CPC 290 Ukraine remembers on the minutes of the procedural actions, his compilation in fact is a violation of the law. However, the opening of materials, as mentioned above is a prerequisite for further use, the materials in as evidence, therefore, the requirements about opening of materials required prove to the court in the future senior 290 of the code of Ukraine notes that parties are obliged to confirm in writing the opposite side, and a victim - the Prosecutor of the fact of giving them access to the materials with the indication of names of such materials. Therefore, it is a written confirmation, but neither the name of this document, nor his mandatory requisites, except guidance on the need to specify the name of the materials, the law not actually determines. According to the author, this lack of a systematic approach the legislator is a significant drawback of legislative regulation, because able to have the effect of non-uniform approach of the court.

Not regulated by the law and procedure of the opening of materials by protection. So, it is unclear whether the protection of open materials the prosecution simultaneously with acquaintance with the materials protection, or can it be done without violating any time after notification of the Prosecutor about the end of the pre-trial investigation but to the beginning of trial on the merits. Not defined by law mechanism familiarization protection of the prosecution with such evidence as the testimony of the witness, because in the understanding of part 8 tbsp. 95 of the criminal procedure code explanation a witness, a lawyer can be taken away from such a participant of the process is not source of evidence; at the same time to carry out the interrogation of the witness lawyer is deprived of the rights - such right of pre-trial investigation shall enjoy only the Prosecutor and investigator.

As noted above, after the requirements of the law regarding the opening materials of the Prosecutor or investigator with his behalf must be one of procedural documents mentioned above. It seems appropriate consider the most difficult situation is with the preparation of the indictment Thus, as this is the document actually is formulated accusations can be regarded as a preparation of the indictment the most important decision that the prosecution accepts the stage of pretrial investigation in criminal proceedings.

The indictment must meet the requirements of Art. 291 of the criminal procedure code of Ukraine. When drawing up the indictment investigator and in case of its approval the Prosecutor should be remembered that the court in the preliminary court session may take a decision on the return of the indictment the Prosecutor in cases, if the indictment does not meet the requirements of the CPC of Ukraine (p.3 part 3 tbsp.314 of the code of Ukraine). Such a situation should be considered in more detail with taking into account the grounds for the refund and the further actions of the Prosecutor Discussion is the question of the existence of the grounds for return the indictment the Prosecutor in case of non-conformity with law the register of materials of pre-trial investigation. So, on the one hand, п.3.ч.3 Art.314 of the code of Ukraine defines as the basis of the return of the indictment the Prosecutor mismatch Code is the indictment. However, when this Art.291 of the criminal procedure code of Ukraine, which should correspond to the indictment, has the name «the indictment and the register of materials of pre-trial investigation». It should be taken into account that according to item 4 tbsp. 291 of the code of criminal procedure register materials of pre-trial investigation has the character of an integral Appendix to the indictment; registry requirements materials of pre-trial

investigation significant and clearly set out in article 109 of the code of Ukraine. When such the circumstances of the breach of the requirements of Art. 109 the CPC of Ukraine compilation of the register materials of pre-trial investigation can be equated to the absence of such the inherent application.

You also have to consider the fact that the law prohibits the provision of the court in the commencement of the trial in fact any documents in addition to conviction act, the register of materials of pre-trial investigation, a civil action and evidence of handing the copies of these documents to the defence, as defined in part 4 senior 291 of the criminal procedure code of Ukraine. If we analyze the contents of the indictment, defined in 1-9 part 1 tbsp. 291 of the criminal procedure code of Ukraine should come to the conclusion that the court deprived of the opportunity to know anything about what evidence will reasonably position of the defense and the prosecution during the trial the indictment. In such circumstances, the common working documents of the court - the indictment and the register of materials of pre-trial investigation. And of course, a violation of law when drawing up both of these procedural documents in advance prevent the court in accordance with the requirements of the law to judicial review. Given this any violation of the requirements of Art. 109, 291 CPC Ukraine should be regarded as the Foundation of the return of the indictment the Prosecutor.

Arise and questions concerning the actions of the Prosecutor in criminal proceedings, the indictment that was returned by the court. Discussion is the question of the possibility of the Prosecutor to refer the criminal case to the investigator for resolving deficiencies identified by the court, by conducting investigative, proceeding or for the preparation of a new indictment or the registry materials of pre-trial investigation. Among prosecutors and investigators common the thought that the answer to this question depends expired pre-trial investigation. According to the author, such a position is absolutely untrue, on the following basis.

With the direction of the indictment in the court of the pre-trial stage the investigation is finished, and this conclusion is final. This conclusion you can and should come as a result of system analysis item 5 part 1 tbsp.3, part 4 tbsp. 110 part 1 tbsp. 290 of the code of Ukraine. The only event of renewal of pre-trial investigation law binds with the case where the past production was stopped from bases provided by the law. No other Foundation conduct any investigative or procedural actions of the investigator or the Prosecutor in criminal proceedings, which finished the pre-trial investigation the law does not provide. Thus, it seems, the only action actually only has legal, because, as shown above, certain theoretical problems being deprived of this legality and such action is preparation of a new indictment act or registry materials of pre-trial investigation by the Prosecutor. Is the status that will be a decision of the Prosecutor of the closing criminal proceedings on the grounds stipulated by the law. Any other action, or any other solution will be, in fact, mean a return to Institute of the additional investigation that contradicts the conceptual the basics of criminal procedure law, which was quite clearly proclaimed in the explanatory note to the draft Criminal procedural Code of Ukraine [4]

It seems that the problems, highlighted in the work really need solutions in the plane of the methodological work and by bringing in the current legislation relevant changes.

REFERENCES

1. European choice. The conceptual basis of the strategy of economic and social development of Ukraine for 2002-2011. The Message Of The President Of Ukraine to the Verkhovna Rada of Ukraine // Uryadovyi Kurier. – 2002. – № 100.
2. Scientific and practical commentary to the Criminal Code Ukraine. Under the General editorship of Потебенько M.A., Goncharenko V.G. – K. : Forum, 2001. – Vol. 1.
3. Constitution of Ukraine // the Official Herald of Ukraine. – 2010. – S. 15.
4. Explanatory note to the draft of the Criminal procedure Code of Ukraine [Electronic resource]. – Mode of access : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=42312