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CRIMINAL PROCEDURAL RESPONSIBILITY IN ACCORDANCE WITH NEW CRIMINAL PROCEDURAL CODE OF UKRAINE

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The concepts of understanding of criminal procedural responsibility in the criminal procedure studies are analyzed. The issues concerning notion of criminal procedural responsibility are researched. Theoretical research of the problems connected with defining of the peculiarities of criminal procedural responsibility is performed and summarized. The system of measures of criminal procedural responsibility is defined. Procedural form of realization of criminal procedural responsibility is outlined.

Keywords: criminal procedural responsibility; measures of criminal procedural responsibility; procedural form of realization of criminal procedural responsibility.

Identification of the problem. Relevance of the topic is determined first of all by the reason that in criminal proceedings the issue of responsibility has raised special significance because the activity aimed at prompt, full and impartial investigation and court proceedings must be strictly based on the law, and that is why on the first place has appeared the responsibility of state bodies and officials, who conduct criminal investigation, with fulfilment of the provisions of criminal procedural law, and other subjects of criminal procedure for performing of obligations set by criminal procedural law.

Adoption of new Criminal Procedure Code of Ukraine has contributed to creation of new procedural institutes and fundamental updating of existing institutes. Among legal institutes, which have been seriously reformed with the adoption of new criminal procedural legislation, the institute of criminal procedural responsibility can be distinguished.

Unfortunately, the concept of criminal procedural responsibility has not found its full presentation in new Criminal Procedural Code of Ukraine, therefore there is a great current interest in addressing to issues related to determination of criminal procedural responsibility, its features and the system of measures of criminal procedural responsibility under new Criminal Procedural Code.

Analysis of recent research and publications. The issues regarding problems of criminal procedural responsibility have been researched both on the general theoretical level and field level, however, mainly in the frames of researches concerning the measures of state coercion in general.

A great importance in this is represented by the works of the following scholars: Alenin Y., Alekseeva L., Boiev V., Boikov A., Checina N., Enikeyev Z., Elkina P., Groshevyi Y., Ioffe S., Khablo O., Kovriga Z., Kornukov V., Leyst O., Nedbailo P., Nor V., Oborotov Y., Petrukhin I., Pogoretskiy M., Rozhnova V., Strogovych M., Udalovala L., Vetrova V., Zinatulinn Z. and others.

Scholar research in the present sphere in contemporary Ukrainian procedural literature are rather isolated [See, for example, 3; 13; 10], therefore inference should be drawn that, unfortunately, the issues regarding criminal procedural responsibility have not been a subject to further complex research in Ukrainian procedural stud-

ies, however their importance for study of mechanism of criminal procedural regulation is practically assured.

Defining of previously unsolved parts of the general problem. Speculative character of a problem of procedural responsibility has required a necessity of its further development. And here in general it is possible to agree that “the problem of procedural responsibility requires a serious learning and may be resolved in a complex with other problems” [8, p. 223-225], besides which, in the first instance, there are general theoretical issues connected with the notion and legal nature of legal responsibility, its types (forms) and peculiarities of realization.

Aim of the article. The main aim of the present research is a comprehensive analysis of theoretical problems and contemporary practice of law enforcement, taking into consideration relevant normative provisions which should lead to formation of, to the extent possible, logically, non-contradictory and consistent scholar concept of criminal procedural responsibility and mechanism of its realization during criminal proceedings.

Main material. Approaching to defining of the notion of criminal procedural responsibility the attention must be paid to the fact, that it reflects a type of legal responsibility, for which cause it has the same problems of definition as the generic notion. It would be logically to define criminal procedural responsibility through type and specific distinction, which in the present research requires rendering of criminal procedural responsibility under wider content common notion of legal responsibility – as for the first stage of defining and determination of distinguishing feature (features) criminal procedural responsibility – as a conclusion of the notion’s definition.

A difficulty of defining the notion of criminal procedural responsibility lies in the fact that in the legal literature there has not been any unity yet of views regarding the responsibility in general, correlation of its different types in the system of law, interrelation of legal sanctions and legal responsibility [In more detail: 9, p. 340-341].

The most widespread in the literature on legal responsibility is its definition as the measure of state coercion, based on legal and moral condemnation of the wrong-doer’s behaviour and in setting certain consequences in the form of restrictions of personal or property character [5, p. 314-315].

We would like to state that field research, which is related to criminal procedural studies, to the full extent reflects theoretical inconsistencies on general theoretical level. Certain group of scholars considers criminal procedural responsibility in a rather wide understanding, pointing out that this type of responsibility could include coercion, which is applied in the sphere of proving, and connected with the abolishment of the illegal and groundless procedural acts, application of preventive measures, others, in contrast, consider this responsibility in a very narrow content, indicating that criminal procedural responsibility must be regarded as imposing on the participants of the process monetary penalties, expelling from the court session, bringing security to the state incomes [In more detail: 9, p. 341-342].

The special attention is deserved for broad notion of responsibility which includes the positive aspect, i. e. when criminal procedural responsibility, according to the view of certain authors, appears from the moment of imposing of criminal procedural obligation but not from the moment of its violation; the subject of the procedure bears the positive responsibility for conscientious fulfilment of the obligations and bears the negative responsibility – for their liable violation [6; 2].

It is difficult to agree with this point of view. Wilful and conscientious exercise of procedural obligations and guilty violation of these obligations are “diametrically opposite phenomena that cannot be united by one notion of criminal procedural responsibility” [11, p. 249].

Existence of positive responsibility in law has been denied and is being denied now by many authors who have stated that “neither scholar considerations nor, moreover, interests of practice do not provide the grounds for revision of view on legal responsibility as a consequence of the violation” [12, p. 187]; “legal responsibility and consequently criminal procedural responsibility should be regarded as the responsibility for committed wrongful act” [1, p. 155].

Certain understanding of criminal procedural responsibility is connected with the fact that among procedural legal relations regulatory and protective relations are outlined. Protective procedural legal relations occur in the result of the violation of the procedural obligation. There is a point of view in the literature according to which control of procedural protective legal relations with abovementioned element includes procedural legal responsibility that is understood as an elementary deprivation of procedural position of the subject of the procedural relations as a consequence of application to the person the measures of more repressive character [8, p. 223].

One more important aspect of analyzed issue is existence of point of view regarding the aspect that there is no procedural responsibility at all and the scholars had denied the perspectives of the idea of procedural responsibility itself [4, p. 74].

“Procedural responsibility as an individual type of legal responsibility does not exist. Procedural coercive measures – these are either preventive measures or measures of administrative responsibility (for violation of order of court proceedings, disobedience to chairman’s orders)” [12, p. 187].

Certain theoreticians, outlining types of legal responsibility, have not mentioned procedural responsibility, that is, in the relevant words of Petrukhin I. denying this or not considering this issue as a problem that is worth examining [7, p. 136-140].

Therefore, in our opinion, it must be emphasized that criminal procedural responsibility as specific procedural measure ensuring criminal procedural relations, guarantee of fulfilment the procedural obligations, exists as an independent type of legal responsibility. This statement is based on the existence in criminal procedural law of its own measures ensuring criminal procedural relations, character and peculiarities of which are defined in accordance with the content of these relations. In other words, in criminal procedural law there exists own method of legal regulation and distinguished in the structure of norm of criminal procedural law procedural sanctions admitting autonomous existence of criminal procedural responsibility [2, p. 50].

Criminal procedural responsibility is a type of legal responsibility. One or other type notion includes all features inherited to generic to this term; the notion of criminal procedural responsibility includes all the features of general notion of legal responsibility. This is far less expressed in comparison to other types of legal responsibility, however, it exists independently.

Criminal procedural responsibility it is the exciting in the form of criminal procedural legal relations the application in a order prescribed by law to individual who commits criminal procedural violation the measures of criminal procedural coercion, which are provided in the sanction of criminal procedural norm that are subject to imposing on the wrong-doer an additional obligation or deprivation (narrowing of the content) wrong-doer’s subjective rights.

Defining criminal procedural responsibility as application of measures of state (criminal procedural) coercion, established by sanction of criminal procedural norm indicated not only at legal character of criminal procedural responsibility but also on a significance and respectively measures of criminal procedural responsibility.

The peculiarities of criminal procedural responsibility are defined as their provision by the norms of criminal procedural law (field relation), occurrence in the event of commitment of criminal procedural violation, and the subject of such responsibility may be only appropriate subject of the criminal procedure.

The system of measures of criminal procedural responsibility under Criminal Procedural Code adopted in 2012 could be regarded as following. Punitive measures (i. e. connected with peculiarly with imposing on a subject additional obligation of punitive character) include: monetary penalty; reverting the security to state incomes; changing of previously chosen preventive measure in the event of its violations for more severe measure.

Punitive measures, connected with deprivation of rights of the subjects of criminal procedure in a particular proceeding, could include the following issues: abolition of protective measures in the case of non-fulfilment by the person, taken under protection, legal demands of bodies performing pro-

tective measures; suspension of the investigator, prosecutor from further conducting of the investigation; expelling of the accused from the court room for the violation of the orderly conduct in the court session.

Besides that, there are examples in criminal procedural legislation regarding law restorative measures, i. e. measures connected with imposing on an individual additional obligation, with aim to restore violated rights and interests of the subjects of law. This concerns, for example, imposing of courts disbursements connected with the announcement of pause in the court session, on the specialist in the event of missing the court session without serious reasons or without notification of the reasons of missing.

The special attention is required to the procedural form of bringing to criminal procedural responsibility which represents certain basis, conditions and procedural order of application of measures of criminal procedural responsibility to individual established by criminal procedural law.

The basis for bringing the individual to criminal procedural responsibility is a commitment of the criminal procedural violation.

It is necessary to mention that in the event of the violation of procedural law by the official, besides law restorative measures (which are clearly regulated in the Criminal Procedural Code, for example, abolishment of illegal decisions), there are the issues regarding simultaneous application to the person of the relevant punitive sanctions (disciplinary or other legal responsibility). The subjective side of the violation in this case must be one of the essential conditions of applicator of one or other type of responsibility (or relief of responsibility) and influence on the content of the punishment. For this very reason the question regarding the elements of the legal content of criminal procedural violation, despite there are some works, requires further research.

Being the important procedural guarantee of maintenance of rights and legal interests of non-public subjects of the criminal procedure, procedural form must be clearly defined for realization of criminal procedural responsibility. Thus, for example, the present legal regulation of monetary penalty in the criminal proceeding cannot be regarded as sufficient and demands further im-

provement (concerning the subjects on which the monetary penalty can be imposed and the procedure of application, the possibility of its application with other measures of influence).

The main conditions of bringing the individual to criminal procedural responsibility include a proper subject, who determines a fact of procedural violation and adopts a decision of bringing to criminal procedural responsibility, procedural formalization of criminal procedural violation and adopting a decision on its basis.

One of the important measure ensuring legitimacy and foundation of legal responsibility is improvement of procedure of its execution and as the result – there is the aim of protection of individual's rights in criminal procedure and support of real exercise of procedural obligations by all subjects, which requires a detailed legislative regulation of measures of criminal procedural responsibility that must be performed in the event of violation or non-fulfilment of procedural obligations. Therefore, the necessity of further improvement of notions of criminal procedural studies and current criminal procedural legislation regarding criminal procedural responsibility is appeared as rather important and necessary.

Conclusions and proposals. To sum up, inference should be made that despite the adoption of new Criminal Procedural Code, in which legislative regulation of application of measures of procedural coercion was essentially changed (since independent Chapter II "Measures ensuring criminal proceedings" was defined) aimed at harmonization of national legislation with international and European values and standards and this was realized by enlargement of the list of such measures and changes in procedure of their application, a lot of issues regarding application of coercion in-criminating proceedings of Ukraine have remained unsolved.

Thus, unfortunately, the concept of criminal procedural responsibility again has not found its full implementation in new Criminal Procedural Code. Therefore, it is necessary to improve both normative regulation and practice of application of measures ensuring criminal proceeding in general, and to develop the concept of criminal procedural responsibility which requires further complex and profound research.

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КРИМІНАЛЬНО-ПРОЦЕСУАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЗА НОВИМ КРИМІНАЛЬНИМ ПРОЦЕСУАЛЬНИМ КОДЕКСОМ УКРАЇНИ

Анотація

Проаналізовані концепції розуміння кримінально-процесуальної відповідальності у кримінально-процесуальній науці. Розглянуті питання щодо поняття кримінально-процесуальної відповідальності. Проаналізовано та узагальнено теоретичні дослідження проблем, пов'язаних з визначенням особливостей прояву кримінально-процесуальної відповідальності. Визначена система мір кримінально-процесуальної відповідальності за КПК України 2012 року. Окреслена процесуальна форма реалізації кримінально-процесуальної відповідальності.

Ключові слова: кримінально-процесуальна відповідальність, міри кримінально-процесуальної відповідальності; процесуальна форма реалізації кримінально-процесуальної відповідальності.

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УГОЛОВНО-ПРОЦЕСУАЛЬНАЯ ОТВЕТСТВЕННОСТЬ В СООТВЕТСТВИИ С НОВЫМ УГОЛОВНЫМ ПРОЦЕСУАЛЬНЫМ КОДЕКСОМ УКРАИНЫ

Аннотация

Проанализированы концепции понимания уголовно-процессуальной ответственности. Рассмотрены вопросы о понятии уголовно-процессуальной ответственности. Проанализированы и обобщены теоретические исследования проблем, связанных с определением особенностей проявления уголовно-процессуальной ответственности. Определена система мер уголовно-процессуальной ответственности согласно УПК Украины 2012 года. Очерчена процессуальная форма реализации уголовно-процессуальной ответственности.

Ключевые слова: уголовно-процессуальная ответственность, меры уголовно-процессуальной ответственности; процессуальная форма реализации уголовно-процессуальной ответственности.

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ADAPTATION OF THE TRUST TO CIVIL LAW SYSTEM

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In this article the concept of the trust in the legislation of some European countries is investigated. In particular, legal regulation of the trust in France and Germany is investigated. The concept of the trust, given by Model rules of the European private law is analyzed. Different approaches to the trust in Common and Civil Law are analyzed. Specifics of continental model of fiduciary property are defined.

Keywords: fiduciary property, trust management, trust, European private law, Common Law, Civil Law.

The statement of the problem. The most important problem which needs to be solved in terms of European integration is the adaptation of institutions which have different approaches in Common and Civil Law. The trust is one of the most famous institutions of the Common Law that was considered the specific institution of exceptionally Common law for a long time. But simultaneously with processes of integration of European countries began the process of adaptation of the trust to Civil Law.

The analysis of the last researches and publications. There are a lot of scientists that dedicate their works to the research of the trust in national and foreign law, such as R.A. Maydanyk,

S.A. Slipchenko, V.V. Vitryansky, Pr. Mifsud-Parker, J.-Fr. Adelle and others.

The definition of parts of a common problem unsolved earlier. There are still not many works that are dedicated to the investigation of the ways of adaptation of the trust in Civil Law. And there are very few investigations of the meaning of trust given by «Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR)».

The aim of the article. The main goal of this article is the research of different approaches to meaning of the trust in Common and Civil Law and searching of the ways of adaptation of the trust to conditions of Civil Law.