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THE SIMPLIFIED PRODUCTION IN STRUCTURE OF CRIMINAL TRIAL OF UKRAINE

In the scientific article problem questions of criminal procedure production in structure of criminal trial of Ukraine at stages of pre-judicial investigation and judicial review are considered

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Traditionally in scientific literature questions of concept and classification of procedural productions are inseparably linked with concept of criminal trial as a whole. Everything depends on the concept „criminal legal proceedings” on which the concept „criminal procedural production” as parts of criminal trial depends.

In the theory of criminal trial there are views of separate criminal procedural proceedings, according to which each of them is a stage (part of procedural activity in business) which includes, as a rule, some stages, is carried out by subjects, carry out thus concrete procedural function within which they solve adequate problems and which are characterized by the corresponding form (means and ways of implementation) criminal procedural activity) [12, p. 18].

In literature on studying of criminal trial in 70–80 years of the last century disputes were quite desperately conducted on the fact that within uniform criminal trial there are types of productions [3, p. 33-37, 2, p. 78-83, 6, p. 86-90, 7, p. 68-85, 23, p. 68-103].

Have to note that the structure of criminal legal proceedings is made by criminal procedural proceedings which divide process down together with stages which divide process across. The modern Criminal procedural code of Ukraine divides all criminal trial into two parts: pre-judicial production and judicial production with what we, of course, can't disagree as the majority of the authors who have devoted the works to problems of pre-judicial and judicial production [11, p. 228, 5, p. 143-145].

As to a certain stage of procedural activity many operation [16, p. 66, 21, p. 24, 15] was devoted to definition of the concept „stage of criminal trial”.

Besides, it is necessary to notice that we can't ignore concept of a stagewise of criminal trial of Ukraine which differs among themselves tasks, subjects, procedural activity and final procedural

decisions by which the further destiny of criminal trial is decided: or it comes to an end, or passes into the following stage.

Therefore there is a sense to allocate each separate stage, considering such signs which consist in the following:

- each stage specific objectives are characteristic;
- each subject has only specific procedural activity;
- pronouncement of the final procedural decision is inherent in each stage.

The existing Criminal procedural code of Ukraine divides criminal trial into two parts: pre-judicial production and judicial production.

Pre-judicial production includes pre-judicial investigation. In particular, in item 5 p.1 Art 3 of the Criminal Procedure Code of Ukraine [9, p. 8-9] is given definition of preliminary investigation as stages of criminal proceedings which begins with the moment of introduction of data on a criminal offense in the Unified register of pre-judicial investigations and comes to an end with closing of criminal proceedings or the direction in indictment court, the petition for application of coercive measures of medical or educational character, the petition for release of the person from criminal liability. That is it is a question of the end result of a stage of pre-judicial investigation. For achievement of this result bodies of pre-judicial investigation act within the competence on standards of the Criminal Procedure Code of Ukraine and pass certain stages, since the moment of introduction into the Unified register of pre-judicial investigations (h. 2 Art. 214 of the Criminal Procedure Code of Ukraine) [9, p. 526] and finishing pre-judicial investigation in the order provided by chapter 24 of the Criminal Procedure Code of Ukraine.

In turn, pre-judicial investigation is carried out in two forms of the pretrial investigation which is carried out by the investigator individually or an investigation team of body of pre-judicial investigation (item 6 p.1 by Art. 3 of the Criminal Procedure Code of Ukraine) [9, p. 9]; inquiries are carried out by investigators of bodies of preliminary investigation, and also in the cases established by the law – the staff of other divisions of law-enforcement bodies, security service and the bodies exercising control of observance of the tax legislation for investigation of criminal offenses (item 4 p.1 Art. 3 of the Criminal Procedure Code of Ukraine) [9, p. 8].

From the specified definition follows that the Criminal Procedure Code contains, except preliminary investigation also other stages, but they in it aren't called and their definitions aren't given. Feature is that each stage is allocated with sense, it takes the place in system of a CPC of Ukraine and is in a certain consecutive order, contains separate tasks and ways of their decision.

Judicial production includes:

- 1) judicial proceedings in the first instance (the Section IV Criminal Procedure Code of Ukraine) [10, p. 4-182];
- 2) legal proceedings on revision of judgments (the Section V Criminal Procedure Code of Ukraine) which includes: a) production in court of appeal instance) production in court of cassation instance in) production in the Supreme Court of Ukraine) productions on again circumstances.
- 3) implementation of judgments.

Each of the called stages has the characteristics. And the first and second stage can be divided into smaller stages, considering certain specifics. At the same time it is it is unlikely expedient to consider restoration of the lost materials of criminal proceedings as it is an exception as a stage, concerns issues already resolved by court and is a question of restoration of their former substantial look (the Section VII Criminal Procedure Code of Ukraine) [10. p. 427-439]. And also the special

orders of criminal proceedings specified in the section VI Criminal Procedure Code of Ukraine [10, p. 327-426].

At the same time the international cooperation during criminal proceedings also can't be referred, in our opinion, to a separate stage (the Section IX Criminal Procedure Code of Ukraine) [10, p. 457-634], considering special nature of such cooperation which can take place both during pre-judicial investigation, and during judicial proceedings.

As we see, the term „criminal procedural proceedings” is difficult and many-sided. But before investigating the concept „criminal procedural production”, we will try to reveal its semantic filling, having addressed to a keyword which sets its main contents, is a word, undoubtedly, „production”.

At first, the term „production” associates with the concept „activity” (to make – means to make, execute, solve) [17, p. 609], prompts us understanding of criminal procedural proceedings as activities for concrete criminal case [21, p. 3]. This component of the concept „criminal procedural proceedings” can make a practical component or be shined as practical aspect.

Except it, this term has also other aspects, for example, a normative definition. Professor Yu. K. Yakimovich specifies that the term „production” „is used and the activity that is settled to the criminal procedural right, and that is institute of a criminal procedural law” [22, p. 6]. Thus, it is possible to consider as the following aspect of studied concept standard aspect.

As intermediate between two called such aspect, as a criminal procedural form also can be specified. Traditionally being one of the most debatable concepts of the theory of domestic criminal trial, the procedural form, in our opinion, can be defined through the following statement of professor Yu. K. Yakimovich that „the criminal procedural law fixes that „ideal model” which there has to correspond criminal procedural activity” [21, p. 6].

As intermediate between two called Developing this thought, it is possible to tell that the understanding of legislators about an ideal course of production on some category of criminal cases finds the reflection in the interconnected set, will settle the corresponding production on application of rules of law. The specified set of rules of law is realized by an enforcer, but before is divided into concrete acts of behavior, forming their standard model which we and call a criminal procedural form.

And then already procedural form is realized by subjects of the criminal procedural relations, forming procedural activities for concrete criminal proceedings, and confirms the postulate put forward by professor S. S. Alekseev on active character of a legal form which attracts to itself the actual (material) contents [1, p. 97].

Thus, we approach to understanding of criminal procedural proceedings as legal form (ideal model) to procedural activities for some certain set of criminal proceedings possessing a set of steady, repeating properties. The corresponding legal form is realized and realized in the form of criminal proceedings.

Proceeding from the aforesaid, we can tell that productions out of criminal trial don't exist. In particular, it concerns also the criminal trial „dressed” in a procedural form and on the contents, and in essence and activity. Actually are the framework established by the legislator out of which it is impossible to be. It protects the power from an arbitrariness, on the one hand, and with another – provides realization of the rights of all subjects of criminal trial for achievement of the purpose actually in criminal trial. In turn, the criminal procedural form is differentiated on various productions. But it would be desirable to emphasize that we wouldn't like to mix the concepts „stage of criminal

trial” and „criminal procedure production” and to agree with Yurkevich N. A. opinion, which in detail noted it in the work [19].

Certainly, our reasonings which are especially concerning understanding of a criminal procedural form are in many respects disputable and need further certain justifications. Earlier specified statements are „focusing” and are urged to help us to open essence of the concept „criminal procedural proceedings” and to find „key category” round which our understanding of this legal phenomenon will be constructed.

So, by us it was established that criminal procedural proceedings (taken in aspect of a criminal procedure form) can be treated as ideal model of procedural activity on some certain set of criminal proceedings that there is a set of steady properties which repeat.

What it for activity? As appears from stated by us above reasons, it is activity of law-enforcement character that is law-enforcement process. It is treated as „specific activity of law enforcement agencies of the state... on consideration and permission of various individual affairs having legal value. ... The circumstances inducing law-enforcement process directly, the legal facts and the actual structures of crimes act. Final legal consequences are law-enforcement acts... containing instructions of individual character”.

Proceeding from it, it is possible to call criminal procedural proceedings indissoluble law-enforcement process from the moment of its initialization until its end by pronouncement of the final procedural decision. In our opinion, at such understanding of production can be connected in a whole.

Within the stated understanding of criminal procedural proceedings the definition of this concept offered S.S. Tsyganenko harmoniously fits in. The author specifies that criminal procedural proceedings (all productions of material character mean) „are provided for realization of who contain in the legislation of norms of substantive criminal law: establishment of the legal fact generating criminal legal relations, and his subject, other signs necessary for emergence of criminal liability and punishment, and also for expression of legal guarantees in case of establishment of bases for application of other measures of criminal and legal influence” [18, p. 7].

The presented option of understanding of criminal procedural proceedings as the law-enforcement process taken in unity of its considerable parties and aspects (criminal procedure activity, criminal procedural institute, a criminal procedure form), certainly, interesting, but isn't the only thing.

And if to recognize that the legislator divides criminal legal proceedings as a whole into pre-judicial and judicial criminal cases production, it is possible to draw a conclusion that the given point of view according to which criminal procedural proceedings are only part of procedural activity in production, divides also the legislator.

So, we found three options of interpretation of category of criminal procedural proceedings. What of them is the most reasonable? It is possible to solve the matter, only having decided on what bases each of the given points of view has.

We need to find definition of procedural production and, whenever possible, to allocate its main signs which allow to separate production from other elements of criminal trial. Investigating definition of this term, we can draw a conclusion that in literature of various periods some various concepts of productions were offered. For one is an activity of authorized bodies of the state which provides realization of separate legal relationship which objectively demands procedural regulation and it is directed on achievement of legal result in the form of the relevant act of public administration, by application to the established actual structure of the corresponding legal form.

[4, p. 10-12]. For others is a part (stage) of procedural activity in business which includes, as a rule, some stages which is carried out by subjects of powers of authority, carries out concrete procedural function within which they solve a problem and are characterized in the corresponding form (procedure, a procedure) criminal procedural activity [13]. And for the third is a specific order, forms and ways of activity of competent government bodies and officials which are directed on the solution of a certain category of affairs which are settled by system of a uniform legal procedure. [8, p. 30-37].

We support the point of view of Yu. K. Yakimovich who noted that it is necessary to understand as criminal procedural proceedings:

- a) certain type of criminal procedure activity;
- b) independent institute of a criminal procedural law;
- c) the institute of the criminal procedural legislation, which norm regulate criminal procedural activity [20, p. 203-208].

Thus, considering the above points of view, it is possible to draw a conclusion that criminal procedural proceedings are a set of procedural actions and solutions of subjects of the criminal trial, directed on achievement of a specific goal, and are carried out according to the current legislation.

Besides, in all procedural productions there is a number of signs on which they can be characterized: 1) first of all they are realized by subjects of criminal trial, 2) a multistage character, 3) substantiality, 4) an orientation on achievement of the purpose, 5) has the subject of consideration, 6) standard fixing, 7) the final procedural decision.

Considering the listed signs, definition of criminal procedural proceedings can be expanded more substantially. Also it is that criminal procedural proceedings as set of stages of the criminal trial, directed on achievement of own specific goal and being coordinated with the purpose of criminal trial as a whole, has the subject of consideration realized by subjects of criminal trial according to standard fixing of procedure of criminal procedural activity.

Thus, it is possible to draw a conclusion that criminal proceedings include separate stages of criminal trial, and these stages can include the corresponding procedural procedures, as is structure of procedural production.

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