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PROCEDURAL FORM IN CRIMINAL PROCEEDINGS: ESSENCE, CHARACTERISTICS AND SIGNIFICANCE

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Annotation:
This article refers to the form of criminal proceedings, its content, composition and significance. To date, the improvement of the criminal procedure form, pre-investigation investigation, inquiry, preliminary investigation, first instance, appeal, cassation instances has become one of the important areas of ongoing reforms in the field of judicial law. Therefore, the article discusses in detail the issues of differentiation or unification of procedural forms. At the same time, based on the experience of developed foreign countries, reasonable proposals for the development of this institution were also developed.

Keywords: procedural form, unification, differentiation, inquiry, preliminary investigation, pre-trial investigation

Introduction

The correct organization of pre-trial proceedings is to ensure justice in criminal cases, to protect the rights and legitimate interests of persons participating in the case, to ensure the fulfillment of the tasks of criminal procedural legislation and criminal cases.

The criminal-procedural form is a complex phenomenon with internal and external aspects. Criminal-procedural attitudes and norms are taken into account as an internal component, while the system of requirements established in legislation constitutes its external form. These requirements determine the procedure for the implementation of certain criminal-procedural activities and formalization of its result with procedural document(s). Therefore, the procedural form is created as a legal event from the moment of receiving the application, information about the crime, and it turns into a criminal procedural form when the criminal case is initiated, and it exists until the case is terminated or the decision of the court, which has entered into legal force, is focused on execution. It can be seen that the essence of the criminal procedural form merges with the essence of the criminal procedural law.

In the theory of criminal-procedural law, there is no single opinion or definition of the nature of the criminal-procedural form. Although it is known that the criminal-

procedural form is essentially related to the procedural relations in the period from the time of the receipt of the application and notification of the crime to the execution of the judgment, decision, the boundaries, scope, and internal structure of this legal institution have been regularly studied among proceduralists. For example, F. Mukhitdinov stated that the criminal-procedural form regulates social relations related to the determination of responsibility for the person who committed the crime and the punishment of the guilty person [1], while U. Tukhtasheva, analyzing the institute of judicial decision review in her research work, said that the verification is "the form ”i puts forward the conclusion that it is a “method of organization” [2]. Through these ideas, the authors mean that the criminal-procedural form is an issue related to the organization of proceedings.

Another proceduralist, K. T. Mavlanov, showed that the studied concept is related to the procedure of conducting a criminal case. According to him, the criminal-procedural form means the procedure established by law for the implementation of procedural actions, non-compliance with this procedure leads to the violation of the procedural form and may lead to the illegality or invalidation of some procedural decision [3]. F. Kadyrov studied the internal structure of the criminal-procedural form and analyzed the procedure, requirements, conditions, procedural period, change or termination of criminal-procedural relations, conduct of procedural actions or implementation of criminal-procedural activities as its elements [4]. According to E. V. Mishchenko, the basis of the criminal-procedural form is the norms regulating the procedural activity [5]. This activity is carried out in a certain way. As it can be seen, in their research, these scientists studied the inextricable connection between the criminal-procedural form and the procedures and procedural conditions. Agreeing with their opinions, it can be said that the criminal-procedural form means the sum of the conditions and sequence of procedural actions established by the law.

In other words, the criminal-procedural form is the system of criminal-procedural institutions and rules regulating them; the sequence of the stages of the criminal process, the terms, methods and conditions of the implementation of the procedural actions carried out during the collection of evidence and their study are understood. A legal fact should be understood as a "condition" for the implementation of any procedural action. For example, in order to conduct a face-to-face investigation in a criminal case, there must be a serious contradiction between the testimony of two previously questioned persons (Article 122 of the Criminal Procedure Code).

Forms of criminal proceedings cannot exist without a generalized concept of views on criminal proceedings. The national concept of criminal proceedings has made the proceedings before the court an integral part of the criminal proceedings, that is, in

order for the criminal case to be heard in court, a preliminary investigation or inquiry must be conducted. This concept is based on the analysis of existing Anglo-Saxon and Romano-German models of criminal proceedings.

In world practice, there are two historically formed models of criminal proceedings: Anglo-Saxon and Romano-Germanic (continental). The Anglo-Saxon model of criminal trial is based on adversarial, where the main burden of proof falls on the parties. A single procedural element (preliminary investigation or inquiry) is not formed in the pre-trial period due to the division of the parties into two parties. Evidence collection is carried out independently by the defense and the prosecution. For example, in the United States, Canada, and England, the cases are not thoroughly and fully investigated in the case investigation [6], it is enough for the authorities to collect the evidence and submit it to the court. In this case, the police does not create procedural materials, but rather investigates the person's involvement in the committed crime. Its result will be sent to the prosecutor. The prosecutor examines it and decides whether to close the proceedings or send the materials to the court. In other words, in this model, the criminal process, criminal-procedural activity begins at the court stage.

Our national criminal-procedural legislation is based on the continental model, and taking the case to court is a separate and important stage of the criminal process and is a complex process.

One of the characteristic features of the criminal-procedural form is its uniqueness. It is explained by the uniform procedural legislation, the uniform principles of the criminal procedure, the uniformity of the procedural tools aimed at determining the factual circumstances in all criminal cases, the uniform legal bases, the procedure, the decision-making procedure, and the uniformity of the requirements imposed on it. Another important feature of the procedural form is its systematicity. The law-making body must take into account the systematic functioning of procedural actions when creating a criminal-procedural norm or making changes or additions to it. Otherwise, as noted by M. N. Marchenko, it will have a negative effect on the efficiency of the work [7]. Procedural form requires systematization of not only criminal-procedural relations, but also other institutions of the process. In particular, the location of sections, chapters, articles and generally all criminal-procedural institutions (for example, principles, composition of participants, etc.) in the Criminal Procedure Code should be based on a logical sequence..

Today, scientific and technical progress has an impact on all areas of society, including the criminal-procedural area. In order to find an optimal solution to the modern problems observed in the judicial investigation practice, to adapt it to the

requirements of the time, the system of procedural relations needs constant changes. This requires the development of a new approach to the investigation of various types of criminal cases. The new approach is inextricably linked with the diversification (differentiation) of forms of criminal proceedings. According to our current criminal procedural legislation, there are types of procedural forms in pre-trial and court proceedings, such as normal (investigation and trial according to general rules), complicated (providing more guarantees to ensure the rights of the participants) and simplified (for example, private prosecution proceedings).

An important criterion for the unification or differentiation of the criminal-procedural form is the uniqueness of the legal status of the participant in the criminal process who committed a socially dangerous act. A person's age, psychological state is one of the classifiers that lead to conducting proceedings in a special way in relation to other persons. In addition, there are other conditions for the differentiation of the procedural form, including the social necessity of separating the criminal case from the general case to a separate case, the cost calculation to achieve the required result. M.V. Zotova emphasizes that the differentiation of the procedural form should be based on the following criteria: the occurrence of a criminal event, the degree of complexity of determining the truth, the subject of the crime, as well as the degree of social danger of the crime [8]. Similar criteria were studied by E. V. Mishchenko, who additionally included the legal status of the person who committed the crime [9]. It can be seen that these criteria are inextricably linked with the criminal law. At the same time, procedural criteria have also been developed [10], which consider the level of complexity of studying the cases that are the subject of proof, and the interests of the persons who committed the crime or suffered from it. So, according to the point of view of these scientists, there are two main criteria for differentiation: the level of social danger of the crime (material-legal) and the level of complexity of proceedings in a criminal case (procedural-legal). serves.

Common criminal-procedural forms in the world experience are related to the nature of the crime committed. In most countries of continental Europe, unlike our national legislation, socially dangerous acts punishable by the criminal law are divided into crimes and acts (two-level classification) or crimes, acts and violations (three-level classification) depending on the nature of social danger. For example, in France, the stages of criminal proceedings do not have a single system: crimes (crimes) have their own system, delicts have their own system, and contraventions have their own system. A similar system can be found in the US criminal procedural legislation, which means that the socially dangerous act is included in one of the categories of felonies or misdemeanors, which is the basis for determining the form of proceedings[11].

The necessity of homogenization (unification) or differentiation of the forms of criminal proceedings, their positive and negative aspects are the cause of debate among scientists. In particular, S.V. Zakharova [12], I.B. Mikhailkovskaya [13] supported differentiation and considered it a necessity for the development of the criminal process. However, while N.A. Vlasova pointed out the shortcomings of such a procedure and stated that it is impossible to determine the truth without spending enough time, effort and money in criminal proceedings [14], V.V. must remain unchanged in unit form. The task of unification of the criminal-procedural form is not to create a new form, but to improve the existing procedural form in our legislation. In our opinion, in both cases, it should be based on the cost-effectiveness of criminal proceedings. In this case, economy means achieving more results with fewer resources. Unfortunately, the criteria for evaluating the effectiveness of the existing procedural forms used in criminal proceedings have not been developed.

The usual form of criminal proceedings is regulated by the general rules of the Criminal Procedure Code. The complexity of the criminal-procedural form is carried out by methods such as extending the period for the implementation of a certain procedural action, setting additional guarantees for the participants, conducting proceedings against minors, and introducing the procedure for obtaining additional permission. Simplification is related to the procedure of speeding up the process, facilitating the investigation or trial, depending on the social danger of the committed crime, thereby reducing material and other social expenses. It helps to reduce existing formalities in legislation and judicial investigation practice. At the same time, these types of differentiation are not free from shortcomings, in particular, complication is expensive and long-term, and simplification is not fully consistent with the principles of criminal procedure. Therefore, it is necessary to create a single concept of differentiation of procedural forms that allows to create forms that are equally responsive to public and private interests. The basis of this concept should be based on provisions such as ensuring the rights of individuals, speed and economy, comprehensive and full investigation of the circumstances of the committed crime.

At the same time, adherence to the procedural form in criminal proceedings does not always lead to the discovery of the truth or the provision of a fair trial in the case. It may cause inconvenience to the responsible persons who implement it in proving that the business conduct is fixed in a strict pattern. Administrative procedures established in the legislation do not prevent investigators from conducting independent activities. Procedural form ensures legality in criminal proceedings, but deviation from it also causes evidence to be considered inadmissible. In other words, criminal proceedings are carried out in a special procedural form as a form of procedural activity.

Based on the above, we can distinguish the following elements of the criminal procedural form:

- Conditions - normative rules defining the grounds, place, time and terms of implementation of procedural actions;
- Process - a set of procedural actions and the order of their implementation, the sequence of stages;
- Guarantees - legal instruments aimed at realizing the rights and legal interests of the participants in criminal proceedings.

The structure of the criminal-procedural form is as follows:

- The procedural procedure for making a decision on the implementation of procedural actions;
- Implementation of procedural actions;
- Registration of the results of procedural actions in relevant documents

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