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Research Article

ANALYSIS OF THE LEGAL NATURE AND THEORETICAL FOUNDATIONS OF THE DIFFERENTIATION OF CRIMINAL PROCEEDINGS

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ABSTRACT

The article specifies the material and procedural criteria, which differentiate the forms of the criminal proceedings. Revealed and substantiated the need for simplified proceedings in criminal cases. The author proposes to introduce a new model of simplified procedure, which would meet the needs of law enforcement practice and would fully ensure the protection of the rights and legitimate interests of persons involved in criminal proceedings.

KEYWORDS

Criminal proceedings, differentiation of the procedural form, simplified proceedings.

INTRODUCTION

In criminal proceedings, the term simplification is often used interchangeably with the term "differentiation." Differentiation (fr. differentiation, lat. differentia – difference) means differentiating the whole based on its characteristic, dividing it into parts.

Differentiation in the criminal process means different forms of criminal-procedural work that meet the various (all) needs of conducting criminal court proceedings, solving a specific criminal case and, as a result, obtaining the necessary (necessary, useful)

result for a specific participant in the process, the whole society. (not only simplified or complicated) existence is understood.

On the basis of the differentiation of the criminal procedural form lies the proposal of the parties to abandon the criminal-legal dispute and apply the criminal law to the case. The essence of procedural differentiation is that the law allows for the expediency of minimizing the activity of the parties and the court

on determining the factual basis of the final document on the application of the law.

Regarding the basis of differentiation, there are different views in the scientific literature.

For example, as for I.S.Smirnova, criminal-legal (material basis): social dangerousness of the act, social dangerousness of the accused; the type of crime committed, the type and standard of punishment that can be applied to the convicted person; the social and socio-political importance of the crime, the importance for the interests of the accused and the victim, and the complexity of the factual circumstances of the case, the special characteristics of the accused or the victim, the complexity of solving the case both factually and legally, and the fact that the crime was committed by an organized group were included in the criminal procedural criteria.

However, in our opinion, based on the experience of most countries and the current criminal procedural law, it is appropriate to base the differentiation on the universal criterion - the criminal-legal criterion (the degree of severity of the crime or the punishment that can be imposed) and the criminal-procedural criterion (complexity of the factual circumstances of the case). The reason is that the remaining criteria depend on more subjective factors and there are no universally recognized criteria for their classification.

The simplified procedure cannot be used in cases of high social risk and, in turn, a more severe punishment may be applied. The main logic of the criminal law is that the punishment and other legal measures that can be imposed according to the severity of the crime increase proportionally. Therefore, it is necessary that the procedural guarantees should be in accordance with it, that the simplified proceedings should not be the reason for restricting the rights and freedoms of

people and citizens guaranteed by the Constitution and laws. That is, the simplification of the criminal process cannot be unlimited, and it should not create conditions for holding an innocent person responsible, but only serve the purposes of the process. For serious and very serious crimes, a more complex procedural form should be used with additional safeguards that can protect against potential errors. As the legal consequence of the crime becomes more serious, the cost of the mistake increases proportionally.

However, the lower the social risk of the crime, the faster the state's reaction to the committed crime, serves to achieve the goals of the punishment, and the educational value of the punishment increases. As observed in today's practice, the punishment for a crime with a low social risk is applied after 4-5 months, it does not allow to achieve the goals of the punishment. It is for this reason that it is worth noting that the cases of committing new crimes during the investigation and court process have increased.

It is precisely because of the lack of universally accepted criteria for dividing proceedings in a simplified manner that the same procedural forms have been the cause of views by various scientists about whether or not they belong to the simplified form.

For example, Kachalova O.V. although there are some elements of the simplified procedure, it does not belong to the simplified form because it is based on the material-legal criteria and not the procedural one, and it is necessary to base on the integrative approach when differentiating the forms.

In accordance with this approach, it is possible to determine the simplified procedure in criminal proceedings only on the basis of criminal-legal, criminal-procedural and organizational criteria. The

main criterion is certainly the criminal-legal criterion, which determines the category of cases and persons to which the simplified procedure can be applied. The criminal-procedural standard determines the scope of proof based on the attitude of the person to the guilt. However, the author's opinion about the use of the simplified form as an organizational criterion in the investigation of complex crimes due to the reduction of the volume of evidence in some criminal cases cannot be justified.

Gerasenkov V.M. in addition to the above, also indicated the characteristics of the person under criminal prosecution and the victim as a criminological criterion.

In our opinion, we cannot agree with A.V.Piyuk's conclusion that the only objective basis for the application of the simplified procedure is the criminal-legal criterion consisting of the degree of social danger of the act, and that there is no criminal-procedural basis, because the simplified procedure is applied only according to the degree of social danger of the act, without taking into account the factual situation of the case. application itself is impossible. This is because some crimes may be complex, even if the social risk is not high or serious, or the parties may be against the application of a simplified procedure.

Professor Mukhitdinov A.A. distinguishing the bases of criminal law and the bases of criminal procedural law, the bases of criminal law include the degree of social danger of the crime, the normative size of the punishment, the complexity of the factual circumstances in the criminal case, the need for quick consideration and resolution of the criminal case, the social level of the crime emphasized that criteria such as importance, the procedural and legal nature of the person being prosecuted or the victim of the crime,

and the existence of personal interests of the persons involved in the criminal case should be taken as a basis.

In our opinion, it would be appropriate to separate criminal-legal and criminal-procedural criteria for differentiation of criminal proceedings. The reason is that the criminal-legal criterion - along with the degree of social danger of the act, the criminal-procedural criterion - the complexity of the factual circumstances of the case and the will of the participants of the criminal process, that is, determines this limit.

However, there is no common opinion among scientists on the issue of criminal-procedural criteria. For example, if M.L. Yakub included in the procedural criteria, the complexity of solving the case from both the factual and the legal side, the socio-political importance of this category of cases, the importance of the crime for the interests of individual persons, one or another office, organization, and enterprise, M.K. Sviridov included in the procedural criteria the complexity of determining the circumstances of the case, whether there is a need to ensure that the suspect and the accused behave appropriately, and whether there are special characteristics of the accused and the victim. At this point, it is impossible to agree with the idea of defining the social and political significance of the cases, the significance of the crime for the interests of individual persons, one or another office, organization, enterprise as a procedural criterion, because the basis of differentiation must be determined in advance in the law, based on the attitude of society or citizens, procedural shapeshifting doesn't make sense. In this case, only the dispositive grounds provided for in the criminal procedure law, i.e. based on public or private interests, can be taken into account.

M.K. Sviridov's opinion that the necessity of using a procedural coercive measure is a procedural criterion

is not sufficiently substantiated, and this issue cannot be an independent criterion due to its subjectivity.

The complexity of the factual circumstances of the case is the basis of the criminal-procedural criterion, and the ease or complexity of determining the circumstances of the case is not always related to the degree of social danger of the crime. However, due to the variability of this criterion, it is necessary to allow the transition from one criminal-procedural form to another. That is, depending on the situation of the work, from simplified to complex or vice versa.

The absence of a substantive legal dispute means that the determination of the facts of the case is not complicated, meaning that the factual circumstances of the case often depend on the discretion of the defense as opposed to the complexity of the facts. That is, if the accused has confessed his guilt and his guilt is not in doubt in the inquiry, investigator, prosecutor and the court, then the dispute itself does not exist, in such a case, simplifying the proceedings becomes an objective necessity.

Simplification criteria are also directly related to the scope of powers of the victim and the discretion of the officials considering the application of the simplified procedure. Of course, in this case, the official should be based not on his subjective opinion, but on "evaluative concepts",

At this point, it is necessary to emphasize the complexity of the criminal proceedings from concepts such as "insignificant", "obvious", "non-suspicious", without proceeding from the specific circumstances of the case.

Based on the above, the criminal-procedural criteria for differentiating criminal proceedings:

- a) The complexity of determining the factual circumstances of the case
- b) Special characteristics of a person who committed a crime or suffered from a crime;
- c) Public or private prosecution of the case;
- d) existence or non-existence of material legal regulation;
- e) It is possible to include the behavior of the person after committing the crime.

Therefore, criminal procedural work is based on the complexity of the procedural form:

- 1) simple operation;
- 2) simplified operation;
- 3) can be divided into complex procedural forms of work.

Simplified operation in the criminal procedure, based on the specific objective features of certain categories of cases, is distinguished by a shorter period of criminal procedural activity and a simpler form of the criminal-procedural form compared to the general form.

A complex procedural form of work is a procedural form of work expressed in the expansion of the subject of proof from the general procedure of work, the increase in the level of procedural guarantees and the strengthening of the obligations of the bodies responsible for the work.

The types of proceedings in the complex procedural form include proceedings on the crimes of minors, proceedings on the application of coercive medical measures.

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