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LAW AND PROCEDURE APPEAL OF MAKING THE CRIMINAL PROCEDURE CODE UKRAINE

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SUMMARY

This paper analyzes the right to appeal and the procedure for its implementation under the Criminal Procedure Code of Ukraine. The analysis of the legal literature on research concepts appeal which plays important because allows citizens to protect the violated rights when they find that the trial court improperly, unreasonably or unjustifiably considered their cause. On appeal pursuant to the Criminal Procedural Code of Ukraine may be appealed court decisions that have been taken by the courts of first instance and not entered into force, as well as the court of first instance ruling and the investigating judge.

Key words: appeal, the Criminal Procedure Code of Ukraine, prosecution, validity, Court of Appeals, the state Supreme Court of Ukraine, Litigation.

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В статье проанализировано право апелляционного обжалования и порядок его осуществления по Уголовному процессуальному кодексу Украины. Осуществляется анализ юридической литературы по исследованию понятий апелляционного обжалования, которое имеет важное значение, поскольку дает возможность гражданам защитить нарушенные права, если они считают, что суд первой инстанции неправомочно, необоснованно или немотивированно рассмотрел их дело. В апелляционном порядке, согласно Уголовно-процессуальному кодексу Украины, могут быть обжалованы судебные решения, принятые судами первой инстанции и не вступившие в законную силу, а также постановления суда первой инстанции и постановления следственного судьи.

Ключевые слова: апелляционное обжалование, Уголовный процессуальный кодекс Украины, обвинение, обоснованность, апелляционный суд, государство, Верховный Суд Украины, судебная практика.

Statement of the problem. According to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, the determination of his civil rights and obligations or of any against him criminal charges.

Also, in accordance with Articles 55, 124 of the Constitution of Ukraine, every citizen is guaranteed the right to defense in court violated his rights and freedoms. Justice in Ukraine is administered exclusively by the courts. Delegation of functions of the courts, as well as assumed by other agencies or officials are not allowed. Courts have jurisdiction over all legal relations arising in the state.

Topicality of the research.

However, not all citizens agree with decisions made by the court of first instance. The Constitution of Ukraine states that one of the basic principles of justice is to ensure that the appellate and cassation court (Article 129 of the Constitution). Appeal counts as enables citizens to protect the violated rights when they find that the trial court improperly, unreasonably or unjustifiably considered their cause. On appeal pursuant to the Criminal Procedural Code of Ukraine may be

appealed court decisions that have been taken by the courts of first instance and not entered into force, as well as the court of first instance ruling and the investigating judge.

The purpose of this study is to analyze the rights on appeal, and the procedure for its implementation in the light of the Criminal Procedural Code of Ukraine 13.04.2012 4651-VI.

In the system of courts of general jurisdiction are appellate courts as courts of appeal for civil and criminal, commercial and administrative cases



of administrative offenses. They are by higher courts and local courts below on the Supreme Court of Ukraine and the high specialized courts.

The main material of the study. Appellate courts for civil and criminal cases and cases on administrative offenses are: areas of appellate courts, appellate courts of Kyiv and Sevastopol, the Appellate Court of the Autonomous Republic of Crimea.

Appellate courts to review business cases, appellate courts to review administrative cases is under appellate commercial courts and appellate administrative courts, which are formed in the appellate districts in accordance with the Decree of the President of Ukraine.

The structure consists of the Court of Appeal judges who have experience as a judge for at least five years, one of whom is appointed by the Chief Justice and his deputies. In the Court of Appeal, the number of judges in which more than thirty-five, can be assigned to three Vice-Presidents.

In the Court of Appeal can create chambers on different categories of cases within their jurisdiction. Trial Chamber is headed by the Secretary of the Chamber, who shall be appointed from among the judges of this court. The decision to form the panel, its composition and the appointment of the Secretary of the Chamber Assembly adopted the court of appeal at the suggestion of the Chairman. Secretary of the Chamber organizes the work of the respective chambers, control analysis, and generalization of judicial practice in cases within the competence of the Chamber shall inform the meeting of the court of appeal on the activities of the Chamber.

Under its authority the Court of Appeal:

- 1) Consider the case within their jurisdiction on appeal under the legislation;
- 2) in cases stipulated by the procedural law, hears cases within their jurisdiction as a court of first instance;
- 3) analyzes judicial statistics, studies and summarizes case law;
- 4) provide methodological assistance to local courts to apply the law;

5) exercise other powers stipulated by law.

The judge appellate court exercising judicial functions in the manner prescribed by the procedural law, as well as other powers prescribed by law [4].

Accordance with Part 1 of Art. 392 of the Criminal Procedural Code of Ukraine (hereinafter – the Code of Ukraine), the appeal may be contested court decisions that have been taken by the courts of first instance and not entered into force, namely:

- 1) penalty, except as provided in Article 394 CCP Ukraine;
- 2) The decision on whether or refuse the application of compulsory measures of medical or educational nature;
- 3) other decisions in the cases provided PDAs Ukraine.

Judgments and decisions of the trial court, subject to appeal in the appeal by the CCP in Annex 1.

Rulings adopted during the proceedings at first instance before making judgments under Part 1 st. 392 Code of Ukraine, own not subject to appeal, except in cases specified by the CPC of Ukraine. The objection to such rulings may be included in the appeal the court decision provided p. 1 st. 392 Code of Ukraine.

In the appeal and the decision may be appealed to the investigating judge in the cases stipulated by the CPC of Ukraine. List decisions investigating judge may be appealed to the court of appeal in accordance with the CPC in Annex 2.

The right to appeal, in accordance with Art. 393 Code of Ukraine shall:

- 1) the defendant in respect of which adopted the conviction, his legal representative or advocate – in the part concerning the interests of the accused;
- 2) the defendant for which approved the acquittal, his legal representative or advocate – in terms of motives and grounds for justification;
- 3) the suspect, accused, his legal representative or advocate;
- 4) legal representative, defender minor or very minor, about which a question on the use of compulsory educational measures – in part related to the interests of the minor;
- 5) The legal representative and

defender of a person against whom a question about the application of compulsory medical measures;

- 6) the prosecutor;
- 7) the victim or his legal representative or representative – in what concerns the interests of the victim but within the requirements stated by them in the court of first instance;
- 8) civil plaintiff, his agent or legal representative – in that settling civil action;
- 9) civil defendant or his representative – in that settling civil action;
- 10) other persons in cases stipulated by the CPC of Ukraine.

List of persons entitled to appeal, grounds and types of judgments by the CCP in Annex 3.

Please note that some court decisions have certain features on their appeal. Thus, according to art. 394 Code of Ukraine:

1. The verdict of the trial court adopted the results of simplified proceedings in the manner provided in Articles 381 and 382 CCP Ukraine can not be challenged on appeal on the grounds of review proceedings in the absence of members of judicial proceedings nedoslidzhennya evidence in court or to challenge the established pre-trial investigation circumstances.

2. The judgment of the trial court can not be challenged on appeal on the grounds of objection circumstances that no one contested at trial and investigation which was considered inappropriate by the court pursuant to the provisions of Article 349 CCP Ukraine.

3. The verdict of the trial court on the basis of the settlement between the victim and the suspect, the accused may be challenged on appeal:

- 1) the accused, his counsel, legal representative solely for the reason: appointment of a court sentence stiffer than the agreed deal, making the sentence without the consent of the sentencing, the failure by the court requirements established parts five – seven of Article 474 CCP Ukraine, including including neroz'yasnennya it effects the transaction;
- 2) the victim, its agent, legal

representative, solely on the grounds of: appointment of a court sentence less severe than the agreed deal, making the sentence without the consent of the sentencing, the nez'lyasennyya consequences of the transaction, the failure by the court requirements established parts six or seven of Article 474 CCP Ukraine;

3) the prosecutor solely on the grounds of the court approving the agreement in the criminal proceedings, which according to the third paragraph of Article 469 CCP Ukraine agreement can not be negotiated.

4. The verdict of the trial court on the basis of an agreement between the prosecutor and the suspect, accused the recognition of guilt may be appealed:

1) the accused, his counsel, legal representative solely for the reason: appointment of a court sentence more severe than the agreed deal, making the sentence without the consent of the sentencing, the failure by the court requirements established parts of the fourth, sixth, seventh article 474 CCP of Ukraine, including nez'lyasennyya it effects the transaction;

2) the prosecutor solely on the grounds of: appointment of a court sentence less severe than the agreed transaction, approval of the transaction by the court in the proceedings, which according to paragraph four of article 469 CCP Ukraine agreement can not be negotiated.

Appeal – a special form of appeal to the Court of Appeal, which is the highest authority that reviews decisions of the courts of first instance.

According to st.396 Code of Ukraine, the appeal must meet the following requirements:

1. The appeal shall be submitted in writing.

2. In the appellate complaint shall include:

1) name of the court of appeals;
2) full name (name), residence (stay) the person submitting the appeal and the number of means of communication, email address, if available;

3) the judgment complained of and the name of the court, which approved it;

4) The requirements of the person submitting the appeal and the reasons

for them to indicate what is the illegality or invalidity of the judgment;

5) request the person filing the appeal, the research evidence;

6) a list of materials that are attached.

3. If a person does not wish to participate in the appeal, it is said in the appellate complaint.

4. If the appellate complaint shall indicate the circumstances that have not been tested in a court of first instance or evidence not submitted the trial court, then it shall indicate the reasons for this.

5. The appeal shall be signed by the person who submits. If the appeal takes back, the representative of the victim, then it added properly made proof of his authority in accordance with the Code of Ukraine.

6. The appeal and enclosed copies of written materials provided in an amount necessary for their sending party to the criminal proceedings and other participants in the proceedings, interest applies to the appeal. This obligation does not apply to a defendant who is under house arrest or in custody.

After the judgment the trial court presiding court must explain the content of the decision, order and terms of its appeal (Part 1 of Art. 376 CPC of Ukraine).

Depending on the subject of the appeal CCP provides two orders of filing the appeal: the court that issued the decision (ie, the court of first instance), and directly to the Court of Appeal. In court, the decision was filed appeal to all judgments made by the court of first instance. If it comes to appeal the decision investigating judge, the appeal is submitted directly to the court of appeals.

To ensure articulated by the European Court of Human Rights of the principle of legal certainty intended provisions of the opportunity to appeal against court decisions within clearly defined terms, on the expiry of which the decision takes legal effect and can not be appealed:

- The judgment or decision on the application or deny the application of compulsory measures of medical or educational nature – within thirty days from the date of the declaration;

- On the other the court of first

instance – within seven days of the announcement decision (the other of the court of first instance, which may be subject to appeal);

- The decision investigating judge – within five days of its announcement.

Calculation of term filing an appeal made by the general rules provided for calculating deadlines.

According to Art. 400 Code of Ukraine, submitting an appeal against the sentence or court order stopping their entry into force and implementation, except as prescribed by the CPC of Ukraine. Filing an appeal on the ruling investigating judge suspends its entry into force, but does not stop its execution, except as prescribed by the CPC of Ukraine.

Where the Court confined compilation and announcement of a resolution of approval, with the addition of the full text later (Part 2 of Art. 376 CPC of Ukraine), the day ad approval is the day of announcement of the holding part. This timely compilation of the full text of the decision must be regarded as a good reason missed deadline for appeal.

In some cases, the purposes of the appeal is not the proclamation of a sentence or ad approval, and upon presentation of (a) a copy of the judgment.

For a person who is in custody Deadline for appeal is calculated from the date of service of a copy of the judgment.

If the court or the investigating judge was rendered without calling the person who challenges (for example, when considering a request for temporary access to objects and documents, the appeal period for that person is calculated from the date of receipt of its copy of the judgment.

If the sentence was passed without calling the person who contested in the manner provided for summary proceedings concerning criminal offenses (Article 382 CPC of Ukraine), the appeal period for that person is calculated as from the date of receipt of its copy of the judgment. This copy of the judgment after consideration of the indictment with a request for its consideration in simplified proceedings sent to the participants of



the proceedings no later than the day following the day of its adoption (Part 4 of Art. 382 CPC of Ukraine).

Throughout the period of appeal of the criminal proceedings no one can be obtained from the court. These rules are intended to guarantee the possibility of proceeding participants read the case file on the appeals of other participants who came to the court for proper preparation for participation in the appellate review. The trial court shall transmit received an appeal with the materials of the criminal proceedings before the appellate court within three days after the expiration of the appeal court decision (Part 1 of Art. 397 CPC of Ukraine).

By the end of prescribed period for appeal, the Court of First Instance, where these petitions participants of the proceedings, it must provide the opportunity for participants to get acquainted with the criminal proceedings. This review before the materials, for example, during pre-trial proceedings, once completed, or when the case came before the Court of First Instance (Articles 221, 290 and 317 of the CPC of Ukraine) is not grounds for denial of the right of review over the term of appeal [5, p. 193-194].

The prospects for further research in the chosen direction. In general, the rules of the Criminal Procedure Code of Ukraine on appeal and the procedure for its implementation meet the Convention for the Protection of Human Rights and Fundamental Freedoms and the Constitution of Ukraine.

However, we believe there are some disadvantages, such as: Code of Ukraine stipulates the right of appeal to appeal the decision of the investigating judge to dismiss the complaint on the decision to close criminal proceedings, a return appeals against decisions, actions or inaction of the investigator, prosecutor or refusal to initiate proceedings her. But Ukraine is not defined PDAs stay of execution or of the relevant decisions in connection with its appeal.

Appeal is an important tool to protect rights and freedoms, because the trial court is immune from error assumptions in solving the case.

Appellate courts for civil and criminal cases and cases on

administrative offenses are: areas of appellate courts, appellate courts of Kyiv and Sevastopol, the Appellate Court of the Autonomous Republic of Crimea.

Depending on the subject of the appeal CCP provides two orders of filing the appeal: the court, which decided, and directly to the Court of Appeal. In court, the decision was filed appeal to all judgments made by the court of first instance. If it comes to appeal the decision investigating judge, the appeal is submitted directly to the court of appeals.

The appeal must meet the requirements set out st. 396 CCP Ukraine and filed within the time stipulated by Part 2 st. 395 Code of Ukraine, namely:

1) the judgment or decision on the application or refuse the application of compulsory measures of medical or educational nature – within thirty days from the date of the declaration;

2) on the other the court of first instance – within seven days of its announcement;

3) the decision investigating judge – within five days of its announcement.

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