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FEATURES OF PROVIDING THE PRINCIPLE OF COMPARISON OF THE PARTIES OF THE CRIMINAL PROCESS OF UKRAINE

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SUMMARY

The article examines the issues of ensuring the adversarial parties in the criminal process. The question of the role of the court as the main subject of the criminal process and the main functions of the court at the stage of judicial proceedings in the criminal case are considered in detail. The reasons, which lead the court to active probative activity during the competition of the parties, are considered. Also, this article is devoted to the scientific analysis of the current criminal procedural legislation of Ukraine in view of the problems of implementing the normative content of the principle of competition. Based on the results of the scientific search, appropriate conclusions were drawn.

Key words: principle of competition, parties to criminal proceedings, "active" court, "passive" court, institute of investigating judge, investigating judge.

ОСОБЕННОСТИ ОБЕСПЕЧЕНИЯ ПРИНЦИПА СОСТЯЗАТЕЛЬНОСТИ СТОРОН В УГОЛОВНОМ ПРОЦЕССЕ УКРАИНЫ

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АННОТАЦИЯ

В статье исследуются вопросы обеспечения состязательности сторон в уголовном процессе. Подробно рассмотрена роль суда как основного субъекта уголовного процесса, определены основные функции суда на этапе судебного рассмотрения уголовного дела. Проанализированы причины, побуждающие суд к активной доказательственной деятельности при состязательности сторон. Проведен научный анализ действующего уголовного процессуального законодательства Украины, учитывая проблемы реализации нормативного содержания принципа состязательности. На основе полученных результатов научного поиска сделаны соответствующие выводы.

Ключевые слова: принцип состязательности, стороны уголовного производства, «активный» суд, «пассивный» суд, институт следственного судьи, следственный судья.

Formulation of the problem. The consolidation of the principles and principles of criminal proceedings in the Criminal Procedure Code of Ukraine (further – the CPC of Ukraine) caused the constant scientific interest in their normative content and practice of implementation in the activities of state bodies, officials, other participants in the criminal process. Of particular importance at the present stage of statehood development are theoretical and practical issues of the principles of the criminal process, all this is the main type of activity of the subjects of criminal proceedings, the results of which assesses the implementation of tasks that are assigned to the relevant subjects. Given the adoption of the current CPC of Ukraine, further understanding of the ways and means of improving the entire mechanism of criminal procedural activities is needed.

The state of the study. I must say that the competition, which according to most scholars is the basis of criminal procedural activities, was the subject of research by almost all the scholars-processualists. Many scientists are genuine practices, that is, the issue was considered in various aspects. Among researchers of this issue is a large number of different scientists, but foreign scientists also studied this problem. Competition in the criminal process was investigated by E. Zaitseva, V. Bozrov, R. Bagdasarov, O. Yanovskaya, G. Solovey, Z. Zinatullin, D. Kim, A. Shamardin, S. Lunin, A. Smirnov, A. Sboev, A. Tumanyants, Y. Miroshnichenko and many other researchers.

In the works of these scholars, issues related to the concept of competition with respect to the subjects of the criminal process were considered, some scientists already had the opportunity to protect the scientific degrees related to the institute of the investigating judge.

In the latest publications of the scholars-processualists, there is some inconsistency in the issues regarding the role of the court in criminal proceedings and in relation to certain of its powers.

The purpose of this article is an attempt to consider adherence by the court of the principle of competition between the parties to criminal proceedings in the light of the requirements of the current CPC of Ukraine and international law. That is why this issue requires comprehensive coverage for the purposes of our study.

Presentation of the main material. The history of mankind is an endless path to perfection. The natural desire of the society to ideal forms of organization of life fully applies to the sphere of criminal procedural activity, the civilizational choice of the form of organization of which is made in favor of adversarialism, which creates the necessary conditions for the implementation of the rights and responsibilities of the parties, requiring them significant activity in the activity (as the prosecution, and protective) collection, verification, research evidence. Therefore, both for the prosecution side and for the protection side of the tremendous importance are tactical methods and methods that should be guided by the particular judicial situation.

In this regard, the definition of the place of the court in adversarial parties is not only an important issue of the theory of criminal process, but is in the field of criminal science as a starting point for studying the problems of court tactics in criminal proceedings, since it is clear that, in general, any tactic implies, first and foremost, the active functional activity of the participant in the process. The passive status of the subject is unlikely to require special recommendations to optimize his activity, or rather "inactivity".

Despite the rather long history of the formation and improvement of competitive jurisprudence and a large number of scientific studies in this area, the competition challenges are far from exhausted and a number of issues deserves further scientific development.

Thus, the provisions of the CPC provide for the institution of an investigating judge whose primary purpose is to exercise judicial control over the observance of the rights, freedoms and legitimate interests of persons in criminal proceedings. In our opinion, an investigating judge as a new subject of criminal justice in Ukraine is the bearer of the judiciary. He carries out activities aimed at ensuring the prevention of unlawful and unjustified restriction of the constitutional rights and freedoms of the person at the pre-trial stages of criminal proceedings by preventing and protecting the rights and freedoms of the individual, that is to restore them in case of violation.

It should be emphasized that the role of the institution of the investigating judge is multifaceted and consists in ensuring legality in criminal proceedings, protecting the constitutional rights and freedoms of the individual, and expanding competition in the pre-trial proceeding.

On the replacement of the norms of the CPC of Ukraine in 1960, where periodic judicial control was carried out, the activity of an investigating judge under the current CPC of Ukraine has a cross-cutting character [1, p. 26], which, due to its comprehensive and systematic nature, positively affects the level of assurance of the constitutional rights and freedoms of a person in criminal proceedings. In view of the tasks facing the investigating judge, I believe that his activities should be consistent with the requirements of systemicity, continuity, bypassing all pre-trial investigations, which will be positively reflected at the level of legal protection of a person in the field of criminal justice.

The criminal proceedings of the investigating judge will be important for the entire criminal process, since the actions and decisions will depend on the course and outcome of the criminal proceedings, ensuring the observance of human rights and freedoms, and hence the realization of its tasks in general.

In accordance with clause 18 of Article 3 of the CPC of Ukraine, an investigating judge is a judge of the court of first instance, whose authority is exercised in accordance with the procedure provided for by the CPC of Ukraine, judicial control over the observance of the rights, freedoms and interests of persons in criminal proceedings, and in the case provided for by Article 247 CPC of Ukraine – the chairman or, by its definition, another judge of the Court of Appeal of the Autonomous Republic of Crimea, the district court of appeals, the cities of Kyiv and Sevastopol [2].

It should be noted that the investigating judge (judge) is elected by the meeting of judges of the entire court on the proposal of the court chairman or at the suggestion of any judge of this court, if the proposal of the court chairman was not supported, for a term not exceeding three years and may be re-elected. Before the election of an investigating judge to a court, his authority is exercised by the elderly judge of this court [2].

An investigating judge is not released from performing the duties of a judge of the first instance, however, exercising his powers of judicial control over the observance of the rights, freedoms and interests of persons in criminal proceedings is taken into account in the distribution of court cases and has a priority value (Part 5 of Article 21 of the Law "On judicial system and the status of judges"). The number of investigating judges is determined separately for each court by the last judges' meeting [3].

Such an approach by the legislator to the institution of the investigating judge as an individual criminal procedural activity is fully justified. As it was aptly noted in the special literature, the introduction of criminal investigations into the institute of an investigating judge should be related to the actual reform of the whole system of relations, on the one hand, between the authorities and the court, with the second, between the pre-trial investigation bodies, investigating judges and courts of general jurisdictions that decide on the merits of criminal proceedings. The court as an authority must be given unconditional authority to verify and assess the initiated petition of the indictment, to assess them for belonging, admissibility, and sufficiency to resolve the parties' merits in substance. Only on these objective grounds the judge is entitled to draw a conclusion on the presence or absence of legal and factual grounds for satisfying one or another petition submitted to court, the recognition of the legitimate and substantiated actions or decisions of the bodies of pre-trial investigation [4, p. 16].

In particular, in the course of a pre-trial investigation, the investigating judge, observing the competitive procedure, deals with:

– application of measures to ensure criminal proceedings (Article 132 of the CPC of Ukraine);

– consideration of complaints about decisions, actions or inactivity of the bodies of pre-trial investigation or prosecutors (Article 306 of the CPC of Ukraine);

– granting permission to conduct separate investigative (search) actions (Articles 233–235 of the CPC of Ukraine), etc [2].

The advantage of the investigating judge's institution is that it does not belong to a system of law enforcement agencies that directly conduct an investigation, it is an objective and independent, impartial figure that can make independent decisions.

It should be noted that the principle of competition between the parties is most fully implemented during the trial. Particularly acutely, this controversy persists around its probative activity, the scope of authority to obtain evidence, and so on. As noted on this occasion, Professor O. Zaitseva, the problem of activity or inactivity of the court in adversarial criminal process – one of the key problems in analyzing the adversarial principle in legal science, its penetration into the fabric of criminal procedural relationships and identify its importance in building criminal justice – taking into account its formative influence, which determines the historical type of process [5, p. 1967].

The guiding idea of this principle is the parity of the parties of prosecution and defense, which independently defend their legal positions in the form of a court dispute through the implementation of procedural rights and procedural obligations provided by the law.

It should be noted that traditionally the science of the criminal process distinguishes in the structure of competition, three main features, namely:

– a clear distinction between the functions of public prosecution, defense and judicial review;

– equality of parties in procedural rights for the exercise of their functions;

– a special role of the court in the process as an objective and impartial subject.

Among modern scholars and practitioners there are various approaches to finding out the place of the court in the process of proof in the criminal proceedings.

Thus, in particular, V. Bozrov completely denies the active role of the court in proving, and believes that it only provides the competition and equality of parties in the study of evidence [6, p. 32]. R. Bagdasarov gives the court the role of an arbitrator independent of the parties to the organizer of the trial [7, p. 19], and O. Yanovska notes that the activity of the court as a manifestation of his cognitive activity should be minimized, in connection with what suggests to speak about the increase of court activity in the aspect of its general management of the criminal process, including the process of proof [8, p. 90]. From the point of view of the academic processualists, it seems that the activity of the court impedes the implementation of the principle of competition in the criminal process also weighs on the substantiated G. Solovei [9, p. 884]

Contrary to this statement, Z. Zinatullin asserts that the court must play an active role in gathering evidence in the course of criminal proceedings in order to establish all the circumstances of the crime [10, p. 175].

L. Loboiko emphasizes that the exclusion of the court from the number of subjects of evidence is ungrounded, since all elements of the process of proof are present in his activity [11, p. 320].

A. Shamardin also believes that the court can not be excluded from the subjects of evidence, because it is obliged to verify and evaluate the evidence provided by the parties for their belonging, admissibility, authenticity and sufficiency. The gathering of evidence is not a duty, but a court's right [12, p. 169].

After analyzing the opinions of many scholars, we can conclude that the objectives of the court's activity in gathering evidence are:

– first, ensuring equal opportunities of parties to criminal justice through the implementation of the "promotion of protection" rule;

– and secondly, the need to protect the rights and freedoms of the individual (defendant, victim) in the event of a situation of "excessive rebuttal" of evidence presented by the opposing party;

– thirdly, the need to verify the evidence already available in the criminal case or provided by the parties in the court session.

According to S. Lunin, the competitive form of the process is ensured by the active procedural position of the court, which is obliged not only to assist the parties in the gathering of appropriate evidence, and sometimes on its own initiative, to provide collection of evidence to comply with the requirements of the law on the completeness of the allegedly in the circumstances, it is impossible, since under such circumstances a court of any level or a judge can be accused of bias and favoritism of one of the parties [13, p. 10].

One should agree with the opinion of O. Smirnov, who in his work notes that since I. Plank in 1857, the main feature of competition has determined the passivity of the court, and the wanted origin was linked with the collection of evidence by the court for the issuing of a sentence, that is with its activity, little that has changed. And now, many authors continue to traditionally believe that the active role of the court – the attribute of the inquisition process. However, it should be borne in mind, the author emphasizes that judicial activity in almost all developed democratic countries, including Anglo-Saxon, where adversity – almost religion, in the XX century only grew [14, p. 6].

It should be emphasized that even in the European Court of Human Rights, the judicial procedure has a mixed form, combining the competition of the parties and its own initiative of the court, the aggregate purpose of which is the establishment of objective truth in matters of observance of the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms by States-parts [15, p. 128].

The adversarial process of criminal proceedings makes the special role of the court, which is objective and impartial in the investigation of evidence, and does not advocate or defend the party. Therefore, the court has no right to send criminal investigation materials for additional investigation, to give pre-trial investigation authorities instructions to replenish the evidence base of prosecution, to take measures on bringing an accused's guilt on his own

initiative. At the same time, the concept of competition does not exclude the court's activity in the investigation and verification of evidence provided by the parties in the case. In particular, in accordance with the provisions of Part 2 of Art. 332 of the CPC of Ukraine, on its own initiative, the court has the right to entrust an expert examination; call an expert for interrogation on clarification of the conclusion (Part 1 of Article 356 of the Criminal Code of Ukraine), as well as to check testimony and other evidence provided to the court by raising questions of the witness (part 11.13 of Article 352 of the CPC of Ukraine), the victim (part 2 Article 353 of the CPC of Ukraine), an expert (Part 2 of Article 356 of the CPC of Ukraine), a specialist (Part 2 of Article 360 of the Criminal Code of Ukraine); ask questions to parties or other participants in criminal proceedings in the case of applications for additions to court proceedings (Part 2 of Article 363 of the CPC of Ukraine); to restore the clarification of the circumstances established during the criminal proceedings, and verification of their evidence, if the accused in the last word will report on new circumstances that are essential for the criminal implementation (Part 4 of Article 365 of the CPC of Ukraine); to declare in the court session the records of investigating (investigatory) actions and other documents attached to the materials of criminal proceedings (Part 1 of Article 358 of the CPC of Ukraine), etc.

The above powers allow the court to objectively assess the parties' legal provisions, eliminate doubts that arose during the trial, and, accordingly, resolve the criminal legal conflict by following the procedure established by law and the adoption of a legitimate, substantiated and motivated decision.

Findings. Consequently, in our opinion, the court in the criminal proceedings does not set as the goal of establishing objective truth. Moreover, there can be no such objective among the parties in criminal proceedings, considering that each of them defends personal interest, defined by its procedural function. In general, the purpose of criminal justice is quite different: the protection and restoration of criminal acts committed by social values by detecting and disclosing criminal offenses, punishment of guilty persons, compensation for damage caused by an offense to the rights and legitimate interests of man and society. However, it can not be argued that the court at all does not participate in the process of proof in the criminal proceedings. Undoubtedly, the court is the subject of proof, because the evidence of process is a complex activity, which is a multi-stage, cyclically-repeated process of gathering, checking and evaluating evidence. Taking into account the competitive principles of the criminal process, one can speak of the right of the court to participate in the process of assessing evidence, which in fact is the exclusive competence of the court. Of course, the parties also participate in such an assessment, however, it does not entail legal consequences, in contrast to the judge's assessment and the consequence of a decision in a criminal proceeding. Thus, despite the rather lengthy history of the formation and improvement of competitive legal proceedings and a significant amount of scientific research in this area, the challenges of adversity are far from exhausted and a number of issues deserves further scientific development. But it should be noted that the changes that have been made in the criminal procedural law have given a positive result.

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СИСТЕМА СУБЪЕКТОВ ПРОФЕССИОНАЛЬНОЙ ПОДГОТОВКИ ПОЛИЦЕЙСКИХ В УКРАИНЕ НА СОВРЕМЕННОМ ЭТАПЕ

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АННОТАЦИЯ

В статье рассматривается система субъектов, осуществляющих профессиональную подготовку полицейских в Украине. Отмечается, что профессиональная подготовка полицейских находится на стадии изменений и эволюции, что связано с европейской интеграцией Украины, необходимостью совершенствования профессиональной подготовки полицейских в соответствии с нормами и стандартами европейского сообщества.

Подчеркивается, что подготовка сотрудников полиции возлагается на разветвленную систему ведомственных учебных заведений, в число которых входят созданные в соответствии с законодательством Украины университеты, академии, институты, колледжи, лицеи. Однако ведущая роль принадлежит высшим учебным заведениям со специфическими условиями обучения, поскольку именно они осуществляют комплексную подготовку специалистов.

Указаны определенные недостатки, связанные с отсутствием законодательного определения правового статуса высших учебных заведений со специфическими условиями обучения.

Ключевые слова: правоохранительные органы, полиция, профессиональная подготовка, высшие учебные заведения со специфическими условиями обучения.

SYSTEM OF ACTORS OF PROFESSIONAL TRAINING OF POLICEMEN IN UKRAINE AT THE PRESENT STAGE

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SUMMARY

The system of Ukrainian professional police training subjects is researched in this article. It is noted that the professional police training is changing now according to the European integration of Ukraine, the necessity of police training improvement due to the norms and standards of the European community.

The author says that the police training is realized by the system of departmental educational institutions, including universities, academies, institutes, colleges, lyceums, which are established according to the Ukrainian legislation. However, the leading role in this process belongs to higher educational institutions with specific study conditions, which provide complex training.

Some shortcomings connected with the lack of a legislative definition of the legal status of higher educational institutions with specific study conditions are considered in the manuscript.

Key words: law enforcement agencies, police, professional training, higher education institutions with specific training conditions.

Постановка проблемы. Изменение функционирования правоохранительной системы Украины в нынешних условиях, связанное с европейской интеграцией нашего государства, построением правоохранительных органов, в частности полиции, в соответствии с нормами и стандартами европейского сообщества, неизбежно вызывает необходимость совершенствования и профессиональной подготовки полицейских, повышения их эффективности. Составной частью общей стратегии реформирования органов внутренних дел Украины является Концепция реформирования образования в Мини-