

PROCEDURAL COSTS IN CRIMINAL PROCEEDINGS INITIATED IN CONNECTION WITH CRIMINAL OFFENCES COMMITTED BY MINORS: THE IMPACT OF REASONABLE ALLOCATION ON THE ECONOMIC SYSTEM OF THE COUNTRY

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Abstract. The *purpose* of the article is to reveal the essence and content of procedural costs in criminal proceedings initiated upon the fact of criminal offences committed by minors; to define the concept, essence and content of procedural costs in the current criminal procedural legislation of Ukraine; to study the problems of criminal proceedings and judicial proceedings in relation to minors; to consider the principle of procedural economy in criminal proceedings. A scientific discussion of the problem of unification of the provisions of the criminal and criminal procedural legislation of Ukraine with a view to ensuring a full pre-trial investigation, trial proceedings and determination of appropriate types of punishment for minor offenders has been presented. The concept of procedural costs in criminal proceedings in Ukraine was improved and methods of their implementation through the provisions of the national criminal procedural legislation were determined. The authors' understanding of the main distinguishing features of procedural costs is presented. The practice and legal positions of the Supreme Court regarding the limits and methods of covering the costs of proceedings have been considered. It has been established that the principle of procedural economy in the criminal justice system has been implemented by ensuring the smooth functioning of all court instances and the up-to-date comprehensive normalisation of investigative situations that may arise in the pre-trial investigation process and the selection of full investigative (research) and covert investigative (research) actions, with the aim of avoiding cases of repeated procedural measures to ensure the proper course of evidence. *Results.* It has been established that the procedural expenses in the criminal proceedings of Ukraine should be understood as the material damage provided by the criminal procedural legislation of Ukraine, caused by ensuring the needs of the pre-trial investigation and court proceedings, in particular, related to the process of evidence and realisation of rights, freedoms and legitimate interests of the parties and other participants in the criminal proceedings. The essence and meaning of the procedural costs are realised through the prism of the provisions of the Criminal Procedure Code of Ukraine (in particular, Article 124, which regulates the peculiarities of the distribution of the procedural costs), which ensure the protection of the state and the persons who have been the victims of a criminal offence from possible material losses that may arise in the course of conducting pre-trial investigation and trial. The main distinguishing feature inherent in the content of procedural costs is the form in which the decision to recover them is made – a court verdict or a court ruling. It has been proved that in modern conditions, in the context of criminal proceedings against minors, the following issues remain to be solved as a matter of urgency 1) improvement of the norms of criminal procedural legislation in the part of criminal proceedings against minors under the conditions of the special legal regime of martial law; 2) improvement of the personnel provision of the judicial system with regard to the selection of candidates for the position of a judge who conducts judicial review of cases of minors; 3) improvement of the procedure for carrying out investigative (search) actions in criminal proceedings initiated due to the fact of commission of a criminal offence by minors; 4) establishment of international cooperation in the pre-trial investigation of transnational criminal offences

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committed in complicity with minors. It was concluded that, in order to maintain the economic cycle, it is necessary to ensure a balance between the procedural costs within the framework of criminal proceedings and court costs for legal proceedings and the funds that go to the state budget. This includes, in particular, the establishment of a mechanism for compensating persons who have committed criminal offences and the normalisation of types of punishment with an emphasis on material punishment. Special attention should also be paid to improving the work of the courts of first instance in order to avoid cases being reviewed in the courts of appeal and cassation.

Key words: procedural costs, minors, criminal proceedings, criminal justice, court costs, criminal offence, principle of procedural economy, economy, punishment.

JEL Classification: K14, K39

1. Introduction

The problem of material provision of criminal justice is not new for the sciences of criminal justice cycle. The creation of an appropriate material and technical base is the basis both for the stage of pre-trial investigation and for the trial. At the same time, nowadays the problem of procedural economy observing the principle becomes especially urgent in the difficult conditions of state functioning caused by the aggressive war of the Russian Federation against Ukraine and the effect of the special legal regime of martial law. It is also necessary to note the consistently high level of criminal activity, both in general and by individual subjects, especially privileged ones. Examples of such subjects are minors, who require a special procession procedure with a correspondingly higher percentage of material support.

The nature and content of procedural costs in criminal proceedings have been considered in the works of O. Kaplina, S. Sharenko, I. Basista, A. Pavlyshyn, R. Bilokin' and others. At the same time, the peculiarities of procedural costs associated with the investigation of criminal offences committed by minors have almost never been the subject of research by scientists, which determines the relevance of the chosen topic.

The purpose of the article is to reveal the essence and content of procedural costs in criminal proceedings initiated on the basis of the fact of commission of criminal offences by minors; to define the concept, essence and content of procedural costs in the current criminal procedural legislation of Ukraine; to consider the problems of criminal proceedings and court proceedings in relation to minors; to consider the principle of procedural economy in criminal proceedings.

2. The Concept, Essence and Content of Procedural Costs in the Current Criminal Procedure Legislation of Ukraine

Criminal activities are a serious destabilising factor with a direct negative impact on the national security of Ukraine. Most of the threats posed by criminal

illegal activities are realised in the economic sphere of the state, since in addition to the objectively existing increased social danger of illegal activities, the latter also affect the state economy. This process is carried out by causing material damage to the victims, as well as by creating conditions in which there is a need for financial provision of criminal proceedings, court proceedings and further maintenance of convicted persons in case they are sentenced to a certain term of imprisonment or life imprisonment.

In order to normalise social relations in the field of ensuring the criminal process in terms of covering costs arising during criminal proceedings, the legislation of Ukraine has provided such a concept as procedural costs. According to Article 118 of the Criminal Procedure Code of Ukraine, the costs of the proceedings consist of 1) expenses for legal aid; 2) costs related to travel to the place of pre-trial investigation or court proceedings; 3) costs related to participation of victims, witnesses, specialists, translators and experts; 4) expenses related to storage and forwarding of things and documents, making duplicates and copies of documents (Criminal Procedure Code of Ukraine). However, despite the fact that the nature and content of all the above-mentioned types of procedural costs have been established by law, in practice there are still a number of problematic issues that arise due to the lack of clarification of certain aspects that arise during the course of legal proceedings. Most of these gaps relate to the lack of clear criteria for distinguishing between procedural costs and damage caused by a criminal offence, the specifics, grounds and procedure for recovering procedural payments at the end of criminal proceedings, in particular in connection with release from criminal liability.

Thus, on the basis of the provisions of the current criminal procedural legislation of Ukraine, procedural costs are distinguished from the damage caused by a criminal offence by the compensation order. As a result, the court determines the amount of the procedural costs at the request of the persons entitled to compensation under the law, and the decision

on the procedural costs is reflected by the court in a judgment or order (Articles 125-126 of the Criminal Procedure Code of Ukraine). Material/moral damage caused to the victim should be compensated by the suspect/accused/natural or legal person who bears civil responsibility for the damage caused by the actions of the suspect/accused on the basis of the civil claim filed by the victim during the criminal proceedings prior to the trial (Article 128 CPC of Ukraine) (The Criminal Procedure Code of Ukraine). Thus, *the main feature inherent in the content of procedural costs is the form in which the decision to recover them is made. The form of such a decision is a court verdict or decision.* However, the existence of an exhaustive list of procedural costs, while having a positive function – ensuring objectivity and transparency in covering material losses incurred in the course of criminal proceedings (which reduces the likelihood of corruption risks), also has negative aspects, in particular, the lack of the possibility of compensation for material costs of certain covert investigative (detective) actions, etc.

In the Resolution of the Grand Chamber of the Supreme Court of Ukraine No. 598/1781/17 of 17.06.2020 it is stated that the procedural costs arising from and connected with the conduct of criminal proceedings are the material costs of the pre-trial investigation bodies, the prosecutor's office, the court and other participants of criminal proceedings. On the other hand, damages in criminal proceedings are not related to procedural relations, but to the material-legal commission of a criminal offence or other socially dangerous act. At the same time, the Grand Chamber of the Supreme Court is of the opinion that the victim of a criminal offence has the right to request the court to determine the monetary amount of the procedural costs to be compensated. This right remains with the victim regardless of whether the consideration of the criminal case has been concluded with a guilty verdict or a decision to close the criminal case (The Resolution of the Grand Chamber of the Supreme Court of Ukraine case No. 598/1781/17 of 17.06.2020, 2020). Thus, according to the position of the Supreme Court, the victim can influence the amount of procedural costs, but only those directly related to the conduct of criminal proceedings and listed in Article 118 of the Criminal Code of Ukraine. According to judicial practice, in most cases this concerns the victim's participation in investigative actions. The analysis of the criminal procedural legislation shows that the existence of the fact of a guilty verdict is the only condition that obliges the accused to pay the procedural costs defined in the document.

The above-mentioned resolution also states that the Code of Criminal Procedure does not limit the

procedural form of resolving the issue of distribution of the costs of the proceedings, including the costs of legal aid, exclusively with a guilty verdict. The court must resolve the issue of the distribution of procedural costs in any decision terminating the consideration of the criminal case on the merits and in the decision terminating the criminal case in connection with the release of a person from criminal liability. Failure to resolve the issue of the distribution of the costs of the proceedings cannot be the sole reason for the annulment of the decisions of the courts of first instance and the courts of appeal, since it does not constitute a significant violation of the requirements of the Criminal Procedure Code and does not affect the resolution of the issue of criminal qualification, proof of guilt and the imposition of punishment. The decision on the apportionment of the costs of the proceedings lies in the court's conclusion on the reimbursement or refusal to reimburse a certain amount of money, which the Civil Procedure Code considers to be the costs of the proceedings. The fact that a party's request for the apportionment of procedural costs has been rejected without consideration does not resolve the issue of the apportionment of procedural costs. In accordance with the provisions of Part 5 of Article 534 of the Code of Civil Procedure, this claim may be resolved by a court that issues a judgment without deciding on the distribution of the costs of the proceedings (The Resolution of the Grand Chamber of the Supreme Court of Ukraine case No. 598/1781/17 of 17.06.2020, 2020). Thus, based on the legal position of the Supreme Court, the following can be summarised: 1) the provision on the distribution of procedural costs does not limit the procedural right of the victim to determine in court the amount of compensation for damages suffered during criminal proceedings, which are provided for by criminal procedural law and are not related to civil liability (damage caused by a criminal offence); 2) determination of the type and amount of procedural costs is carried out by the court in any case and in any form of court decision (verdict, ruling, etc.); 3) procedural expenses in closed proceedings are subject to reimbursement from the State Budget of Ukraine (due to the existence of legal grounds for reimbursement of procedural expenses for a court decision to release a person from criminal liability).

Thus, taking into account the legal nature, as well as the existing case law practice and recommendations, *it is expedient to understand by procedural costs in criminal proceedings in Ukraine the material losses provided by the criminal procedural legislation of Ukraine, caused by ensuring the needs of pre-trial investigation and court proceedings, in particular, related to the process of proving and realising the rights, freedoms and legitimate interests of the parties and other*

participants in criminal proceedings. The essence and meaning of procedural costs are understood through the prism of the provisions of the Criminal Procedure Code of Ukraine (in particular, Article 124, which regulates the peculiarities of the distribution of procedural costs), which ensure the protection of the state and persons who have been the victims of a criminal offence from potential material losses that may arise in the course of conducting pre-trial investigation and trial. The main differentiation in the content of procedural costs is the form in which the decision on their recovery is made – a judgment or a court order.

3. Problems of Criminal and Judicial Proceedings in Relation to Minors

The investigation of offences committed by or against minors is complicated by a number of procedural factors. The current Criminal Procedure Code of Ukraine provides for a special chapter describing the peculiarities of criminal proceedings against minors. It should also be noted that the Criminal Procedure Code also provides for the particularities of the interaction of pre-trial investigation bodies with several offenders at the same time, if at least one of them is a minor. Thus, part 2 of Article 484 of the Criminal Procedure Code of Ukraine states that criminal proceedings against a minor, taking into account the fact that they are conducted against several persons, at least one of whom is a minor, shall be conducted by investigators who have been specially authorised by the head of the pre-trial investigation department to conduct pre-trial investigations against minors. In criminal proceedings against a minor, as well as in proceedings on the application of coercive measures of an educational nature, the investigator, the interrogator, the procurator, the investigating judge, the court and all other participants are obliged to carry out procedural actions in the order which least disturbs the minor's usual way of life and corresponds to his/her age and psychological characteristics, and also to explain the essence of procedural actions, decisions and their meaning, to listen to arguments when making procedural decisions and to take all other measures aimed at avoiding negative influence on the minor (The Criminal Procedure Code of Ukraine). At the same time, despite the sufficiently detailed approach to establishing the specifics of criminal proceedings against minors, in practice a number of problematic aspects directly related to the judicial consideration of children's cases arise. Most of the gaps that currently exist in judicial practice are due to the insufficient level of training of judges authorised to consider cases involving minors, which is also caused by the lack of a mechanism for

special training of such specialists, due to the lack of personnel (understaffing of the judicial corps), as well as the insufficient financial capacity to provide such a mechanism.

The Law of Ukraine "On the Judiciary and the Status of Judges" stipulates that judges (magistrates) authorised to conduct criminal proceedings against minors shall be elected from among the judges of the respective court by the meeting of judges of this court on the proposal of the head of the court, or on the proposal of any judge of this court if the proposal of the head of the court was not supported, for a term of no more than three years, and they may be re-elected.

The number of judges authorised to conduct criminal proceedings against minors is determined separately for each court by the meeting of judges of that court. A judge authorised to conduct criminal proceedings against minors may be elected by a person who has at least ten years of experience as a judge, experience in conducting criminal proceedings in court and high moral, business and professional qualities. If the court does not have a judge with the necessary experience who is authorised to conduct criminal proceedings against minors, such a person shall be chosen from among the judges with the longest experience as a judge (The Law of Ukraine "On the Judiciary and the Status of Judges"). It seems that such a legislative approach cannot be considered fully balanced and well-considered for a number of objectively existing factors. Firstly, the experience of the judge does not always imply his ability to work with juvenile offenders, as well as with their legal representatives and defenders. Secondly, such a requirement as high moral, business and professional qualities is also inappropriate, since it is universal for a judge of any court level and the cases under consideration. In view of the above, it would be more logical to assume that such a person has experience in dealing with minors, educational or psychological work, etc. As far as the doctrine of criminal procedure is concerned, it would be more logical to focus more on the expediency of creating special bodies and subdivisions, whose remit would include the conduct of pre-trial investigations and judicial review of cases involving minors.

Thus, M. Horodetska stresses the existence of specific rights of minors, which must be implemented in criminal proceedings. From the content of the subject of criminal justice authorities, a part related to criminal proceedings against minors who have not reached the age of criminal responsibility due to the lack of a proper subject of the crime should be excluded. The legal status of minors who have reached the age of criminal responsibility but have not reached the age of majority is specific and requires the introduction of a separate subject for judicial

authorities. Taking into account the peculiarities of the subject connected with the investigation and trial of criminal offences committed by minors, it is necessary to create a separate investigative body and a separate juvenile court body or judicial division – college in the composition of local courts. In addition, it is necessary to apply obligatory internal specialisation of procedural managers according to such a criterion as a minor subject of committing a criminal offence (Horodetska, 2020). At the same time, if the scientist's position can be supported, other proposals may give rise to a number of concerns because of the possible artificial branching of the system of bodies whose powers include pre-trial investigation and judicial proceedings in which the participants are minors. The analysis of judicial and prosecutorial practice throughout the existence of an independent country shows that the creation of several specialised bodies with similar powers often leads to the delegation of powers between these bodies, which extends the duration of criminal proceedings.

Thus, the following issues remain relevant today in the context of criminal proceedings against minors and need to be addressed: 1) improvement of the criminal procedure legislation in terms of criminal proceedings against minors under the special legal regime of martial law; 2) enhancement of the judicial system's staffing in terms of selecting candidates for the position of a judge who conducts court hearings of minors; 3) improvement of the procedure for conducting investigative (detective) actions in criminal proceedings initiated on the fact of committing a criminal offence by minors; 4) establishment of international cooperation during pre-trial investigation of transnational criminal offences committed in complicity with minors.

4. The Principle of Procedural Economy in Criminal Proceedings

The problem of procedural economy in criminal proceedings is inextricably linked to procedural costs, since the principle of procedural economy is reproduced through the prism of creating the most balanced approach to choosing ways of ensuring the process of proof. The logical conclusion is that the establishment of reasonable limits to financial support for criminal proceedings and court cases are elements of economic security and sustainable economic development of the state.

Scholars also point out that procedural economy is inextricably linked to the effectiveness of criminal proceedings, but at this stage of the development of procedural science, the place of this idea in criminal procedural law has not yet been determined. Procedural economy is an idea that aims to increase

the efficiency of the procedural form by rationalising it through speeding up, simplifying and reducing costs. The article analyses different views on the idea of procedural economy in the works of Soviet and modern scholars. The issue of procedural form differentiation is considered as one of the means of implementing procedural economy. The need to optimise the form of criminal procedure in the direction of its simplification, facilitation and cost reduction leads to the search for alternative mechanisms to the general procedure. The principle of procedural economy has two forms of influence on criminal justice: normative (by improving legislation) and organisational and managerial (by improving the efficiency of work organisation). However, despite the importance of procedural economy, the status of this idea has not yet been determined. Thus, taking into account the fundamental importance of the idea of procedural economy for the organisation and development of criminal justice, the correspondence of this idea with the criteria developed by science for procedural principles, there is every reason to assert that procedural economy belongs to the principles (fundamentals) of criminal proceedings (Kanyuka, 2015). It should be noted that the principle of procedural economy and direct procedural costs are also directly related to the specifics of criminal proceedings conducted against a certain category of subjects. Minors are one of these categories.

On the basis of the provisions of Article 485 of the Criminal Procedure Code of Ukraine, in addition to the circumstances provided for in Article 91 of this Code, the following data shall be determined: 1) complete and comprehensive information about the minor (his/her age (day, month, year of birth), health and developmental level, other social and psychological characteristics of the person), which should be taken into account when individualising responsibility or choosing an educational measure. If there is evidence of mental retardation not related to mental illness, it should also be established whether the minor could fully understand the significance of his or her actions and to what extent he or she could control them; 2) the minor's attitude to the committed act; 3) the living conditions and upbringing of the minor; 4) the presence of adult instigators and other accomplices in the criminal offence (The Criminal Procedure Code of Ukraine).

At the same time, in order to ensure the process of establishing such circumstances, additional procedural measures must be taken, which entail certain costs. An example of this is the comprehensive psychological and psychiatric examination of a minor suspect or accused person provided for in Article 486 of the Criminal Procedure Code of Ukraine, the implementation of which requires the

involvement of certain persons with special knowledge and the subsequent payment for the examination carried out.

Thus, it can be stated that the principle of procedural economy is directly related to the specifics of the criminal offence under investigation and the subjects who committed it.

In this context, the position of the Supreme Court is interesting, according to which the principle of procedural economy is primarily aimed at speeding up the consideration of the case (resolution of the dispute) and reducing court costs. On this basis, the Supreme Court formulated a legal opinion according to which the principle of procedural economy (efficiency, reasonableness and rationality of the judicial process), in the aspect of the right of a person to appeal a court decision in cassation, provides for the possibility of limiting this right in relation to certain types of "intermediate" (procedural) court decisions. This condition is that the disagreement of one of the parties with such a "provisional" court decision can be expressed in a corresponding appeal or cassation appeal against the "main" court decision ("final" decision on the merits of the case) in accordance with the guarantees established in particular in Article 129 of the Constitution of Ukraine (the right of a person to an appellate (second) review of a case). Such application of the principle of procedural economy by the courts is predictable for the parties; it allows to consider the case as a whole within a reasonable period of time, prevents the parties from abusing their procedural rights and also ensures careful handling of the resources of all participants in the case (The Resolution of the Supreme Court of Ukraine of 24.05.2021 in case No. 9901/20/21). Thus, the principle of procedural economy in the criminal

justice system is implemented by ensuring the smooth operation of courts of all instances and the modern comprehensive regulation of investigative situations that may arise in the course of pre-trial investigation and the selection of an exhaustive list of investigative (search) and covert investigative (search) actions in order to avoid cases of repeated procedural measures to ensure a proper process of proof.

Consequently, it can be concluded that in order to preserve the economic cycle, it is necessary to ensure a balance between procedural costs within criminal proceedings and court costs for the trial, as well as the funds that go to the state budget. In particular, this also applies to the creation of a mechanism for compensation for damage by perpetrators of criminal offences and the regulation of types of punishment with a focus on pecuniary ones. Particular attention should be paid to improving the work of the courts of first instance in order to avoid cases being heard in the courts of appeal and cassation.

5. Conclusions

Ensuring adequate justice for minors depends directly on the circumstances of the offence and the persons who have committed it. Minors are privileged subjects of criminal liability and punishment, and they also have a special status within the framework of criminal proceedings. This status imposes a specific procedure for the conduct of a pre-trial investigation, which leads to an increase in the level of procedural costs due to the need to carry out additional procedural measures (expertise, establishment of a circle of communication, etc.). In this respect, there is an obvious need to develop the juvenile justice system, in particular by improving the standards of criminal legislation and reviewing the types of punishment foreseen for minors.

References:

- The Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI. Available at: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (in Ukrainian)
- Resolution of the Grand Chamber of the Supreme Court of Ukraine case No. 598/1781/17 of 17.06.2020. Available at: <http://www.reyestr.court.gov.ua/Review/89977787> (in Ukrainian)
- The Law of Ukraine "On the Judiciary and the Status of Judges" of 02.06.2016 No. 1402-VIII. Available at: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (in Ukrainian)
- Horodetska, M. (2020). Committing a criminal offense to a minor as a specific attribute of the object of the knowledge. Available at: <https://rep.dnuvs.ukr.education/server/api/core/bitstreams/9d16e8b0-2d50-4ba2-bd4c-0eb556a32159/content> (in Ukrainian)
- Kanyuka, I. (2015). The principle of procedural economy in criminal proceedings of Ukraine. Available at: <http://dspace.onua.edu.ua/bitstream/handle/11300/856/%D0%9A%D0%B0%D0%BD%D1%8E%D0%BA%D0%B0%20%D0%86.%20%D0%9C..pdf?sequence=3&isAllowed=y> (in Ukrainian)
- The Resolution of the Supreme Court of Ukraine of 24.05.2021 in case No. 9901/20/21. Available at: <https://verdictum.ligakon.net/document/97114087> (in Ukrainian)

Received on: 11th of October, 2023

Accepted on: 21th of November, 2023

Published on: 28th of December, 2023