

CRIMINAL PROCEDURE AND CRIMINALISTICS

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VIOLATION OF THE COMPETITIONS PRINCIPLE IN THE PRE-TRIAL INVESTIGATION: REALITIES AND PERSPECTIVES

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The development of quality social relations is based on certain aspirations and legal principles, which include the rule of law, legality, equality before the law, respect for human dignity, ensuring citizens' rights to freedom and personal integrity, and so on. Failure to comply with such requirements are the reasons for illegal actions, the development of corruption, degradation of certain segments of the population and others.

In addition, the level of proper completeness of information about the crime and its processing and use is one of the conditions for its successful investigation, detection and prevention, as well as the ability to quickly identify the perpetrator. In the current conditions of ongoing European integration, there has long been a need to reform the criminal justice system and improve their activities. The concept of criminal justice reform in Ukraine, approved by the Decree of the President of Ukraine № 311 of 08.04.2008, outlines that «the criminal justice system is somewhat cumbersome, internally contradictory, not always scientifically substantiated and excessively complicated. The activities of its subjects are characterized by duplication of powers, lack of clear definition and delimitation of their competence, giving priority to tasks that are actually secondary, the use of unjustifiably complicated formal procedures. The bodies of criminal justice have imperfect functional capacity, which does not allow to ensure compliance with the principle of the rule of law in their activities» [1].

Consideration into account gaps and mistakes, finding ways to solve them is a priority of modern research, which is a prospect of positive legal practice in Ukraine.

Today's research conducted within the legal sciences allows us to conclude that the legal system is imperfect in the dimension of «law-practice», due to violation of the rights of the parties to criminal proceedings, which, in turn, violates the principles of adversarial proceedings.

The pre-trial investigation is accompanied by many investigative (search) actions aimed at collecting and verifying the evidence already obtained in adversarial criminal proceedings. At the same time, carrying out certain investigative (search) actions requires the involvement of specialists in certain fields of knowledge. Highlighting such an investigative situation, when the procedural action is carried out in relation to the suspect, it should be noted the effectiveness of its conduct, subject to the involvement of a knowledgeable specialist.

On the basis of studying the materials of judicial practice it is possible to reveal non-compliance with a number of norms of the current, in particular, criminal procedural legislation of Ukraine. An example is the violation of the adversarial principle, which manifested itself in the denial of the defense's request for a forensic examination (technical examination of documents) by an investigating judge during the investigation of a criminal offense under Part 4 Art. 190 of the Criminal Code of Ukraine.

Thus, in the criminal proceedings, the advocate, with the consent of the accused, filed a request for a forensic examination to establish the posts of parts of the text in the receipts and to establish what was primary and what was added (subject to finding added parts of the text in documents). The advocate counsel substantiated the arguments of the petition for the appointment of a forensic examination and expressed to the court the opinion that the examination could lead to the conclusion that the testimony of the defendant was true. However, the victims and the prosecutor objected to the appointment of a technical examination of the handwriting of the accused, as no such statement had been made in the pre-trial investigation, and the result of the expert examination was irrelevant in the case, which allegedly indicated that there was no need for an examination.

The court, after hearing the parties to the proceedings under discussion, the court provided for in Art. 242 of the Criminal Code of Ukraine, the grounds for the appointment of this examination are not established; the questions were discussed at the last court hearing and according to the court decision of 16.02.2018, a similar request of another advocate counsel to appoint a forensic examination of documents in the criminal proceedings under Part 4 of Art. 190 of the Criminal Code of Ukraine. Guided by Art. 242, 332, 376 of the Criminal Procedure Code of Ukraine, the court decided to deny the defense counsel's request to appoint a forensic examination of documents [2].

During the issuance of such a decision by the court – the refusal to satisfy the request of the defense to appoint a forensic examination of documents, without the right to appeal, violated a number of current criminal procedure legislation. According to Art. 22 of the Criminal Code of Ukraine, the adversarial principles were not observed, as the accused was deprived of the right to defend his innocence; also violated the right of the defense to collect evidence and ensure the submission to the court of appropriate and admissible evidence (Part 3 of Article 93 of the Criminal Code of Ukraine). In addition, the court did not take into account that the examination of documents requires special knowledge, which is not possessed by the victims and the prosecutor. All this indicates that the court violated the norm of Art. 94 on the evaluation of evidence, namely the lack of impartial attitude to the circumstances of the criminal proceedings.

In modern conditions of development of fight against crime in the conditions of adversarial criminal proceedings, realization of requirements and provisions of the Convention for protection of human rights and fundamental freedoms the improvement of the mechanism of legal regulation of public relations occupies a special place. One of the areas of its optimization is the ability to take into account the experience of other countries. A certain place in this dimension is occupied by psychology, which is becoming increasingly popular around the world not only in helping people in their daily lives, but also contributes to the investigation and prevention of crime. Judicial practice, there are a large number of such violations of applicable law. Detection and prevention of such decisions is one of the priority areas of our time, which in turn is the basis for promising research that can be the basis for a fair trial and trial.

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