

Слободяник Н.С.

Национальный университет «Одесская юридическая академия»

НЕКОТОРЫЕ АКТУАЛЬНЫЕ ВОПРОСЫ ФОРМИРОВАНИЯ СУДЕЙСКОГО КОРПУСА В УКРАИНЕ

Аннотация

Анализ стратегии реформирования судебной власти и некоторых направлений ее совершенствования позволяют спрогнозировать возможные изменения и в порядке формирования судейского корпуса. В свете последних процессов реформирования актуальными являются вопросы качества правосудия, эффективности функционирования судебной власти и производительности каждого судьи как носителя судебной власти. Сейчас вопрос квалификационного оценивания судей с целью определения профессионального уровня и квалификации каждого судьи, а также качества отправления правосудия в целом являются весьма актуальными и требуют внимания. Среди ключевых аспектов совершенствования судебной власти и утверждения доверия к правосудию является вопрос повышения авторитета судебной власти, ее приближения к обществу и одновременно максимального обеспечения принципа независимости. Поэтому вопросы формирования судейского корпуса и непосредственного участия народа в этом процессе может быть рассмотрен в контексте изменений в Конституцию Украины и реформировании судебной власти.

Ключевые слова: судебная власть, эффективность правосудия, квалификационное оценивание судей, судейское досье, выборность судей.

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REGULATIVE AND LEGAL INFLUENCE OF TERMS IN THE STAGE OF PREPARATIVE AND ASSIGNMENT OF COURT HEARING

Soldatskyi V.V.

National University «Odessa Law Academy»

The preparatory stage of production is independent of criminal proceedings in which the judge examines the criminal case, the adequacy of reasons for the appointment of the court session, and solves issues related to the preparation of the case for trial. At this stage of criminal proceedings, to date, there are some gaps that can only fill regulations change legislation.

Keywords: preparative court procedure, court hearing, stages in criminal process, terms in criminal process.

Statement of problem in the general view and its connections with important scientific and practical tasks. Criminal and Procedural Code of Ukraine essentially reformatted the stage of court procedure preparation with the purpose of justice performance at the base of competitiveness and procedural equality of parties in the criminal procedure. In this reason, the realization of temporal aspects in competitive principles in preparative court procedure needs the conceptual research because the actions are made by judge at this stage of criminal process are the guarantee, validity, objectivity of a sentence that, certainly, get a great importance for the parties of prosecution and defence. Judge appraises proves from the point of view of their sufficiency for rendition guilty or not guilty verdict in the future stage of case consideration [1, p. 165].

It's necessary to note, that during the competitive principles, court must to create the correspond conditions for performance procedural commitments and realizing of given rights by parties and to ensure the levels of procedural and legal opportunities of upholding and proof of own position in criminal case to the members of process.

In the same time, the equal opportunity to participate in the consideration of questions is solved in the preparative of court hearing must be given to the parties. Preparative procedure is the independent stage of criminal process where the judge checks the materials of criminal case about the existence of reasons for the assignment of court hearing and solves the questions are connected with preparation of case to the court consideration (art. 314, 315 Criminal and Procedural Code of Ukraine).

At this stage it's performance the activity by judge which is directed to the defining the existence and absence of problems with the consideration of the essence of criminal case. This activity in correspondence to the central stage of criminal process of court hearing is preparative, that's why it's important to performance of the case without unreasonable interruption as right realization of every accused person into the reasonable time and ensuring as fast access of complainant to justice. In a way, it's appeared the objective necessity of legal regulation in the activity of judges in this stage with the help of establishing in the statutes of the law the terms of decision formulation and making of procedural actions.

Formulation of goals of the article (Task establishing). Preparative procedure – is the stage of criminal process where: 1) the materials of criminal procedure are checked by judge; 2) boundaries of responsibility are defined; 3) existence or absence of reasons for dismissing of criminal procedure; 4) checking abiding by the rules of judicial criminal procedures; 5) using methods for preparation of court hearing of case. By this, it's necessary to that at the stage of preparative procedure there is not solving the question about proves of the guiltiness of accused person, this is in the competence only of court and it's decided in the follow stage – stage of court consideration of case. According to the statutes of criminal and procedural code, the main purpose of this stage lays in the procedural and organizational providing of court consideration [2, p. 141].

Statement of the main material of research with the modern groundings of received scientific results. Stage of preparative procedure gets the intermediate position between pre-court investigation in connection with which it has controlling character and court hearing in connection with which it has organizational character and also services as „procedural filter” – it's appealed to protect the court hearing from the: criminal procedures which are created with violations of criminal and procedural code or must be closed, accusation, petition for application of coercive measures of educational character, petition for application of coercive measures of medical character or petition for release from criminal liability.

According to above said, at this stage judge solves two groups of questions:

1) questions are connected with checking material of criminal procedure; 2) questions are connected with preparation of criminal procedure to the court hearing.

It's necessary to admit that court procedure in the first institution starts with preparative court hearing which is assigned not later than 5 days after getting of accusation, petition for application of coercive measures of educational character, petition for application of coercive measures of medical character or petition for release from criminal liability (pt. 1 art. 314 Criminal and Procedural Code of Ukraine). It's should be admitted that Criminal and Procedural Code of Ukraine of year 1960 was establishing the longer terms at this stage of court procedure. In a way, according to the pt. 241 Criminal and Procedural Code of Ukraine, the case must be assigned to the consideration not later than ten days but in the especially difficult case – not later than thirty days from the day of its admission to the court. So, as we can see, the legal statutes of the modern Criminal and Procedural Code will fully encourage to the quick and operative consideration of the case.

It's necessary paying attention to the fact that for today the illegal practice for the sending of informational sheets to the lower levels courts came to stay in Ukrainian court system. It continues its existence despite of new Law adoption „About court structure and status of judges” which doesn't warrant such seals in the court of cassational institution. But courts pay great attention to the understanding of legislation which is consisted

in the instructional lists of their colleagues from the higher courts. This situation is abnormal for democratic and legal state.

After approving of new Criminal and Procedural Code of Ukraine, Superior Specialized Court of Ukraine by the questions of civil and criminal cases, prepared dozen of such sheets which admit the list of violations in legislation of Ukraine during performance of criminal procedure. In a way, according to the Informational sheet of the Superior Specialized Court of Ukraine „About the order of court procedure performance due to the Criminal and Procedural Code of Ukraine” Head (Professional Judge who is the chef during joint judicial proceedings or carries it out individually) gets the accusation, petition for application of coercive measures of educational character, petition for application of coercive measures of medical character or petition for release from criminal liability, the note about above said fact is made into the court audit and about other materials are given to the judge. Not later than five days after getting to procedure accusation, petition for application of coercive measures of educational character, petition for application of coercive measures of medical character or petition for release from criminal liability, court approves the agreement about assignment of preparative court hearing where it admits the data, time and place of its performance. In the same time with adoption of this decision, court which will carry out the court procedure, in the case of necessity according to pt. 1 art. 320 Criminal and Procedural Code of Ukraine may assign the substitute judge; the note about this fact is made in the court audit [3].

In a way, it's needed to pay attention about the fact that this recommendation contradicts to the pt. 314 Criminal and Procedural Code of Ukraine, according which, five day counting should be started not from the procedure of concrete judge but from the getting of these documents to court. In the same time, obligation to assign the statement about assignment of preparative court hearing is not warranted by the Art. 314 Criminal and Procedural Code of Ukraine. According to Instruction about clerical correspondence, in the regional court of general jurisdiction, after getting of material about criminal procedure in the day of their finding out, worker of court apparatus check out the consistency of packages and envelopes and correspondence of their addressing and then with following to the rules of safety, he opens packages and envelopes, check out the correspondence of applications to the inventory (existence of adds to the documents), makes a registration stamp of court on the right lower or other text-free place where the data of materials getting to the court and registration number in correspondence with audit of input correspondence. In the follows, these materials will be classified.

Along with this, it's necessary to note that actual Criminal and Procedural Code of Ukraine, above said Instruction and also the Statement about the automated system with circulation of court documents don't warrant the term for solving questions about consideration of such case by the concrete judge.

In our mind, such situation is the essential neglect in the actual criminal and procedural legislation of Ukraine and tells about the chance in admitting of unpunished case of routine courts employees of criminal cases production. In connection with this fact, we offer to add the Instruction about clerical correspondence in the regional court of general jurisdiction with the statement of follow content: „Court cases (materials of criminal procedure) must be registered in the audit of input correspondence in the day of their getting by court and not later than the next day after getting of material, they should be included to the system of document circulation of court for deciding of their transferring to the in the correspond court”.

In a way the beginning of term counting should be considered with the data of case registration in the court office which is happened in the day of materials getting by court. During this term judge must make the decision. By this, the question about the in-time registration has organizational not procedural character. But impactful effect of terms regulates the judge activity by the criminal case which is sent to court is possible only with condition of distinct organization of court office.

In the scientific legal literature, about this reason it's expressed idea by S. Rozumov which is worth of our attention. Scientist thinks that to the term of preceding hearing which is admitted with pt. 1 art. 314 Criminal and Procedural Code, it's included not only making decision about the assignment of preceding hearing but also its performance and making decision in general during the preceding hearing [4, p. 451]. Such idea seems us right and proved from the point of view of legal regulation in time of making decision in the stage of preparation and assignment of court hearing. At the same time, strict construction of pt. 1 art. 314 of Criminal and Procedural Code of Ukraine causes the conclusion in making only decision about assignment of preceding hearing into the relation to preceding hearing in-time which is admitted with this article.

This position of legislator doesn't conform to the assignment and role of procedural terms in regulation of relationship at this stage of criminal process of Ukraine. Encompassing by legal regulation of making decision term by judge in the criminal case which is sent to the court, is based on the necessity of limitation of preparation and assignment of hearing stage with temporal limit with the purpose of activity ending at this stage.

Making decision by judge about the assignment of preceding hearing ends this stage of criminal process. It means, if the judge makes decision about the assignment of court hearing without performance of preceding hearing, so the activity is carried out faster than with the assignment of preceding hearing, because it stays on the term admitted by the Law. In addition, the preceding hearing is just a type of preparative order to the court hearing, that's why this stage doesn't end with its assignment. In connection with this, it's important that procedural terms which regulate the judge's activity in the stage of preparation and assignment of court hearing, carry out the effective legal influence (in a way of limitation of this activity with temporal limits) equally similarly on both orders in purpose of court session. Consider-

ing of above said, it's appeared the necessity to regulate court activity in the performance of preceding hearing with the help of limitation terms. We offer to recite the pt. 1 art. 314 Criminal and Procedural Code of Ukraine in the follow redaction: „After getting of accusation, petition for application of coercive measures of educational character, petition for application of coercive measures of medical character or petition for release from criminal liability not later than five days after day of its registration in court and legally provided order appoints preparatory court session in which call participants of judicial proceedings.

The preceding hearing must be carried out in the 10 days term after the day of getting materials by court and in 5 days term in the criminal case in connection with accused person who remains in custody”.

It's necessary to admit that in par. 17 p. 3 of Informational list of Superior Specialized Court of Ukraine „About order of carrying out of preparative court hearing according to the Criminal and Procedural Code of Ukraine” it's not completely decided the question about initial continuation at a stage of preparatory court session of suppression method as remaining in custody of accused person. Considering the verdict of European Court of Human Rights in the case „Kharchenko against Ukraine” from 10 February 2011 (where it's generalized the system disadvantages in Ukraine with the art. 5 of European Court of Human Rights), it's necessary paying attention to the necessity of: 1) 1) justification in the resolution of court on purpose of business to consideration of the bases for extension of term of the detention accused if this decision was made by court and 2) indications of concrete period of validity of the resolution in this part (taking into account provisions of pt. 3 art. 331 of the Criminal Procedure Code of Ukraine). Considering of said above it may be stated par. 4 and 5 p. 4 of sheet about content of motivation and resolutely parts of the relevant resolution. It's also subject to the other methods to providing of criminal procedure which will be active during the court hearing.

Statement of judge about assignment of court hearing has an important meaning for all court investigation. The absence of procedural document is admitted as essential violation of criminal and procedural law which causes the canceling of verdict. Term of making decision in the criminal case which is warranted by law, regulates the activity of judge in a way of defining of its terminal continuance. In essence, normative statutes outline the term of judicial importance, legal procedural activity in the stage of preparation and assignment of court hearing and making any decision beyond the scope of which will be violation of procedural order in criminal law which is admitted by law. From our point of view, that's the reason of the statement composing about assignment the court hearing after finishing of terms which are warranted by art. 314 Criminal and Procedural Code of Ukraine, divests such document of procedural character and testifies about its absence in criminal case. In turn, it's admitted as essential violation of criminal and procedural code which causes canceling of verdict.

All above said testifies about the necessity of consolidation in the pt. 1 p. 314 Criminal and Procedural Code of Ukraine of addition according to which the making the decision by judge about the assignment of court hearing after ending admitted by pt. 1 art. 314 Criminal and Procedural Code of Ukraine term causes this document such that has no validity and testifies to absence in the resolution on purpose of court session. From our point of view, such statement, first of all, will carry out the activity of judges, performance of preventive influence in the reason of the negative legal consequences which come in connection with the termination of procedural terms, formulated in the form of the offered sanction of a number of precepts of law will focus judges in their activity on timely (before adverse effects) decision-making in a stage of preparation and purpose of court session.

According o pt. 2 art. 317 Criminal and Procedural Code of Ukraine after assignment of case to the court consideration, chief must provide the opportunity to review materials of criminal case to the participators of court hearing if they request. It's also necessary to note that legislator didn't admit the term for performance of such power. Such gap causes the interpretation and application of standard of the specified article of the law. In connection with this, it's appeared list of questions: in what time the party must or can examine the materials of criminal case in case of satisfaction its petition; whether there will be in violation of an established period of purpose of criminal case to hearing; what document and when the judge has to grant to the party the specified right?

It's presented that right of additional studying of criminal case material which is given to the party, may be regimented with statutes of law. In our mind, the term for realization of such law should not exceed of 5 days. The party has a right to lodge the petition about giving a term to the additional studying the material of criminal case from the day of getting of criminal case to the court before the making decision by judge. In connection with this, it's necessary to recite the p. 2 art. 317 Criminal and Procedural Code of Ukraine in the follow edition: „After assignment of case to the court consideration, chief must provide to the members of court procedure the opportunity of additional material of criminal case studying in term which doesn't exceed 5 days, it is given the correspond decree if they lodge the petition. During studying, members of court procedure have a right to make necessary extracts and copies from materials”.

Regulation of judge activity in the stage of preparation and assignment of court hearing is not limited only with influence of terms of making procedural decision which is stated by law. After taking by judge the decree about assignment of court hearing, its activity needed also the regulation in a way of terms setting in the statutes of law which define remoteness in time of the moment of the beginning of court hearing. Court consideration should be assigned not later than ten days after decree about approving of its assignment (pt. 2 art. 316 Criminal and Procedural Code of Ukraine).

Establishing in law of beginning term in court consideration encourages the speed of court procedure and has a purpose to the prevention of

unreasonable interruption in beginning of consideration of criminal case. Among other things, statement is consolidated in the art. 316 Criminal and Procedural Code of Ukraine and directed to the providing of realization in requirement of p. 1 art 6. European conventions about protection of human rights and main freedoms about the right of every accused person to the case consideration in reasonable time. By this, the existence of certain gap of time allows the parties to prepare for court hearing in time, think their position, if it's necessary, once again to study materials of criminal case, to invite additional witnesses, to claim proofs which can be provided in court.

Term of beginning of court consideration is warranted by the pt. 2 art. 316 Criminal and Procedural Code of Ukraine and formulated in the law in a way of admitting of maximal term of beginning of court hearing. To the mind of H. Petrova main feature lay in non-limitations in court right of beginning of court consideration earlier than their ending. In a way, the law regulated the court activity is connected with obligation of court consideration term which one sides ensures the moving of criminal case without unreasonable interruption, other sides provides the right of accused person for protection because it allows to prepare for the court hearing, to consider the position, to coordinate it with the defender, to declare the petition for a call of additional witnesses, etc.

The term is predicted by the pt. 2 art. 316 Criminal and Procedural Code of Ukraine and warranted by law in a way of admitting of minimal term. The court hearing must not start earlier than ending of said above term. Lineament of legislative regimentation in such terms is their inability by the persons who performance the procedure in court. Such terms are special only for court procedures; in pre-court procedure they are absent. With their content they service to ensuring of member of process rights but its adherence is provided with severe procedural sanctions. Violation of this term causes the unfavourable legal consequences because it's a normative and legal term which was formulated in the law as the proscription.

Conclusions are made as the result of research and perspectives of follow prospecting in this direction. Preparative procedure is the independent stage of criminal process where judge checks the materials of criminal case on the existence of enough reasons for assignment of court hearing and decides questions which are connected with preparation of case to the court consideration. Together with that, it's exist the list of gaps in the legal regulation of criminal process performance at this stage; and with the help follow normative statements, some of them may be filled:

1. We consider the necessity of adding Instruction about clerical correspondence in the regional court of general jurisdiction with statute of follow content: „Court cases (materials of criminal procedure) must be registered in the audit of input correspondence in the day of their getting by court and not later than the next day after getting of material, they should be included to the system of document circulation of court for deciding of their transferring to the in the correspond court”.

2. We offer to recite the pt. 1 art. 314 Criminal and Procedural Code of Ukraine in the follow re-daction: „After getting of accusation, petition for application of coercive measures of educational character, petition for application of coercive measures of medical character or petition for release from criminal liability not later than five days after day of its registration in court and legally provided order appoints preparatory court session in which call participants of judicial proceedings.

The preceding hearing must be carried out in the 10 days term after the day of getting materials by

court and in 5 days term in the criminal case in connection with accused person who remains in custody”.

3. It is necessary to recite the p. 2 art. 317 Criminal and Procedural Code of Ukraine in the follow edition: „After assignment of case to the court consideration, chief must provide to the members of court procedure the opportunity of additional material of criminal case studying in term which doesn't exceed 5 days, it is given the correspond decree if they lodge the petition. During studying, members of court procedure have a right to make necessary extracts and copies from materials”.

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Солдатський В.В.

Національний університет «Одеська юридична академія»

РЕГУЛЯТИВНО-ПРАВОВИЙ ВПЛИВ СТРОКІВ У СТАДІЯХ ПІДГОТОВЧОГО ПРОВАДЖЕННЯ ТА СУДОВОГО РОЗГЛЯДУ

Анотація

Підготовче судове провадження є самостійною стадією кримінального процесу, в якій суддя перевіряє матеріали кримінальної справи з огляду на те, чи є достатні підстави для призначення судового засідання, та вирішує питання, пов'язані з підготовкою справи до судового розгляду. Разом з тим, на сьогоднішній день існує ряд прогалин щодо правового регулювання здійснення кримінального процесу на цій стадії, заповнити окремі з яких, можна лише змінами нормативних положень.

Ключові слова: підготовче судове провадження, судовий розгляд, стадії, строки.

Солдатский В.В.

Национальный университет «Одесская юридическая академия»

РЕГУЛЯТИВНО-ПРАВОВОЕ ВЛИЯНИЕ СРОКОВ В СТАДИЯХ ПОДГОТОВИТЕЛЬНОГО ПРОИЗВОДСТВА И СУДЕБНОГО РАССМОТРЕНИЯ

Аннотация

Подготовительное судебное производство является самостоятельной стадией уголовного процесса, в которой судья проверяет материалы уголовного дела, достаточность основания для назначения судебного заседания, и решает вопросы, связанные с подготовкой дела к судебному рассмотрению. В этой стадии уголовного производства, на сегодняшний день существует ряд пробелов, которые заполнить можно только изменениями нормативных положений законодательства.

Ключевые слова: подготовительное судебное производство, судебное разбирательство, стадии, сроки.