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THEORETICAL AND LEGAL ASPECTS OF CRIMINAL-PROCEDURE FORMS AND THEIR ROLE IN CRIMINAL-PROCEDURE

Abstract

This article analyzes the non-theoretical and legal aspects of procedural forms in criminal proceedings. The concept, significance and specific features of the criminal procedural law form are theoretically analyzed, and the opinions and considerations of theoretical scientists in this field are analyzed. At the same time, the experience of foreign countries in this field is analyzed.

Key words

Criminal procedure, criminal-procedural form, judicial authority, inquiry, court documents, investigative actions, guarantee of personal rights, presumption of innocence, Anglo-Saxon legal system, Romano-German legal system.

ЖИНОЯТ-ПРОЦЕССУАЛ ШАКЛЛАРНИНГ НАЗАРИЙ-ҲУҚУҚИЙ ЖИҲАТЛАРИ ҲАМДА ЖИНОЯТ-ПРОЦЕССИДА ТУТГАН ЎРНИ

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Аннотация

Мазкур мақолада жиноят процессида процессуал шаклларнинг назарий-ҳуқуқий жиҳатлари таҳлил қилинган. Жиноят-процессуал шакл тушунчаси, аҳамияти ва ўзига хос хусусиятлари назарий жиҳатдан ўрганилган бўлиб, мазкур соҳага оид назариётчи олимларнинг фикр ва мулоҳазалари таҳлил қилинган. Шу билан бирга ушбу соҳага оид хорижий давлатлар тажрибалари таҳлил қилинган.

Калит сўзлар

жиноят процесси, жиноят-процессуал шакл, суд ҳокимияти, суриштирув, суд ҳужжатлари, тергов ҳаракатлари, шахсий ҳуқуқлар кафолати, айбсизлик презумпцияси, англо-саксон ҳуқуқ тизими, роман-герман ҳуқуқ тизими.

The fight against and prevention of crime is becoming an important global problem in the protection of human rights, society and the state in the world. According to Article 11 of the Universal Declaration of Human Rights (December 10, 1948), everyone charged with a criminal offence has the right to be presumed innocent until proven guilty in a public trial according to law, with full opportunity for defense. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the penalty which was applicable at the time when the criminal offence was committed [1]. Adherence to the procedural form in the conduct of criminal cases is being formed as the main guarantee of legality in the criminal-procedural law. In the practice of international law, this issue is evaluated as a component of the right to a fair trial, and the European Court of Human Rights recognizes in its decisions that non-compliance with procedural rules during the investigation and trial is a violation of Article 6 of the European Convention [2].

It should be noted that today, not only in Uzbekistan, but throughout the world, special attention is paid to reforming mechanisms for observing criminal procedural forms and preventing violations of procedural forms, and reforms are being implemented aimed at improving criminal procedural legislation.

Mechanisms for preventing violations of criminal procedural form in criminal proceedings are of great importance, and legal scholars have expressed various opinions and considerations on this issue.

In particular, V.P. Bozhev emphasized that mechanisms for preventing violations of procedural form are formed through a system of procedural guarantees, adding that "procedural guarantees prevent cases of non-compliance with criminal procedural form and allow for early detection of violations of the law" [3] if you say, Sh.Kh. Kuchkarov, on the other hand, said that "the mechanism for preventing procedural violations is a set of measures aimed not at eliminating violations of the law later, but at eliminating them in advance" [4] linking the prevention of violations of the criminal procedural form to the consideration of it as a preventive system. According to another scholar, T.T. Ashirbekov, "Prevention of procedural violations is not only a legal system, but also a system that is closely linked to organizational and personnel policy" [5], interpreting the prevention of procedural violations in terms of state coercion mechanisms.

Based on the ideas of these scholars, we can define the concept of mechanisms for preventing violations of criminal procedural form as follows: measures to prevent violations of procedural forms in the implementation of procedural actions and decision-making in the criminal process, a set of institutions that ensure compliance with the requirements of criminal procedural legislation, and accountability and control in the criminal process are mechanisms for preventing violations of criminal procedural form in the criminal process.

First, if we clarify the concept of form, the philosophical meaning of the concept of "form" reveals the relationship between the concepts of "determination of the legal process", "form of the legal process" and "procedural form". In philosophy, the category of "form" occupies a key place along with the category of "matter". From the point of view of philosophical understanding, form is considered as a way of organizing and existing an object, process, phenomenon. In ancient philosophy, starting from the time of Plato and Aristotle, attention was paid to the stability, integrity and activity of form in relation to content. According to Plato, form has an ideal character, is a model for creating all material things, an idea (form) is the opposite of matter [6]. By the way, the ideas expressed by Plato gave a general and unified definition to the concept of "form", and it is the only model and idea for creating material objects in society. From this point of view, it is not an exaggeration to say that the concept of criminal procedural form is considered the only form of procedural documents in the implementation of procedural actions in the criminal process and is implemented on the basis of a single standard and idea. In a general sense, we can understand it as a single model aimed at regulating a certain area and the implementation mechanisms are defined.

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We will try to explain the concept, significance and place of the procedural forms used in investigation and court practice in the system of criminal-procedural legislation.

The concept of "criminal procedural form" is considered an important category describing the processes between the content and form of criminal procedural activity from a legal point of view, procedural forms and their compliance have not lost their relevance in the theory of

criminal procedural law. The tasks and functions of the criminal process and procedural actions are carried out through the procedural form.

In the general theory of law, procedural form is understood as a set of unified procedural requirements imposed on the actions of the participants in the process and aimed at achieving a certain substantive legal result. In other words, procedural form is a special legal structure that embodies the most appropriate procedures for the exercise of certain powers [7].

Criminal procedural form is a system of mechanisms for conducting criminal cases in accordance with the procedure established by procedural legislation, which clearly and in detail regulates the conditions, sequence and consistency of criminal procedural actions, the procedure for their formalization, that is, the strict conditions for the establishment, change or termination of certain procedural relations [8]. An important feature of the criminal procedural form is its legal regulation.

The concepts of "procedural form", "criminal procedural form" or "procedural form in criminal cases" are widely used in legal literature, but there is no single definition and approach to this concept among scholars.

In particular, according to the Uzbek scholar Z.F. Inogomjonova, "the procedural form in criminal cases is a system of relations that are regulated by the norms of criminal procedural legislation and that form the activities of the subjects of the criminal process" [9]. Doctor of Law Mukhitdinov F.M. stated that "the legal form that regulates the relations in bringing a person to criminal liability and the application of punishment" [10] should be considered a criminal procedural form.

According to the Russian scholar L.N.Loboiko, "the criminal procedural form is the legally established procedure for conducting a criminal case as a whole, the procedure for performing individual procedural actions and making procedural decisions" [11], while another scholar Y.M. Grosheviy defined "the criminal procedural form as the legal regime of criminal procedural activity, including the fulfillment of certain procedural conditions, compliance with legal procedures and ensuring guarantees in the criminal process" [12].

Also, the Russian scientist S.M. Melnik gave a broader understanding of the concept of procedural form in criminal proceedings, stating the following: "the system of procedural institutions and rules determined by criminal procedural law and regulated by law, the sequence of stages of the criminal process and the essence of the procedural requirements imposed on the participants in the criminal process, which are: a) the foundations of the most appropriate procedure for exercising their powers; b) the methods and terms of carrying out procedural actions related to the collection, examination and evaluation of evidence; c) the procedure for making and formalizing decisions; d) the legal regime of the activities of the judicial, prosecutorial supervision and investigative bodies and the conditions created for the initiation of a criminal case; e) the implementation of the rights of all participants in the process; e) a guarantee of achieving the necessary material and legal result".

In addition, the criminal procedural form is defined by O. Khimicheva and O. Michurina as "the procedure for conducting criminal cases regulated by criminal procedural law, that is, the sequence of stages and the conditions for the transition of the case from one stage to another, general conditions, the grounds, reasons, conditions and procedures for conducting the case that characterize the process at a certain stage, the content and form of procedural actions" [13].

It seems that the opinions of the above-mentioned scholars approached the concept of criminal procedural form from one aspect or another, and none of them gave an incorrect definition.

We can only see a relatively complete and complete definition given by SM Melnik. We can agree with his views and say that the criminal procedural form is not only understood as a legal order, but also as a legal regime, institutions, participants, evidence and a system of guarantees.

In turn, according to the Russian scientist Y.A. Ivanov, the "procedural form" is the system and structure of criminal procedural institutions, the rules, procedure and sequence of stages of criminal proceedings, determining the conditions, methods and terms of carrying out procedural

actions, including investigative actions aimed at collecting and verifying evidence, the procedure for their procedural consolidation in relevant procedural documents, as well as the procedure for making and formalizing decisions on individual issues and on the case as a whole [14].

V.M. Gorshenev, further clarifying the ideas of Y.A. Ivanov, came to the conclusion that the procedural form is a set of certain procedural requirements, which at the same time is a legal structure consisting of certain components (1. stages; 2. procedural proceedings; 3. procedural regime) [15]. In addition, the Russian scientist V. Grigoriev came to the conclusion that “the criminal procedural form means the structure of the entire criminal process, enshrined in criminal procedural law, and the determination of its individual stages, the conditions, sequence and order of procedural actions” [16].

Thus, it can be seen from the opinions of the above scholars that "criminal procedural form" is a complex and comprehensive concept, consisting of legality, systematicity, subjectivity, obligation and other important elements.

The external value of the procedural form is that it creates a regime of legality, protects the rights and legitimate interests of individuals, enterprises, institutions, organizations, victims of crimes (through the prompt and complete disclosure of crimes, the identification of the real perpetrators and their criminal liability), as well as individuals from unlawful and unfounded accusations, prosecutions, and restrictions on their rights and freedoms. The procedural form is the most important and only means of achieving the goal of conducting criminal cases, and compliance with it is the most important condition for proof [17].

Strict adherence to the procedural form of the criminal process, in which the implementation of evidence is at least part of the minimum necessary and possible guarantee of the protection of civil rights from the repressive mechanism of the state [18].

According to the Russian scientist Pratasov V.N., “some scientists are trying to downplay the theoretical and practical significance of procedural form by unreasonably “exaggerating” the problems related to procedural form and “regarding procedural science as yesterday” [19].

However, in our opinion, we cannot fully agree with these opinions, because the research of the procedural form serves to reveal the structural nature of the criminal process, as well as the theoretical study of the principles and rules of the criminal process and their implementation.

If we dwell on the importance and specific features of the form of criminal-procedural law, above we have given some concepts about their importance and specific features.

At the same time, many scholars have expressed their opinions and observations about the importance and specific features of the criminal procedural law form.

In particular, the Russian scholar Loboiko assessed the criminal procedural form as the main mechanism ensuring the legal norms and order of the judicial process, emphasizing that it is “the only procedure that legally determines the rights and obligations of subjects participating in the criminal case and ensures legality” [20].

Melnik, on the other hand, explains the criminal procedural form as a complete legal regime of the mechanisms of the criminal process, saying that “the system of procedural institutions, the legal status of the subjects of the process and the legal regime established by law that determines the sequence of actions” [21], while another scholar Groshevoy defines the criminal procedural form as a legal regime of criminal procedural activity, saying that “it is a mechanism that ensures the legality of criminal procedural activity and regulates the implementation of legal requirements” [22].

It seems that one cannot fully agree with the views expressed by Loboiko, Melnik, and Groshevoy on the importance of criminal procedural forms, since they primarily classify them as determining the procedure and mechanisms for conducting a criminal case.

However, the fundamental essence of criminal procedural forms should be considered not only as technical rules and norms that determine the sequence of cases, but also as a factor that strengthens relations related to the proper protection of human rights and the formation of a democratic and legal state.

In particular, the theory of the American scientist Packer's "Due Process Model" emphasizes the role of the criminal procedural form in the protection of human rights, defining it as "the procedures and procedures in the criminal process are mechanisms aimed at protecting the rights and freedoms of the individual. Without them, judicial justice cannot be achieved" [23]. The German lawyer Roxin considers the criminal procedural form to be a guarantor of human rights in a democratic state based on the rule of law, calling it "a legal structure necessary for the guarantee of the rights of the participants in the process, a fair and transparent judicial process", and the Polish lawyer Szewczyk emphasized that the procedural form is "a structure that guarantees the legality and fairness of judicial activity, and deviation from it calls into question the validity of the court decision" [24].

It is worth emphasizing that the essence of the criminal procedural form in the views of these scholars should be characterized by a single point, namely, as we noted above, the procedural form is not just a formal procedure, but a legal mechanism that protects individual rights, ensures the legality and fairness of judicial activity, and is the main guarantee of the judicial system in a democratic state.

By studying the criminal procedural legal systems of foreign countries, it is possible to conduct a comparative legal analysis of the procedural form and its specific features in the criminal process. Because the form of the legal process is inextricably linked to the legal traditions, democratic institutions, standards for the protection of human rights, and models of the implementation of judicial justice of each state. In countries such as Germany, France, and Poland, which belong to the Roman-Germanic legal system, the procedural form is strictly regulated at the level of law, and its main task is to guarantee personal rights, ensure the legality of evidence, and create stable mechanisms of judicial control.

If we pay attention to the experience of foreign countries on the procedural form and its significance in criminal procedural legislation, we can see that each country has its own characteristics. In almost all foreign countries, the procedural form in criminal proceedings has certain common features, and in some cases it is distinguished by its own characteristics.

In particular, the importance of procedural forms in the Russian Federation is high, and they are considered as a means of ensuring justice, a guarantee of the rights and interests of a person, and mandatory requirements that determine the clear limits of the activity of judicial and investigative bodies.

Russian legal scholars have expressed various opinions and considerations on this issue, in particular, M. S. Solomonovich expressed the opinion that "the criminal procedure is the main means of ensuring legality in court proceedings and limits the arbitrariness of judicial and investigative bodies" [25], while P. A. Lupinskaya defined "procedural form as not only an official procedure, but also a legal mechanism aimed at protecting individual rights" [26]. Other scholars, A.V. Smirnov and K.B. Kalinovsky, linked the procedural form with the concept of procedural justice and expressed the opinion that "observance of the procedural form is not the only way to achieve justice, but one of its most important conditions" [27], Melnik S.M. defined the procedural form as "a system of institutions, procedures, stages and legal guarantees established by law, a single mechanism for collecting, verifying and evaluating evidence [28], and Groshevoy Yu.M. defined it as "not just a legal order, but a system that determines the legal regime of criminal procedural activity, its guarantees and the legal status of its participants" [29].

In turn, in the Russian Federation, procedural legislation on procedural forms and their observance is established by certain norms, which are similar to the legislation of Uzbekistan.

Article 1 of the Criminal Procedure Code of the Russian Federation [30] states that "The procedure for conducting criminal cases in the territory of the Russian Federation shall be determined by the Criminal Procedure Code in accordance with the Constitution of the Russian Federation. The procedure for conducting criminal cases established by this Code

shall be mandatory for all courts, prosecutors, investigative and inquiry bodies.” This provision embodies the main elements of the procedural form.

Also, according to Article 389.17 of the Criminal Procedure Code of the Russian Federation [31], “Fraudulent violations of procedural law shall include cases of non-compliance with the procedure for conducting criminal proceedings by depriving or restricting the rights of participants in criminal proceedings guaranteed by this Code to cancel or change the court decision of the appellate court, which have affected or may affect the adoption of a lawful and justified court decision.” This provision establishes the cases of gross violations of criminal procedure law, and such cases, in turn, arise directly as a result of non-compliance with procedural form.

From this we can see that, according to the criminal procedural legislation of the Russian Federation, the above-mentioned circumstances are directly considered non-compliance with procedural forms and are assessed as serious violations of criminal procedural legislation, leading to the change or cancellation of the court decision.

In Ukraine, special attention is paid to the issue of procedural form, since violation of procedural form is considered a serious violation of criminal procedural legislation in this country and can lead to the decision on the case being changed or canceled.

Article 412 of the Criminal Procedure Code of Ukraine [32] defines 7 cases of serious violations of the requirements of the criminal procedure law, and serious violations of the requirements of the criminal procedure law are violations of the requirements of the Criminal Procedure Code of Ukraine and may prevent the court from making a legal and reasonable decision.

The court decision shall be annulled in the following circumstances:

- if there were grounds for the court to consider the criminal case in a closed court session, and the trial was not held in a closed session;
- if the court decision was issued by a court of an unlawful composition;
- if the case was heard in the absence of the defendant, if his participation is mandatory;
- if the participation of a defense attorney is required by law, and the case was investigated or considered without his participation;
- if the trial was held in the absence of the victim, if he was not duly notified of the date, time and place of the trial;
- if the rules of jurisdiction to be heard were violated;
- if the trial proceedings did not include a court session journal or a technical means of recording the trial proceedings in the court of first instance.

It should be noted that in case of violation of the above-mentioned procedural forms, the court decision should be annulled.

In Germany, the legal basis of the criminal procedural form is regulated by the Code of Criminal Procedure (Strafprozessordnung), which clearly defines the strict legal basis of the procedural form, the stages of procedural actions, and the legality of evidence collection.

In criminal procedural law, criminal procedural forms are considered the main guarantee of a legal state, and violation of procedural forms is characterized by the fact that, first of all, evidence is considered invalid and decisions are annulled.

In particular, Klaus Roxin defined the criminal procedural form as “a mechanism that legitimizes state coercive measures” [33], emphasizing that any deviation leads to the destruction of the legal value of evidence, while another scholar, Fischer, states that the procedural form is the only mechanism that ensures the legal value of evidence, and any minor violation (non-compliance with procedural forms) leads to the invalidation of evidence by the court [34], and another scholar, Göppinger, evaluates the procedural form as “a methodological guarantee in determining the truth” [35].

As for the sources of criminal procedure in the United States, unlike the English criminal procedure, the main written source for criminal procedure is the country's Constitution, which contains norms regarding judicial procedure. After the Fourth Amendment to the Bill

of Rights, which was introduced into the Constitution in 1891, many new principles of criminal procedure were established [36].

In the United States, there is a principle of "due process of law," which states that state interference with individual rights and freedoms must be carried out not only in accordance with the law, but also on fair, proportionate, and reasonable grounds.

Due process is the presumption of innocence in criminal proceedings, the admissibility of evidence, the prohibition of torture and coercion, and the core of a fair trial [37].

"Due process" is considered not only a procedure, but also a criterion of fairness, and is interpreted in the scientific literature based on a substantive and formal approach. According to the substantive approach, even if the law is followed, if the result is unfair, due process is considered violated, while according to the formal approach, if the state follows the law and does not deviate from the established procedure, due process is considered ensured.

Now, let us dwell on the experience of some European countries in the criminal procedural form. In European countries, the procedural form is mainly based on the adversarial approach to criminal cases. Adversarial is a democratic principle of judicial proceedings, according to which the discussion of the case is carried out through the debate of the parties [38]. In the literature, it is said that the adversarial process arose on the basis of the accusatory form of proceedings, and this form of the process was widely developed mainly in the Anglo-Saxon legal system [39]. Adversarial is an organizational and legal idea of criminal proceedings not only for the Anglo-Saxon legal system, but also for other legal systems.

The European Union legal system also has a system of "fair trial standards", which includes a set of standards that guarantee that judicial proceedings are conducted impartially, independently, openly, lawfully and within a reasonable time.

In particular, Article 6 of the European Convention on Human Rights [40] states that the right to a fair trial constitutes a set of procedural guarantees, including the right to access to a court, equality of arms, adversarial proceedings, judicial independence and the requirement that the trial be held within a reasonable time.

In the Polish state, the criminal-procedural form is based on the priority of human rights, and all parties have equal rights during the trial [41].

The rules governing the conduct of criminal proceedings in this country are regulated by the Code of Criminal Procedure [42], which regulates three types of criminal proceedings: preliminary investigation, trial, and enforcement proceedings. Procedural forms ensure compliance with the requirements of the law at each stage of the criminal process, ensuring the legality and fairness of the proceedings.

The initial investigation is carried out in the form of an investigation, then under the supervision of a prosecutor or in the form of an inquiry, which is usually carried out by the police. The role of the court in this process is limited to considering applications from prosecutorial bodies and applications related to violations of civil rights and freedoms.

The current Criminal Procedure Code of the Czech Republic was adopted in 1961 and has undergone a number of important changes as a result of socio-economic and political changes in the country. The European Union laws have had a major influence on the regulation of criminal procedural relations [43].

In the Czech Republic, compliance with criminal procedural forms is strengthened on the basis of the principles of criminal procedure, rights and obligations of the parties, investigation, court and execution of judicial documents established in the procedural legislation.

Observance of the procedural form in the Republic of Kyrgyzstan is considered one of the conditions of the legality of proceedings, the established order of conducting criminal cases, that is, the transfer of the case from one stage to another and the sequence of conditions, general conditions describing the proceedings at a certain stage, the basis, conditions and procedure of

investigation and court actions, through them the investigator, the authorized official of the investigative body, the investigator, the court and the exercise of their powers, citizens and they use their rights and fulfill their obligations [44] is a criminal procedural form.

Violation of criminal procedural forms in Kyrgyzstan has legal consequences and leads to the invalidation of procedural documents.

In particular, Article 421 of the Criminal Procedure Code of the Kyrgyz Republic [45] defines circumstances that constitute a serious violation of criminal procedure law, according to which the deprivation or restriction of the rights guaranteed by law of persons participating in the case, failure to comply with judicial procedural rules, or in any other way hindering a comprehensive and impartial study of the circumstances of the case, affecting or likely to affect the proper conduct of the case, the adoption of a lawful and justified verdict are offenses.

In the Republic of Kazakhstan, recent years have been characterized by the beginning of certain legislative changes in the format of strategic and conceptual documents that determine the legal policy of the state, including the scope of criminal proceedings. In particular, in accordance with the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, "simplification and increase in the efficiency of criminal proceedings, including pre-trial proceedings" [46] are indicated among the priority areas of criminal proceedings.

Based on the above, the variety of existing approaches to the legal regulation of criminal proceedings in foreign countries indicates the wide importance of procedural forms.

At the same time, the legal systems of all foreign countries, although familiar with common forms of criminal proceedings, differ only in some aspects. The potential of comparative legal research is fully manifested in the analysis of individual branches of legal regulation and legal institutions, which allows for a detailed study of the common features and differences of national legal systems.

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