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SIMPLIFIED COURT PROCEEDINGS FOR MISDEMEANORS UNDER AGREEMENT

Максим Таус. СПРОЩЕНЕ СУДОВЕ ПРОВАДЖЕННЯ ЩОДО КРИМІНАЛЬНИХ ПРОСТУПКІВ НА ПІДСТАВІ УГОДИ. У статті розглядаються актуальні питання ефективності кримінального процесу України в контексті проблемних питань одночасного застосування інститутів угоди у кримінальному провадженні та спрощеного судового провадження щодо кримінальних проступків без проведення судового розгляду.

Автором розглядається проблема неможливості, з огляду на чинні норми КПК України, одночасного здійснення кримінального провадження на підставі угоди в межах процедури спрощеного судового провадження щодо кримінальних проступків без проведення судового розгляду та обґрунтовується неефективність процесуальної моделі існування зазначених інститутів кримінального процесу без можливості спільного застосування при здійсненні кримінального провадження.

Проаналізовані чинні положення КПК України, яким врегульовані процедури судового провадження на підставі угоди в контексті здійснення спрощеного провадження щодо кримінальних проступків та сформульовані напрями вдосконалення кримінального процесуального законодавства для більш ефективного застосування інституту угод у кримінальному судочинстві. На основі проведеного аналізу чинних норм КПК України виявлені недоліки та прогалини кримінального процесуального законодавства, яке регламентує інститут спрощеного провадження щодо кримінальних проступків та інститут угод у кримінальному провадженні в частині, що стосується процедур судового розгляду угоди у кримінальному провадженні. На науковому рівні обґрунтовано доцільність поєднання інститутів судового провадження на підставі угоди із спрощеним порядком судового провадження щодо кримінальних проступків без проведення судового розгляду, у зв'язку з чим доведено необхідність якісного перегляду чинних положень КПК України, якими врегульований порядок судового провадження на підставі угоди у кримінальному провадженні.

Ключові слова: кримінальне провадження, кримінальні проступки, судове провадження, судовий розгляд, провадження на підставі угод, спрощене провадження.

Relevance of the study. One of the most important problems in criminal proceedings is the effectiveness of the criminal procedure [1]. In this regard, the legislature has introduced differentiated forms of criminal procedure into the current Criminal Procedural Code, such as criminal proceedings on the basis of agreements and summary proceedings for criminal offences.

The differentiation of a crime and a criminal offences was intended to ensure the effective and expeditious consideration of criminal proceedings, through the application of the summary procedure of criminal proceedings for criminal offences [2].

Criminal offences in international practice is a widely used institution in the common law and civil law system [3]. The criminal procedure law of most developed countries of the world has adopted, in one form or another, approaches to simplifying criminal proceedings in respect of acts which, by their very nature, are punishable acts of lesser gravity on the basis of the degree of public danger.

The current Criminal Procedural Code of Ukraine [4], from the first day of its implementation into the system of national legislation, contained a reference to such a criminal law institution as «criminal offences». However, its actual introduction took place only on 1 July 2020 with the entry into force of the Law of Ukraine «On amendments to certain legislative acts of Ukraine concerning simplification of pre-trial investigation of certain categories of criminal offences» (Law 2617 - VII) [5].

Since the entry into force of Law 2617-VII, many issues have arisen with regard to the

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procedural procedure for the application of summary proceedings in criminal cases, particularly with regard to judicial proceedings. A separate problem has been the theoretical and practical application of summary criminal proceedings in conjunction with other institutions of criminal procedure, in particular the institution of agreements in criminal proceedings.

Recent publications review. The subject of criminal proceedings on the basis of agreements is the scientific work of such domestic scholars as: Yu. Alenin, I. Basysta, O. Baulin, M. Vilhushinsky, I. Hlovyuk, Yu. Dyomin, N. Orlovska, O. Kuchynska, V. Nor, D. Pysmenny, V. Tertyshnyk, L. Udalova, M. Khavronyuk, O. Yanovska and others. Some of the issues concerning the introduction of the Institute of Criminal offences have been addressed by scholars such as K. Zadoya, Yu. Dyomin and others.

However, in the writings of national scholars, no attention was paid to the problems of the simultaneous use of institutions for summary criminal proceedings and criminal proceedings on the basis of agreements. In this connection, this topic is of interest, primarily from the point of view of seeking ways of improving procedural legislation, which regulates the procedures for conducting criminal proceedings as reduced proceedings, and judicial proceedings on the basis of agreements.

The article's objective is to provide a scientific result in the form of improvements in criminal procedural legislation, which governs the trial of criminal proceedings in summary proceedings for criminal offences on the basis of an agreement.

In order to achieve the stated objective, the following tasks must be carried out: 1) To identify problems that may arise in the conduct of judicial proceedings on the basis of an agreement on criminal offences; 2) To identify shortcomings and gaps in the criminal procedure legislation, which regulates the institution of summary proceedings for criminal offences and the institution of agreements in criminal proceedings relating to concerning procedures for judicial review of an agreement in criminal proceedings; 3) To identify areas for improvement of the provisions of the current Code of Criminal Procedure in order to ensure more effective application of the provisions; which regulate the institutions of summary proceedings concerning criminal acts and agreements in the criminal procedure of Ukraine.

Discussion. In accordance with the provisions of art. 469 of the Code of Criminal Procedure of Ukraine, as amended by Law 2617-VII, may be concluded in criminal proceedings for criminal offences both a conciliation agreement and an agreement on the conviction of guilt [4].

It should be noted that, in the context of procedural features of the conclusion of an agreement in criminal proceedings at the stage of pre-trial investigation, the rules and requirements of the norms of the Code of Criminal Procedure of Ukraine are uniform, as for pre-trial investigation procedures relating to crimes, as well as the procedure for pre-trial investigation of criminal offences, which takes the form of an inquiry.

However, in view of the subject-matter of this article, we consider it appropriate to pay particular attention to the procedural problems of the simultaneous application of summary legal proceedings for criminal offences, which are provided for in the chapter 30 of the Code of Criminal Procedure and the provisions of the Constitution. Art. 474 of the Code of Criminal Procedure of Ukraine, which regulates the general procedure for judicial proceedings on the basis of an agreement in criminal proceedings.

Moreover, it is objectively possible to assess the effectiveness of the reform of criminal procedure and the practical application of the innovations introduced only from the point of view of their implementation at the trial stage. This conclusion is based on the fact that the trial itself, as a key stage in criminal proceedings, is an indicator of the quality and efficiency of criminal proceedings as a whole, as it demonstrates the overall result of the consistent exercise of functions by each stage (stages) of criminal proceedings.

K. P. Zadoj rightly asserts that the most «relief» of the simplification of criminal proceedings is reflected in those provisions of the Code of Criminal Procedure which regulate the peculiarities of judicial proceedings in criminal cases [6].

In view of the problems raised and the challenges faced under this article, it seems advisable to study the problem of conducting judicial proceedings on the basis of an agreement within the limits of summary proceedings concerning criminal misconduct.

Under the provisions of the Code of Criminal Procedure currently in force, summary proceedings may therefore be conducted in two ways, with or without judicial review.

Judicial proceedings in respect of criminal offences and judicial review are conducted in accordance with the general rules established by the Code of Criminal Procedure for judicial review, namely, the summoning of participants in criminal proceedings or the questioning of

accused persons or victims, Witnesses, their explanations and opinions on the issues to be examined, the examination of evidence and the like. Consequently, the application of the institution of agreement in criminal proceedings in such proceedings does not pose any particular problems or difficulties in law enforcement, since judicial proceedings concerning criminal misconduct which is conducted in court and is accompanied by active procedural activities of the parties to the proceedings.

However, the use of the institution of agreement in criminal proceedings as part of summary criminal proceedings without trial raises many problematic issues in terms of the application of the rules of procedure.

According to the requirements of art. 302 of the Code of Criminal Procedure of Ukraine, the consideration of an indictment concerning a criminal offence in summary proceedings without the conduct of a trial, that is, without the appearance or participation of the parties, is possible only at the request of the procurator and subject to the following conditions:

- an unequivocal guilty plea of criminal misconduct;
- his failure to reconcile the circumstances established by the pre-trial investigation;
- the consent of the accused to the examination of the indictment in his absence and the absence of any objection by the victim and the representative of the legal entity in question.

In addition, the provisions of the said article of the procedural law oblige the investigator and the prosecutor to explain to the participants in the criminal proceedings the content of the circumstances established by the pre-trial investigation, and that, if they agreed to a summary indictment, they would be deprived of the right to appeal on the basis of the proceedings, in the absence of the parties to the proceedings and the failure to investigate the evidence, confirmation of the circumstances. In addition, it is incumbent upon the investigator and the prosecutor to ascertain the voluntary consent of the parties to the criminal proceedings to the summary consideration of the indictment.

Consequently, two key conditions for the summary examination of an indictment without trial - an unequivocal guilty plea and non-contested criminal proceedings - are, to some extent, the same as the basic conditions, The Code of Criminal Procedure of Ukraine provides for the conclusion of an agreement in criminal proceedings and their subsequent trial. Other common features of these institutions of criminal procedure should also be highlighted: such as limiting the appeal to the parties to the circumstances of the criminal proceedings and the mandatory requirement to test the voluntary position of the participants in the criminal proceedings.

However, unlike criminal proceedings based on an agreement, The consideration of an indictment of a criminal offence in summary proceedings without trial and without the participation of the parties deprives the parties to the criminal proceedings of the opportunity to express their views on matters before the court, which concern the trial itself during the consideration of the merits of the criminal proceedings, including views on the type and penalty to be imposed on the accused, as well as other matters, related to the final decision of the court in criminal proceedings.

Therefore, while acknowledging its culpability for criminal misconduct and accepting the summary trial of the criminal proceedings without trial, The accused is in a state of uncertainty as to the possible outcome of the examination of the indictment against him and the sentencing of him for a criminal offence in which he is found guilty. He is deprived of the opportunity to legitimately influence the opinion of the court on the measure and the type of punishment that may be imposed on him as a result of the consideration of the criminal proceedings, and to draw the attention of the court to any circumstances that may mitigate the punishment of the accused.

Similarly, the prosecutor, when representing the prosecution, does not have the procedural opportunity to formally state to the court his position on the type and measure of punishment for the accused and other issues that are relevant to the determination of the conviction (fate of exhibits, distribution of court costs, etc.).

It is possible to use the institution of agreement in criminal proceedings to fill this gap, since it is by agreement that the parties can agree on the penalty to be imposed on the accused, as well as on other important points in the criminal proceedings, in particular compensation for damages caused by a criminal offence, performance of other duties by the accused, etc.

However, the current provisions of the Code of Criminal Procedure of Ukraine have a number of inconsistent norms, which make it much more difficult for the institution of agreement to be effectively applied in criminal proceedings in summary criminal proceedings without trial.

The procedure for judicial proceedings in respect of criminal offences is regulated by provision chapter 30 of the Code of Criminal Procedure, the provisions of which, in turn, contain no prohibitions or special conditions concerning the possibility of concluding an agreement in criminal proceedings on criminal offences.

The Code of Criminal Procedure of Ukraine does not prohibit the application in criminal proceedings of a special procedure for criminal proceedings on the basis of an agreement, but procedural rules; which regulate the conduct of criminal proceedings in contravention of the rules governing the conduct of judicial proceedings on the basis of an agreement.

From item para. 2 of art. 381 of the Criminal Procedural Code of Ukraine, where the accused does not contest the circumstances established during the initial inquiry, The court may review an indictment concerning the commission of a criminal offence without a hearing in the absence of the parties to the proceedings. It is therefore apparent from the analysis of the procedural rule cited that a court may review an indictment of a criminal offence only on the basis of the materials of the criminal proceedings attached to it, without even communicating with the participants in the proceedings.

However, the conduct of judicial proceedings in this manner is not in conformity with the provisions of the Article 474 of The Code of Criminal Procedure of Ukraine, whose peremptory norms oblige the court, before deciding to approve an agreement during a court hearing, to ascertain from the accused and the victim the substantive circumstances of the agreement, in particular the voluntary nature of its conclusion, correct understanding of the nature of the charge and the terms of the agreement, the agreed punishment, the consequences of the approval of the agreement and its non-compliance, etc.

Let us emphasize that the content of art. 474 of the Code of Criminal Procedure of Ukraine, the court ascertaining the above-mentioned substantive circumstances of the criminal proceedings, in which the agreement is concluded, shall be conducted in a court session and not in any other procedural way, which in our opinion, makes the presence of the parties to the agreement at the head of the proceedings mandatory.

Of course, the Criminal Procedural Code of Ukraine provides for the right of the court to order a hearing of an indictment concerning the commission of a criminal offence and the summoning in court of participants in criminal proceedings, if deemed necessary by the court.

It is obvious that the court may exercise this right and apply the rule of para. 3 in art. 381 of the Ukrainian Code of Criminal Procedure for consideration in court of an agreement concluded in criminal proceedings concerning criminal misconduct in order to meet the mandatory requirements of the Art. 474 Code of Criminal Procedure of Ukraine. However, in our opinion, the appointment of a hearing on criminal misconduct, with the participation of participants in criminal proceedings only for the purpose of considering the conciliation or conviction agreement, where it is not unreasonable to consider criminal proceedings without trial, it will not be in keeping with the objectives and purposes of summary proceedings for criminal offences, because it does not reduce the burden on the court, but, on the contrary, increases it by requiring a hearing with the parties to the agreement.

Conclusions. According to the Code of Criminal Procedure of Ukraine, it is not possible for a court to consider an agreement in criminal proceedings as part of summary proceedings for criminal offences without a trial; because mandatory requirements art. 474 The Code of Criminal Procedure of Ukraine provides for the parties to an agreement to be required to participate directly in the court hearing during the court's decision to approve the agreement.

At the same time, increasing the possibility of using the institution of an agreement in criminal proceedings, together with summary proceedings concerning criminal misconduct without trial, will significantly increase the efficiency of the judicial process production, because it will significantly reduce the workload of the court and consequently save the procedural time and resources that are spent on the litigation of the agreement in court with the parties.

In addition, summary proceedings for criminal offences are conducted in the courts without trial. But, by applying the institution of an agreement in criminal proceedings, will enable the parties to the proceedings to agree in advance on their legal positions in criminal proceedings, including positions on the type and measure of punishment of the accused, The extent of the material damage and the procedure for its compensation, and so on, will in itself improve the legal certainty of the participants in criminal legal relations and will be positively reflected in the development of criminal proceedings.

However, in order to implement the idea of combining the institutions of judicial proceedings on the basis of an agreement with the summary procedure for criminal proceedings

without the holding of a trial, the current provisions of the Code of Criminal Procedure of Ukraine should be qualitatively reviewed, In particular, those who are subject to the legal procedure established by agreement in criminal proceedings.

We therefore propose a change in the art. 474 of the Code of Criminal Procedure of Ukraine, under which the court may, on the basis of an agreement, verify the agreement in order to ensure that it meets the requirements of the law, during summary proceedings for criminal offences, as well as the voluntariness of its conclusion by the parties and the correctness of its understanding of its terms and the nature of the accusation, without the appearance in court of the participants in the criminal proceedings, only on the basis of the materials of the criminal proceedings annexed to the indictment with the agreement.

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Abstract

The article covers topical issues of the effectiveness of the criminal procedure and considers the problematic issues of simultaneous application of the institutions of the agreement in criminal proceedings and simplified court proceedings for criminal offenses without trial. The current provisions of the CPC of Ukraine, which regulate court proceedings on the basis of an agreement in the context of simplified proceedings for criminal offenses and formulate areas for improving criminal procedure legislation for more effective application of the institution of agreements in criminal proceedings.

Keywords: *criminal proceedings, criminal misdemeanors, court proceedings, court proceedings, proceedings on the basis of agreements, simplified proceedings.*