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Accelerated Inquiry: Unification and Differentiation of the Procedural Forms

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In the article, taking into account the positions of the researchers, the authors analyse the concepts of "unification" and "differentiation" of the procedural form used in scientific research on the problems of development and improvement of the criminal procedural form of pre-trial proceedings. Using the example of the evolution of the procedure of inquiry in a shortened form, it is concluded that the content of the term unification of the procedural form of pre-trial proceedings is minimisation of the procedural terms, simplification and procedural economisation of pre-trial proceedings, and differentiation of those requiring a clear distinction close to their goals and algorithms of procedural activity to ensure the individualisation of their constituent procedures.

Key words: *Accelerated inquiry, unification of criminal procedural form, differentiation of criminal procedural form, optimization of pre-trial proceedings, inquiry in a shortened form, unified inquiry, procedural forms of pre-trial proceedings.*

Introduction

The content of one of the reviews on the next publication manuscript is devoted to the unified, that is, in the author's view, accelerated and simplified pre-trial proceedings prompted to address the problem indicated in the title of the article. In this case, the reviewer - among the comments and recommendations pointed out incorrectly – viewed the term "unified" used in the manuscript as bringing individual procedural proceedings to a uniform

system or form. This is exactly the opposite of what the author proposed in the sense of simplified and accelerated.

Not seeing the term used in this article with any conflict against those social relations that are subject to settlement, we consider it necessary to present our arguments regarding the use of the definitions "unification" and "differentiation", with reference to various procedural forms of pre-trial proceedings and, above all, inquiry in abbreviated form. Indeed, if we consider Wikipedia, then one of the meanings of the term *unification* (from Latin unus "one" + facio "do"; "unification") is used in the meaning: "reduction to a uniform system or form" (Wikipedia, 2009). The author of the review is not alone in his judgments about unification and in many special sources this term is used precisely in the above meaning - *the desire for a unity of the procedural form and its application.*

For example, according to the authors of the textbook "Criminal Procedure Course", the idea of criminal procedural unification (the unity of the procedural form) is illustrated by the unified stages of the Russian criminal process, by which they mean "procedurally similar stages of criminal proceedings" (The Course, 2009). Researchers L.L. Kruglikova and L.E. Smirnova believe that unification in criminal law is understood as "a process carried out by law-making bodies that ensures uniform legal regulation of similar (homogeneous) or coincident (identical) social relations in the process of creating or improving normative legal requirements or their elements" (Kruglikova and Smirnova, 2008).

Numerous statements by other researchers of the unification problem can be cited, who agree that this term is used when it comes to the need to bring the various legal relations entered into by the subjects of criminal proceedings, into a single, common for all participants legal and procedural order. Basically, in such studies, legal relations arising at the stages of judicial proceedings are cited as an example; however, as practice shows, such approaches are not always adequate for pre-trial proceedings.

The scientific community still remembers memories of the postulate of a two-stage preliminary investigation that existed in the first half of the last century, the procedural order of which was regulated by uniform procedural establishments and procedures, for which there was a single system of evidence, including sources of evidence, the procedure for their collection and use. The differences between the two forms of the preliminary investigation: the inquiry and the preliminary investigation were quite formal in nature, since the shortened terms of the inquiry were compensated by the procedures for their extension, and the participation of the defense attorney, the format for familiarising the participants with the criminal case materials and some minor differences were considered insignificant. The main difference between the two-part procedural form of the preliminary investigation took place in the subject of pre-trial proceedings: the investigator or the interrogator.

Well-known specialist Yu. K. Yakimovich, assessed the above problem and described the pre-trial proceedings as "extremely monolithic and practically not differentiated". Speaking about the problems of pre-trial proceedings, he did not find significant differences in the modern procedure of inquiry and preliminary investigation, which, in his opinion, "took place at the beginning of the Criminal Procedure Code of the Russian Federation". Answering the question, '*what is the difference between the inquiry and the investigation carried out by the investigators of the Ministry of Internal Affairs'*, he quite definitely expressed his point of view by stating "Virtually nothing" (Yakimovich, 2013).

We believe that the current situation with the procedural regulation of two seemingly different procedural forms is a result of the above interpretation of the term "unification", both by the reviewer and other researchers, who persistently promote the unification of the procedural forms of pre-trial proceedings from the perspective of bringing them to a single "Procedural denominator" according to the procedure, terms, procedural means and system of evidence. Unfortunately, such developments by scientists turned out to be perceived in the legislative process, which led to a significant convergence of the procedural forms of inquiry and preliminary investigation by the main institutions. This stereotype of pre-trial proceedings perceptions - including its unified procedure and inquiries in abbreviated form - continues to dominate the legislative work on the correction of criminal procedure legislation.

The criticism of this position was expressed by L.V. Golovko, who praised the distinction between the preliminary investigation and inquiry as "no less artificial conceptual distinction", in which the investigation "is most often performed by the same police authorities and which are the same in purpose and procedural means". He also concluded that "all attempts to theoretically substantiate such parallelism have failed" (Golovko, 2009).

But the question arises: is it always that procedural forms should be brought to uniformity, whether this approach is useful for criminal procedural relations in all cases, if there are conceptual errors inherent in the desire for uniformity? It is quite typical that Wikipedia's electronic resource does not contain the only meaning of the term "unification". But not every user reads all the requested content. Unification, according to the above Internet resource, is also "a common and effective method of eliminating excessive diversity by reducing the list of acceptable elements and solutions, bringing them to the same type" (Wikipedia, 2009). In other words, unification is a kind of systematisation that pursues the goal of distributing objects in a certain order and sequence, and forms a clear system that is convenient for use. We see such an interpretation of the definition of "unification" as more adequate, in relation to expedited and simplified inquiry - an inquiry in a shortened form, as this type of procedural production was called by the legislator in chapter 32.1 of the Criminal Procedure Code of the Russian Federation (hereinafter CPC). Thus, for example, the

problem researcher Mishchenko (2019) quite correctly believes that unification, as a form of law-making activity, is positive, since it allows you to regulate the criminal procedure, time and cost of legal proceedings (Andreeva, 2014). Obviously, the requirements of procedural economy rise to the fore precisely during the development of modern approaches to a unified procedural production.

In the opinion of O.I. Andreeva, which is difficult to disagree with, procedural savings are achieved by "narrowing the subject of evidence, the possibility of using information, collecting evidence, and the possibility of excluding evidence from the proving process" (Andreeva, 2014). Indeed, it is not unusual that a unified inquiry procedure is applied with various simplifications and reasonable derogations from the classical, traditional preliminary investigation, since the crimes are usually obvious, for which the shortened procedure is allowed, and the involvement of specific persons in them does not cause doubt, it certainly comes from the requirements of procedural economy.

But what, in general, determines the request for another procedural design procedure?

We are close in this regard to the position of V.V. Nikolyuk, in whose opinion the procedural form is secondary, is derivative in relation to the subject of criminal procedural activity. According to his position "Only a set of criteria, among which the decisive importance belongs to its goals, will allow us to detect the qualitative uniqueness of one or another order of criminal procedural activity" (Nikolyuk, 2018).

In fact, if one carefully analyses the reasons why law enforcers again formulate a request to the legislator to introduce an optimised inquiry into the Russian criminal procedure, after the abolition of the protocol form in 1998, it becomes clear that it (the request) was determined by the practitioners' needs for the "tool", allowing them to speed up and simplify the processing of obvious crimes cases of low public danger. This circumstance, as it seems to us, caused the corresponding order of the President of the Russian Federation D.A. Medvedev, addressed to the Prosecutor General of the Russian Federation and the Minister of Internal Affairs of the Russian Federation on the preparation of proposals for an expedited inquiry. It was a huge number of simple and obvious cases in the production of police interrogators, which swept Russia at that time, distracting them from a high-quality investigation of crimes with a more complex structure of the crime and a large number of criminal manifestation episodes, as well as accomplices, required the Russian Ministry of Internal Affairs to constantly initiate state legislatures before the legislative bodies the problem of introducing a unified processual procedure in criminal proceedings by analogy with the protocol form of pre-trial registration of materials about crimes, acting before and blocked the by country's judicial system.

In this study, we will not analyse the advantages and disadvantages of inquiry in abbreviated form. Undoubtedly, both are present, but we believe that the named problem forms the subject of special scientific development. Let us discuss only one aspect. Despite the adequacy of the inquiry in abbreviated form to public relations prevailing in the issues of countering mass crimes of small and medium gravity, it should be noted with regret that the legislator considered more carefully the problem of legal regulation of evidence in cases performed as inquiries in accelerated form. In such cases, evidence comes from the same sources that are used in the preliminary investigation.

Meanwhile, within the framework of an accelerated inquiry, it is hardly justifiable to fulfill investigative actions, especially such as forensic examinations, searches, investigative experiments and some others that require time and resource costs and do not in any way meet the optimisation requirements: simplification and acceleration of production. In this case, of course, the legislator justifiably provided for certain exemptions from the procedures of the evidence process used in the preliminary investigation: failure to conduct repeated interrogations; the obligation to conduct only those investigative and procedural actions, the non-production of which may entail the loss of evidence; non-verification of evidence, if it was not disputed by other participants and others, which in itself can be perceived as an independent system of evidence for expedited inquiry. We believe this position is wrong.

In this case, we are talking about a different situation similar to international practices, where, within the framework of the inquiry, an abbreviated system of evidence unique to this procedural form would have been developed and reflected in the law. As it is fulfilled in most states with the Anglo-Saxon and continental systems of law in relation to police inquiry procedures (Girko, 2019). In other words, approaching the distinction between procedural forms close in the tasks, we must not forget about the requirements for their differentiation.

The essence of the differentiation of criminal proceedings in the opinion of Yu.K. Yakimovich is "the presence in criminal proceedings of differing proceedings" (Yakimovich, 2013). In other words, the differentiation of the procedural forms of pre-trial proceedings, and more precisely, the inquiries, should not be reduced to the definition of “insignificant exemptions”, as defined in Part 1 of Art. 226.1 of Criminal Procedure Code.

An elementary comparative analysis of the procedures enshrined in chapter 32 - inquiry and chapter 32.1 - inquiry in abbreviated form, of independent procedural forms of pre-trial proceedings, shows that both forms differ in almost all aspects: the beginning and end of production, procedural terms, composition of participants, their volume rights and obligations, process and limits of evidence. The legislator has attempted, within the framework of the shortened inquiry, to individualise the means of evidence, the limits and the process of proof. However, it seems that this has not been done correctly enough.

This created the basis for scientific experts to take skepticism about the efforts to form an independent, unified and differentiated procedural form. Thus, for example, in the opinion of A.V. Boyarskaya, in the formation of the inquiry procedure in a shortened form, "the process of proving turned out to be deformed so much that the person is convicted on the basis of his own confession". The author concluded that "when introducing a new differentiated production into the system of procedural forms, one should clearly define the properties and options of its legal structure (complicated or simplified), as well as provide all possible ways of combining it and interacting with other procedural forms" (Boyarsky, 2018). Summing up the above, it should be determined that the unification of the criminal procedural form of pre-trial proceedings implies not only and not so much the desire to achieve uniformity of the procedures used, but, above all, their individualisation and isolation, taking into account the specific tasks, search and development of reasonable (the most effective) components of procedural savings, from the point of view of optimising the terms and simplifying the procedures.

These individual features, that distinguish between processual procedures close in their tasks, determined their differentiation.

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