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SIMPLIFIED PROCEEDINGS IN GERMANY AND ITS PROSPECTS IN CRIMINAL PROCEEDINGS OF THE REPUBLIC OF UZBEKISTAN

Tukhtasheva Umida Abdilovna
Head of Criminal Procedure Law Department at Tashkent state university of law, Candidate of Law, Professor

Khosiyat Mamatkulova
Teacher of Criminal Procedure Law Department at Tashkent state university of law

Abstract. The article analyzes the issues of ensuring the expeditiousness of criminal proceedings, while studying the experience of Germany on the example of such forms of simplified proceedings as accelerated proceedings and a court order. The basis of agreement for cooperation, principles of simplifying criminal procedures also had been studied. In conclusion, the prospects for the development of simplified legal proceedings in the Republic of Uzbekistan are examined.

Key words: simplified proceedings, effectiveness of criminal justice, criminal procedure agreements, accelerated proceeding, court order, principles of simplifying procedures.

Аннотация. В статье анализируются вопросы обеспечения оперативности уголовного судопроизводства, при этом исследуется опыт ФРГ на примере таких форм упрощенного судопроизводства как ускоренное производство и судебный приказ. Также были исследованы основания соглашений о сотрудничестве, принципы упрощения судопроизводства по уголовным делам. В заключении рассмотрены перспективы развития упрощенного судопроизводства в Республике Узбекистан.
Ключевые слова: упрощенное судопроизводство, эффективность уголовного правосудия, уголовно-процессуальные соглашения, ускоренное производство, судебный приказ, принципы упрощения судопроизводства.

Аннотация. Мазкур мақолада жиноят суд иш юритувини тезкорлигини таъминлаш масалалари таҳлил қилинган, шу билан бирга Германия Федератив Республикасининг тажрибаси соддалаштирилган суд иш юритувини тезлаштирилган суд иш юритуви ва суд буйруғи шакллари мисолида тадқиқ қилинган. Шунингдек хамкорлик битимларининг (келишувларнинг) асослари, жиноят ишлари бўйича суд иш юритувини соддалаштириш тамойиллари тадқиқ қилинган. Хулоса қисмида Ўзбекистон Республикасида соддалаштирилган суд иш юритувининг ривожланиш истиқболлари муҳокама қилинган.

Калит сўзлар: соддалаштирилган суд иш юритуви, жиноят одил судлови самарадорлиги, жиноят-процессуал битимлар (келишувлар), тезлаштирилган суд иш юритуви, суд буйруғи, жиноят суд иш юритувини соддалаштириш тамойиллари.

Ensuring the efficiency of criminal proceedings is a serious problem for each State, regardless of the legal system in which it operates. One way to enhance it is to introduce simplified proceedings.

Discussion at the 12th UN Congress on Crime Prevention and Criminal Justice (Salvador, Brazil, 12-19 April 2010) on the concept of simplified (accelerated) criminal proceedings showed that improving the fight against crime in modern conditions requires consideration of a wide range of factors. Ineffective and protracted investigative proceedings, limited use of the provisions on pre-trial diversion, ineffective practice for hearing cases, the limited resources available to prosecutorial and judicial authorities and absence of a provision regarding the simplified proceedings or there insufficient use were noted among the problems adversely affecting its condition.

In this regard, the world community is faced with the task of developing strategies to improve the effectiveness of criminal justice, the objectives of which, among others, are:

- shortening of the period between the commencement of the criminal proceedings and its conclusion with the final judgement
- Introduction of simplified criminal proceedings.

In the view of UN, summary proceedings mean a simplified procedure that accelerates the judicial proceedings in order to ensure a higher efficiency of the criminal justice system and to minimize costs. In general,

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simplified legal proceedings are used in lower court instances, usually for less serious criminal offenses, and constitutes an expedited procedure in which certain formal procedures are not required or simplified.

By now, lawmakers and practitioners in Uzbekistan are seeking ways of reducing (optimizing) the terms of criminal proceedings, especially at its pre-trial stage.

There is no doubt that the issue requires comprehensive study and analysis so that the legal regulation comply with the present-day needs and contributes to the effectiveness of the fight against crime.

One of the aspects of the explorations is familiarization with the experience of foreign countries in simplifying criminal proceedings, which can be used to develop domestic legal solutions in this area.

As the analysis of international practice demonstrates, accelerated and simplified proceedings are those forms of the criminal process that are intended to resolve criminal cases within a shortened time frame and on simplified rules. The main objectives of summary proceedings are:

1) Procedural economy, that is, reducing the time, effort and resources used to resolve a part of criminal cases and release them for proceedings in the most complex cases.

2) Approximation of the moment of punishment of the perpetrator by the time of the commission of the crime in order to strengthen the preventive impact of the procedure of legal process and criminal punishment.

3) Reconciliation between the parties.

4) The immediate restoration of complainant's rights that had been violated.

As a rule, summary proceedings provide participants in the trial with not less, or sometimes even more

advantageous guarantees of their rights and legitimate interests than the ordinary judicial proceedings.

Simplified court proceedings are usually used only with the consent of the accused and, as an alternative, have a full trial in the context of competitiveness.

Consider the experience of Germany in this matter. The German Parliament adopted the Law on Agreements in Criminal Proceedings on May 28, 2009, and thus a new special section was introduced into the Code of Criminal Procedure. It provides that the court on suitable criminal cases can agree with the participants of the criminal proceeding on the future course and result of the hearings. The subject matter of the agreement is the confession of the accused and the legal consequences of such recourse related to the reduction of the punishment[1].

The parties to criminal proceedings have the right to initiate negotiations on concluding an agreement on cooperation. Prior to conclusion of an agreement, that is before the hearing of the case, the defendant can inspect the case documents and, as a result, know everything about the evidence base of the prosecution and realistically assess their chances in negotiating the conclusion of an agreement on cooperation. The court must be convinced that the agreement is essential for establishing the truth in the case. In case of doubt with adherence to agreement, the court must thoroughly examine its admissibility. The agreement is concluded after the court has ascertained the consent of the parties of criminal proceedings to conclude an agreement. In this case, the court indicates a lower penalty, which can be imposed and its upper limit. If the court admits a plea agreement null and void, after providing the relevant self-incriminating evidence by the

[1] Podreukina I.A. Foreign experience and continuity in the construction of the penal system in Russia. // Business. Education. Law. Bulletin of the Volgograd Institute of Business. 2012. № 4 (21). P.247-250

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accused, in order to exclude the court's prejudice in guilt, the case is to be transferred to another judge.

The subject of "criminal procedure agreements" in German law can be both the scope of the charge (the exclusion of the "accompanying" elements of the crime from the indictment is permitted), and the amount of punishment. Fundamentally, all "concessions" which can be made by the prosecution must be stipulated by criminal law; otherwise, the conclusion of an agreement is not permitted. In passing verdict, the court is not bound by the will of the parties in any manner; he makes a decision based on a direct assessment of the evidence submitted.

In Germany, judicial practice also recognizes negotiations on changing the maximum term of the prescribed punishment, if there has been a confession, and there is no doubt about the guilt of the person concerned.

It should be noted that simplification in Germany concerns only the second and third stages of the proceedings in the court, for each initiated criminal case, a full preliminary investigation is always conducted.

In the criminal process of Germany, there are two forms of simplification of criminal proceedings, namely accelerated proceedings (das beschleunigte Verfahren) and a court order (das Strafbefehlsverfahren)[2].

The decision between these types of proceedings is made by the prosecutor, when there is increasing need for him to file charges. If the conditions under which a sentence order can be imposed are not met, the prosecutor checks the possibility of conducting an accelerated proceeding. If accelerated proceeding, based on factual circumstances, cannot be applied too, then proceeding continues in general form.

[2] Hellmann U. Strafprozessrecht. Springer-Verlag, 2006. Rn. 996.

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By virtue of § 417 of the Code of Criminal Procedure of Germany, accelerated proceedings commence with an oral or written motion of the prosecutor for a adjudication in accelerated proceedings. This should be preceded by a preliminary investigation and verification of the possibility of imposing an order for punishment.

According to § 419 of the Criminal Procedure Code of Germany, a court with regard to prosecutor's motion for accelerated proceedings can take one of the following decisions: the satisfaction of the motion and the transition to accelerated proceedings; the rejection of the motion and the transition to the general order; cessation of criminal prosecution.

An important feature of accelerated proceedings is a simplified study of evidence, admissible with the consent of the participants in the trial (§ 420 III of the CCP of Germany), for example, the possibilities for disclosing the case files are expanding. In the ordinary process, it is also possible to read out the interrogation protocols or other written explanations of witnesses, experts or co-accused, but this procedure only serves as an addition to the direct investigation of evidence by the court[3]. In accelerated proceedings, the judge has more authority to reject the parties' requests to present evidence. In practice, the situation is as follows: the parties file petitions for the presentation of evidence, the court can reject them without explaining the reasons, simply because, in the Court's opinion, these evidence are irrelevant for the case.

The result of the analysis of the legislation and the doctrine of the simplified process in Germany, the visit of the litigation was the identification of two basic principles of simplification:

1. The principle of exceptionality.

[3] Schroer E. Das beschleunigte Strafverfahren gem. § 417 ff. StPO, 1998. S. 165 - 166.

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2. The principle of compensation for the lack of direct examination of evidence in court.

On their basis, the features of regulating simplified proceedings in Germany are built, mandatory conditions are established, the fulfillment of which is necessary for the admissibility of the application of simplification.

The principle of exceptionality, which allows for the differentiation of the criminal process only in respect of cases representing the lowest social danger, makes it possible to achieve a balance between public and private interests. Simplification of production is compensated by the simplicity of the cases under consideration, as well as the admissibility of such legal consequences, which insignificantly restrict the rights of the person who committed the socially dangerous act.

The main criterion enabling to talk about the possibility of simplification is the public danger of a committed action. Thus, the punishment order can be imposed only in cases of criminal offenses (das Vergehen), proportion of which from the total number of illegal criminal offenses in Germany (the calculation does not account parts of articles with qualifying signs) is approximately 6.5%[4].

Accelerated proceedings, in turn, is possible in relation to any cases, if in a particular case it is proposed that punishment to be imposed not more than 1 year of actual deprivation of liberty.

The nature of sanctions is an important criterion necessary for the implementation of the principle of exceptionality. If the upper limit of the permissible sanction is established by the legislator in respect of accelerated production, the production of issuing of punishment order which is related to increasing

[4] Strafgesetzbuch der Bundesrepublik Deutschland vom 13. November 1998. (zuletzt geandert 21.01.2015) // URL: http://www.gesetze-im-internet.de/stgb/

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restrictions, the law provides a closed list of punishments permissible for the purpose (the severest is 1 year of deprivation of liberty conditionally (§ 407 II CCP of Germany). The common feature is that in both cases the permissible limit of sanctions is very low - only 1 year of deprivation of liberty (conditionally).

It should be noted that for the application of a special procedure it does not matter, a simple case or not; simplification of the trial is possible in any case, the main thing is that the person pleads guilty and agrees with the charge. It is necessary to investigate in detail and fully the circumstances of the case to obtain reliable information about the criminal act. This is possible only with a direct examination by the court of the facts and the investigation of evidence relevant to the case.

Let us consider the prospects for the development of simplified legal proceedings in the Republic of Uzbekistan.

It should be noted that in the criminal proceedings only in conciliation cases simplified proceedings are allowed. The application for conciliation can be filed by the victim (civil plaintiff) or by his legal representative at any stage of the inquiry and preliminary investigation, as well as at the trial, but before the court is removed to the deliberation room. The criminal case with the application for conciliation is sent to the court within a period of not more than 7 days from the date of application. The court session on conciliation cases is held no later than 10 days after the criminal case is submitted to the court. In the court session, evidence of criminal case is not being investigated.

It should be noted that the required conditions for further expansion of conciliation in criminal proceedings have currently been created. Thus, by the Law of the Republic of Uzbekistan dated May 18, 2010, the Criminal Code of the Republic of Uzbekistan is supplemented with

the article 57-note, which provides that under mitigating circumstances, such as admission of guilt, sincere repentance or active assistance in the investigation of the offence and voluntary mitigating of damage caused, in the absence of circumstances aggravating the punishment, the term and amount of the punishment imposed on the defendant cannot exceed two thirds of the maximum penalty provided for in the relevant article of the Special Part of the Criminal Code.

This provision can serve as a starting point in deciding on the implementation of the simplified legal proceedings in the criminal process of the Republic of Uzbekistan. There is another important factor that determines the possibilities of introduction of above-mentioned institution into the criminal process. Thus, about 75% of combinations of the offenses stipulated in the Criminal Code of the Republic of Uzbekistan are referred to crimes that do not pose a great social danger and less serious crimes. As the criminal investigation and judicial practice had shown, the majority of persons facing criminal prosecution for the crime that do not pose a great social danger and less serious crimes, admit their guilt and take measures to mitigate the damage caused.

It is important to note that 45.5% of combinations of the offenses set out in the Criminal Code are punishable by a fine. In 20.6% of combinations of the offenses deprivation of liberty is not provided for. The analysis of national and foreign experience allows us to propose the following model of simplified legal proceedings.

1. At the first stage, it is necessary to envisage the introduction of the simplified court procedure at the stage of trial in criminal cases, which do not pose a greater public danger or are less serious crimes for which the accused (the defendant) pleads guilty, the parties do not make any claims about the evidence of guilt. In the future, taking into

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account the accumulated experience, the limits of the simplified procedure can be extended and applied for crimes for which a penalty of up to 10 years of imprisonment is provided.

1. At the first stage, it is necessary to envisage the introduction of the simplified court procedure at the stage of trial in criminal cases, which do not pose a great public danger or are less serious crimes for which the accused (the defendant) pleads guilty, the parties do not make any claims about the evidence of guilt. Subsequently, in the light of accumulated experience, the limits of the simplified procedure can be extended and applied for crimes which are punishable by a maximum 10 years imprisonment.

2. The court must consider a criminal case with the application of the simplified procedure, if a petition is made for the sentence to be passed without going through a judicial investigation.

The application must be declared by the accused voluntarily, and he must comprehend the nature, as well as the legal consequences of the claimed petition.

3. A motion for the sentence to be passed without going through a judicial investigation must be declared by the accused only in the presence of his defense counsel before the trial begins.

4. The law should contain an incentive rule that provides for the imposition of punishment not more than two-thirds of the maximum term or amount of punishment stipulated in the relevant articles of the Criminal Code.

5. Procedural legislation should establish a simplified procedure for judicial proceedings in cases in which the accused applies for the sentence to be passed without going through a judicial investigation. It is necessary to establish an order in which the court confines itself to establishing the identity of the defendant, his attitude to the charge; whether he supports his motion for a verdict

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without conducting a judicial investigation; whether his motion is voluntarily and after consultation with the defense counsel.

6. The court must pass sentence on the basis of evidence already collected in the criminal case. Investigation and evaluation of evidence in general order should not be made. An exception can only be made to investigate the circumstances that characterize the identity of the defendant, as well as circumstances that mitigate and aggravate punishment.

The court must evaluate the evidence submitted and make sure that the accusation with which the defendant consented is lawful, justified, and supported by evidence in the case materials.

However, the verdict should not provide the analysis of evidence and their evaluation.

In a conviction, the court must confine itself to a description of the criminal act with which the defendant consented; indicating the findings of the court on compliance with the terms of imposing the verdict without conducting a judicial investigation and supplying a justification for the punishment imposed.

7. In the CPC it must be stipulated that the review of conviction made with the application of the simplified procedure, on the basis of inconsistency of the court's findings in the verdict and the factual circumstances of the criminal case, shall not be permitted. The verdict regarding the part of the punishment imposed can be appealed in the appellate or cassation proceedings.

In our view, the introduction of simplified legal proceedings, subject to the above-mentioned suggestions, will correspond to the accumulated experience in the progressive reform of criminal proceedings, and will contribute to the further development of the above-

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mentioned institution in the criminal process of the Republic of Uzbekistan.

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