



Batsko Igor

candidate of law sciences,
associate professor,
associate professor of criminal law
and procedure department of law faculty
Gonchar Dnepropetrovsk national university
(Ukraine)

ABOUT THE DEVELOPMENT OF THEORETICAL AND APPLIED PROBLEMS OF CRIMINAL – PROCEDURE RELATIONSHIPS

With acceptance of the Constitution of Ukraine (1996) the realized updating of all the state legal includes also such its essential part as a criminal - procedural law. In system of norms of the criminal - procedural law the central place belongs to the fixed by the constitution legislative rules regulating a number of major criminal – procedural legal relationship through which can be not only constitutional rights of citizens and juridical persons involved in the sphere of criminal legal proceedings are realized but also their material - legal interests are protected.

In connection with that legal connections in the form of legal relationship between subjects of criminal legal proceedings make its essence, embody the principles of legality, in the theory of a procedural right the problem of criminal – procedural legal relationship are still actual, have an important methodological value as for the science of criminal trial and practice of criminal legal proceedings.

The research spent by us corresponds «the Concept of judicial legal reform in Ukraine» authorized by the decision of the Supreme Soviet of Ukraine № 2296-XII from 28.04.1992, «to Priority directions of a legal science for 2005-2010» recommended by branches of Academy

of legal sciences of Ukraine [1]; item 67, 69 of «Priority directions of the scientific and dissertational researches demanding prime development and introduction in practical activities of Department of interiors for the period of 2004-2009» [2], and also it is included in the Plan of research works of the Dnepropetrovsk state university of interiors of Ukraine.

Works of many scientists - lawyers in sphere of various branches of law were devoted to the various aspects of realization of the subjective rights and duties within the limits of criminal – procedural legal relationship problems. The works containing the results of scientific development of criminal – procedural legal relationship and published during the various periods have generated strong and thorough theoretical base for perfection of continuously changing legal connections between subjects of criminal legal proceedings. At the same time many aspects of legal regulation of criminal – procedural legal relationship are developed insufficiently comprehensively, deeply and full.

V.Gorshenyov wrote that in jurisprudence and its practice many years the condition of «procedural nihilism» was observed. It was shown, in his opinion, in underestimation of the

role and value of requirements of procedural regulation of some spheres of the state power realization and realization of the separate rights and freedom of the citizens fixed by the legislation, and also that « ... in a science of the general theory of law all theoretical regulations about proposition of law, legal relationship and other legal categories are based mainly on the characteristic of examples from practice of norms realization of the substantive law. As the object of scientific research also basically the facts of the material - legal contents are used... for example, in a multivolume rate of the Marxist-Leninist general theory of state and right in the volume devoted to the socialist right, there is no phrase about procedural norms, about features of the procedural law» [3]!

The published textbooks on criminal trial about criminal – procedural relations contain as a rule the introductory, familiarization data of the common character obviously insufficient for formation at students - the future lawyers - full and universal representation about one of the basic institutes of legal proceedings. Besides, since the time of the defence by professor V.Bozhjev of the dissertation on competition of a scientific degree of the doctor of jurisprudence in 1994 on a theme «Criminal – procedural legal relationship» [4] and with acceptance in November, 2002 of the new Criminal - procedural Code of the Russian Federation much has changed with reference to the institute of criminal – procedural legal relationship in criminal legal proceedings. Simultaneously in Ukraine - probable in the only country in territory of former USSR - the Criminal - procedural code, accepted in 1960 with numerous changes and additions which for today are totaled already more than hundred, continues to operate.

The problems connected with appropriate regulation of the criminal-procedural legal relationship still form one of the actual scientific directions in the field of criminal legal proceedings. Subjects of criminal trial enter the criminal-procedural legal relationship at all the stages of legal proceedings. Therefore the questions of the procedural regulation of the institutes connected to occurrence, change and

the termination of criminal - procedural legal relationship have the important independent value and in many respects determine all the course of the criminal cases. The legislative rules which regulate criminal - procedural legal relationship and fixed in the Constitution, Criminal - procedural code and in other acts of Ukraine, represent the program of realization of guarantees of legitimate rights and interests of criminal trial participants, and appropriate execution of these instructions provides the decision of legal proceedings' problems as a whole.

Undoubtedly that in modern quickly varying conditions people need new approaches in development of the theory of legal relationship that are promoted substantially by the new attitude to the person and citizen, updating of the legislation, first of all, from the positions of increasing of efficiency of legal means of the person's interests protection [4, 4].

Unfortunately, for today many theoretical and practical problems of criminal - procedural legal relationship have not found sufficient development for satisfaction of existing sharp needs of practice of modern prejudicial inquiry, trying and the disposition of criminal cases in courts. So cardinal changes in a public life and occurrence of the new public phenomena which have essentially influenced earlier existing order of manufacture on criminal cases and also the new criminal - procedural codes which accepted in the majority of the after Soviet countries, cause sharp necessity of the further optimization of criminal – procedural legal relationship regulation.

For example, two decades ago it was impossible to imagine that by the criminal cases a number of subjects of criminal trial will be in need of protecting from possible punishment from the part of the organized criminal formations by replacement with a pseudonym real biographic and other adjusting data, and also with the help of other additional measures (art.art. 521-525 CPC of Ukraine). The opportunity of refusal of the witness from giving the explanations connected with himself and close relatives became the constitutional norm (an item of 63 Constitutions

of Ukraine), suspected and accused from the beginning of 90th years had an opportunity to dialogue with the defender even before the beginning of the first interrogation (an item of 59 Constitutions of Ukraine and an item 431 CPC of Ukraine), etc.

The name and the number of other features of the legal relationship fixed in the Constitution and the criminal - procedural legislation of Ukraine and have received new development in conditions of democratization of modern society, cause the all-round and profound analysis of the criminal – procedural legal relationship and the legislative rules regulating these legal connections between participants of legal proceedings. So inquiry as the independent procedural form of prejudicial inquiry formulated in the effective criminal - procedural legislation, in an insufficient measure corresponds to showed requirements and needs updating to become the capable basic form of criminal – procedural activity of police in future. It differs from prejudicial inquiry and operative - search activity. It is necessary to order considerably a legal status of police as the body authorized to prosecute the inquiry, inquiry as the form of prejudicial investigation, and also its subjects: body of inquiry, the chief of inquiry body, investigator [5, 106] and persons making inquiry.

The theory of law in a present condition is indifferent to the distinctions of substantive and procedural law at the estimation of legal phenomena, and it is possible to consider this theory “the theory of substantive law” [6, 18]. This circumstance equally concerns criminal – procedural legal relationship arising during initiation, investigation and assizing of criminal cases. It was paid attention on this feature in the legal literature and it was fairly marked that not enough attention is given to the studying of norms regulating criminal - procedural legal relationship of the legal proceeding subjects. The stated testifies the necessity of the further detailed and profound development of theoretical and practical problems of criminal - procedural legal relationship; especially those legal connections by which the guaranteed rights are mentioned in the Basic law.

Additional and all-round scientific development of the problems of criminal - procedural legal relationship, including those which received constitutional fixation, will create a basis for the further deep theoretical and applied researches of many, not only general but also private, practical aspects of investigation and sanction of criminal cases, application of norms of the criminal - procedural right, legal regulation of the legal status of the participants of these relations, perfection of the criminal - procedural legislation. Besides, the results of the fundamental and applied researches of the ripened problems of criminal - procedural legal relationship can successfully serve also for the sanction arising during pre-judicial investigation and assizing of criminal cases, deep and sharp legal collisions which in many cases became a subject of assizing of the Constitutional Court of Ukraine.

Literature:

1. Приоритетные направления правовой науки на 2005-2010 годы, рекомендованы отделениями Академии правовых наук Украины // Пост. АПрН Украины от 18.06.2004 г. № 2/04-2.
2. Приоритетные направления научных и диссертационных исследований, требующих первоочередной разработки и внедрения в практическую деятельность ОВД на период 2004-2009 гг. // Приказ МВД Украины от 05.05.2004 г. № 755.
3. Горшенёв В.М. Некоторые методологические проблемы теории юридического процесса // Юридические гарантии применения права и режим социалистической законности в СССР. – Яролавль, 1977. – С. 4, 5.
4. Божьев В. П. Уголовно-процессуальные правоотношения: Дисс. ... докт. юрид. наук в форме научного доклада, выполняющего также функции автореферата. – М.: Акад.МВД РФ, 1994.
5. Гирько С.И. Уголовно-процессуальные функции милиции: Моногр. – М.: ВНИИ МВД России, 2003.
6. Протасов В.Н. Основы общеправовой процессуальной теории. – М., 1990.