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PREPARATION OF A CRIMINAL CASE FOR TRIAL

(On the example of the Criminal Procedure Legislation of the Russian Federation)

D.F.Pulatova
Master degree student
Tashkent State Law University, Tashkent,
Republic of Uzbekistan
dilfuzapulatova@gmail.com

Abstract: Preparation of the criminal case to the court is a traditional direction of modern scientific research in the field of Criminal Procedure. The interest of scientists in the problems of the stage of preparation of criminal cases for the Judicial Complex is long-term, with the presence of a large volume of theoretical and practical issues that have not been resolved to this day. In this article, we will talk about the actual issues of preparing a criminal case for a court hearing.

Keywords: court, trial, criminal case, preparation of a criminal case for trial.

ПОДГОТОВКА УГОЛОВНОГО ДЕЛА К СУДЕБНОМУ РАЗБИРАТЕЛЬСТВУ (На примере Уголовно-процессуального законодательства Российской Федерации)

С.Т.Алишаев
Студент магистратуры
Ташкентского государственного юридического университета,
Ташкент, Республика Узбекистан
dilfuzapulatova@gmail.com

Аннотация. Подготовка уголовного дела к передаче в суд является традиционным направлением современных научных исследований в области уголовного процесса. Интерес ученых к проблемам стадии подготовки уголовных дел к Судебному комплексу носит долгосрочный характер, с наличием большого объема теоретических и практических вопросов, которые не решены по сей день. В этой статье мы поговорим об актуальных вопросах подготовки уголовного дела к судебному разбирательству.

Ключевые слова: суд, судебное разбирательство, уголовное дело, подготовка уголовного дела к судебному разбирательству.

Preparation of a criminal case for a court session is a traditional direction of modern scientific research in the field of criminal proceedings. The interest of scientists in the problems of the stage of preparation of criminal cases for a court session is long-term and is due to the presence of a large volume of unresolved theoretical and practical issues to

date.

So the discussion continues on the function of the judge in the preparation stage, on the forms and mechanism of the implementation of the competition, the limits of the verification of the materials of the criminal the case and the judge's familiarization with them, the legal consequences of the parties' statements of petitions for the inadmissibility of evidence, etc.

Of no small importance in the continuation and preservation of the relevance of scientific research is the scale of the production of the stage of preparation of a criminal case for acourt hearing, including the holding of apreliminary hearing, the multiplicity and procedural significance of the issues resolved within it. Analysis of statistical data over the past few years indicates an increasing number of violations committed during the preparation of criminal cases. For example, in the regional, regional and other courts of the subjects of the Russian Federation in 2013, procedural violations were committed in 2.9%, in 2014 - already 3% of criminal cases referred to the courts of first instance. In 2015, such violations were already committed in 3.3% of criminal cases, in 2016 this figure was 3.4%.

These data do not seem to allow reducing the level of scientific attention to the stage of preparation of the court session in criminal proceedings and the relevant regulatory legal prescriptions.A lot of scientific, including monographic works in various historical periods have been devoted to the preparation for the court session.

Thus, I.Ya. Foynitsky pointed out the high procedural significance of the stage of trial: "Trial in the meaning of judicial activity rests on two kinds of grounds. On the one hand, they protect the interests of society, which require that all those who deserve it be brought to the criminal court. On the other hand, the trial is also aimed at protecting the identity of the accused..."

He attached no less importance to this stage another famous Russian scientist K.K. Arsenyev, who in 1870 published a collection of practical notes on the proceedings in the framework of the trial.

I.D. Perlov wrote about the institution of trial as follows: "all reactionary, anti-democratic reforms in the field of criminal justice in all countries, as a rule, led to the elimination of the institution of trial, its curtailment and infringement, and, on the contrary, all reforms and transformations. Having a progressive democratic character, they tried to lead or led to the strengthening and development of this institution"

V.Z. Lukashevich formulated the purpose and objectives of the trial stage as follows: "In the theory of the Soviet criminal process, the significance of the trial stage was determined by the fact that, firstly, it contributes to further improving the quality of the work of the bodies of inquiry and preliminary investigation, promptly and quickly detecting shortcomings and gaps and taking measures to eliminate them.

Secondly, it is designed to ensure the high quality of judicial proceedings, since it does not allow criminal cases that are insufficiently complete to be tried, comprehensively and objectively investigated, ensures the adoption of measures to prepare a criminal case

for consideration on the merits at a court hearing; thirdly, it is an important guarantee of the rights of the accused, protecting the innocent from unjustified criminal prosecution and ensuring the lawful and reasonable trial of persons whose guilt or innocence will be stablished by the court in the trial on the merits" In the post-Soviet period, there was a certain rethinking of the entire criminal

procedure, starting from the totality of the ideas underlying it (principles), to the solution of individual private issues. The former stage of trial was called "preparation of a criminal case for a court session" and in a certain part its procedural form changed: two procedures appeared - one-person and with the participation of the parties, their powers were significantly expanded, etc. The changes that have taken place have not affected the assessment of the significance of this stage for criminal proceedings. According to O.V. Gladysheva (Volkolup): "the stage of appointment of a court session is an independent stage of criminal proceedings, endowed with the function of judicial control over the activities of the preliminary investigation bodies and preparing the upcoming trial. By its nature and content, the stage of assigning criminal cases to trial is a trial in criminal proceedings" Adheres to a similar position N.V. Tkacheva, who writes on this issue: "□ This is an independent stage of the criminal process, the significance of which lies in its controlling role for the stages of pre-trial proceedings and at the same time in the preparatory in relation to the trial" . With the similarity of scientists' opinions regarding the high procedural significance of the content of the preparation stage, there is no unity of opinion on the question of the name of the stage. Despite the fact that in the Criminal Procedure Code of the Russian Federation.

Although this issue seems to have been resolved unambiguously, there are significant differences in the positions of scientists in scientific sources. There is an opinion that the stage of preparation for the court session should be called the stage of appointment of the court session. "It is this name that more accurately corresponds to the purpose of this stage in the criminal process".

S.S. Tsyganenko writes: "The stage of the appointment of a trial is the first stage of criminal procedure, which is a system of procedural actions and relations related to the establishment of appropriate conditions by the court and the removal, if necessary, of obstacles to the verdict, ensuring equal access to justice for procedural parties". Some other scientists have a similar opinion about the name of the stage. There are other examples of using the name of this stage.

So, A.A. Yunusov uses in his work all possible categories - trial, preparation of the case for the court session, appointment of the court session. Terminological differences in the definition of the stage, it seems, depend on the subjective priorities of scientists, their highlighting of individual aspects of the stage and giving them special significance .

It seems that consideration of the content of the stage allows us to identify individual elements that perform the function of preparing a court session, appointing a trial. In some cases, it is possible to talk about the preservation of such an element as trial. Therefore,

it is worth considering that the name of the stage should be perceived to a certain extent as conditional. There is also other examples of such conditional naming of stages in criminal proceedings, for example, the stage of initiation of a criminal case. For our research, the following fact is fundamental - the preparation of a criminal case for a court hearing is considered exclusively as the first judicial stage (or institute). Accordingly, the development of all provisions concerning the institute of training takes place in relation to the court, its powers, participants in the court session, etc. This orientation of scientific research, based on long-standing traditions associated with the origin and gradual development of the stage of trial (appointment, preparation) in the Russian criminal court in court proceedings, it is to a certain extent natural and justified. However, the current stage of the development of criminal proceedings requires a new look and new approaches to the consideration of the preparation of a criminal case and its appointment to a court session. The objective reason for this conclusion, in our opinion, is a significant change in the structure of criminal proceedings (pre-trial proceedings include the production of court sessions on quite numerous issues, involving a large number of participants), the expansion and deepening of the scope of judicial review decisions, the appearance of two categories of court decisions - interim and final and differences in the order of their review and other factors. The expansion of the scope of judicial activity, the holding of court sessions on various issues during pre-trial proceedings poses the task of the science of criminal procedure to develop and implement the order in criminal proceedings (procedures) of preparation for the relevant court sessions. Some prerequisites for this can already be seen in the content of the criminal procedure law, and the most significant is the very fact of holding court sessions in pre-trial proceedings. The need to conduct relevant scientific research is due to the logic and regularity of the preliminary preparatory measures before the court session. So, in particular, there is an opinion that "Ineffective preparation of criminal cases for trial can lead to red tape during their consideration, cancellation of court decisions and, thus, violate one of the fundamental rights to consider a case without undue delay". The following statement also seems to be true: "at the stage of preparation, all actions of the subjects of the process should be aimed at ensuring the correct and timely resolution of the case". However, setting the same tasks and the corresponding object of legal relations is currently justified when holding court sessions in the pre-trial stages of criminal proceedings. Thus, the investigator's petition for the application of detention is considered and resolved by the judge at the court session.

At the same time, there are separate preparatory measures on the part of the judge, entailing appropriate procedural actions for other participants in criminal proceedings. In particular: "Considering the activity of the defender in the aspect of election or application of preventive measures, we believe that the subject of it is the refutation of the arguments of the prosecution about the legality, validity and motivation of the use of a preventive measure, and especially detention." considering that in order to solve this task, the defender must, at a minimum, be notified of the date and place of the relevant

procedure for considering the petition for the detention of the defendant, and how the maximum is to know the arguments of the prosecution, the judge is obliged to notify the defender and give him the opportunity to prepare his position and present it to the court at the hearing. The resolution of the Plenum of the Supreme Court of the Russian Federation "On the practice of consideration by courts of petitions for investigative actions related to the restriction of constitutional rights of citizens (Article 165 of the Code of Criminal Procedure of the Russian Federation)" dated June 1, 2017 No. 19 states: "for each received petition for investigative or other procedural action, the judge must find out whether the petition meets the requirements of PartParts 1 and 2 165 of the Criminal Code of the Russian Federation: is it within the jurisdiction of this court, is the criminal case in the proceedings of the investigator or inquirer who filed the petition, is there a consent of the head of the investigative body or the prosecutor to conduct an investigative action, does the petition contain the necessary information (the name of the specific investigative action, the address of the place of inspection or search in the dwelling, etc.), and also whether the materials required for its consideration are attached to the petition (copies of the resolutions on the initiation of a criminal

case and the acceptance of a criminal case for on the extension of the term of the preliminary investigation, on the resumption of proceedings in a criminal case, materials, confirming the existence of grounds for the investigative action, etc.). In particular, the petition for the sale, disposal or destruction of material evidence (Part 3.1 of Article 165 of the Code of Criminal Procedure of the Russian Federation) must contain information about the owners or other legal owners of the object recognized as material evidence, necessary to notify these persons of the place, date and time of the court session (address of residence, phone number, etc.)". The content of this and other provisions of the said resolution of the Plenum of the Supreme Court of the Russian Federation indicates the need for the judge to carry out preparatory actions. In the current CPC The Russian Federation has not said anything about this stage of the court's consideration of the petitions of the preliminary investigation bodies. There are no relevant regulations regarding the preparation for judicial review of complaints of participants in criminal proceedings sent to court in accordance with Articles 125, 125.1 of the Criminal Code of the Russian Federation, which should be considered as a legislative gap. Conducting court sessions in the pre-trial stages of criminal proceedings should involve their thorough preparation. The similarity of the tasks that are legally defined for the stage of preparation for trial and are put before the judge during the preparation of court sessions in pre-trial proceedings allows us to draw the following conclusion: the institute of preparation for a court session is no longer closed at the same stage of criminal proceedings, it significantly expands its limits and should regulate legal relations, formed during the preparation for the court session both in pre-trial and in the judicial proceedings of the criminal process, as well as extend to the stages of preparation for court sessions in the appellate, cassation and supervisory order. As an additional argument in support of the idea of allocating the institute of preparation for

a court session in the system of criminal procedure law, the following statement can be cited: "For ... institutions of criminal procedure law, the application of the rule on the identity of their procedural stages is not suitable ". We share this position and consider it possible to consider a criminal procedure institution in isolation from any stage, even if there is a terminological coincidence of their names. The absence to date of structural separation and relative isolation in criminal procedure law of norms regulating the procedure for preparing for all types of court sessions objectively complicates the process of their progressive and progressive development. The attribution of criminal procedural norms regulating the preparation for the court session to the criminal procedure institute aimed at regulating the activities of the court, for example, on consideration and resolution of the petition for the detention of the accused, is not allows you to consider all their features, makes it difficult to assess their effectiveness, takes these norms to the "background". Accordingly, their study is carried out in fragments and in "binding" to institutions, which, although they act with them in a systemic connection, nevertheless differ in their main goals and objectives, forms and method of procedural activity. And, on the contrary, the allocation of an independent complex criminal procedure institute of preparation for a court session will allow creating and offering appropriate and effective regulation of objectively evolving, changing procedural relations arising in connection with the preparation of a court session at any stage of criminal proceedings.

Thus, summing up, we consider it possible to draw the following conclusions:

1) preparation for the court session has objectively ceased to be an institution of criminal procedural law, the implementation of which takes place exclusively in the eponymous stage of criminal proceedings. The expansion of the scope of judicial activity has led to the need to extend certain rules for the preparation of a court session to pre-trial proceedings;

2) the preparation of a court session in the pre-trial stages cannot take place according to the same rules as the preparation of a criminal case for trial, respectively, special rules should be provided for its regulation, fixed by the relevant criminal procedural norms;

3) based on the above considerations, we consider it necessary to form a new criminal procedure institution - preparation for the court session. Its elements (subinstitutions) should be:

- preparation for the court session in accordance with Article 29 of the Criminal Code of the Russian Federation (relevant additions should be made to Articles 108, 109, 115, 115.1, 125 of the Criminal Procedure Code of the Russian Federation, etc.);
- preparation of a criminal case for trial in the first instance (Chapters 33, 34 of the Code of Criminal Procedure of the Russian Federation);
- preparation for court sessions in the appeal, cassation, supervisory procedure;

4) in order to individualize the procedural form of each of the subinstitutions and, taking into account the essential specifics of judicial activity in the preparation of a

criminal case for trial, we consider it possible to return to the discussion of the restoration of the concept of "trial" in criminal procedural law.

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