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The bounds of a court proceeding

Abstract: Established by the legislation the bounds of a court proceeding contraries to the tasks and principles of criminal proceeding.

The court cannot completely respond on exposed facts of criminal activity; it is compelled to limit with unperfected provisions of the law.

It is given proposals on change and supplement of the criminal procedural legislation

Keywords: bound of a court proceeding; accusation; participants of a court process; a court.

A core of the bound of a court proceeding consists in an amount of accusation and time (moment) of determination its nonconformity with taking a person to a court as accused.

As is justly noted by B.T. Bezlepkin "during the court proceeding of criminal case cannot be incriminated to the accused person that is not contained at the third common lines of criminal prosecution important criminal procedural acts: a) decision on institution as an accused person; b) the bill of indictment; c) decision of the judge on assignment of the court session, - one word, that about which he had suddenly known, regarding what he has not interrogated and from what he has not defended before the court" (1, p. 326-327). It seems that stated assertion is not the base which should be used during studying of the problem considered.

In result of pre-trial production is collected a combination of the evidences pointing out on committing of crime by a person. This combination confirms: a fact and circumstances of criminal incident containing the features of crime; connection with it (guiltiness) of a specific person (or persons); circumstances mitigating, aggravating or eliminating punishment which is provided by the law.

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In dependence of objective or subjective reasons during pre-trial production in a number of cases are established not all episodes and circumstances of crimes and not all guilty participants of crimes.

In informational aspect, materials of pre-trial production the information about this (other episodes, circumstances or individuals) can completely be absence or to be insufficient for including in amount of accusation.

In the last case it is given an appropriate assessment which, as rule, is reflected in a decision on assessment of the evidences, cancellation of the part of criminal case (criminal prosecution) and other similar procedural documents that is not provided by the law but required by procedural management of preliminary investigation. We are speaking about situations when there are not accused persons and not opportunity to apply the provisions of the article 225.2 of CPC of Azerbaijan Republic.

However, sometimes the assessment of insufficiency of the evidences is not registered in writing and accusation is brought only that part which a body carrying out criminal process considers as proof and other one is consciously (and procedurally correct) remained without documental substantiation. This often occurs in connection with subjective reasons when an investigator (an inquirer) either really does not realize incompleteness accusation or deliberately hides it.

Criminal case or other material connected with criminal prosecution always submitted to a court. An incompleteness issue of accusation can be risen on preliminary session of a court or during of court proceeding. However, there is not also full lucidity here.

Article 299 “Preliminary session of a court” of the CPC does not contain specific provisions determining of a court action in case of incompleteness accusation found. In article 299.3.4 of CPC is stated that in preliminary session a court should resolve an issue on availability or absence grounds for postponement or discontinuance of the production on a case, and in article 299.3.2 of CPC is said about necessity to determine the violations of the requirements of the CPC during performance of preliminary investigation.

In article 300.1.5 of CPC is stated that during preliminary court session can be accepted a decision about cessation of consideration of the criminal case or the

materials of simplified pre-trial production and return them to a prosecutor carrying out procedural management of the preliminary investigation.

Article 303.1 of CPC states that a court stops consideration of the criminal case or materials of simplified pre-trial production and returns them to a prosecutor carrying out procedural management of preliminary investigation if it is found during preliminary court session that were made gross violations at the time of pre-trial production. However, article 303.3 of CPC does not relate the violations of an amount of accusation to the gross violations (see articles 303.3.1-303.3.9 of CPC), in connection with this returning of criminal case to a prosecutor by the decision of a preliminary court session on this ground is illegal.

Thus, an issue about the bounds of a court proceeding in reality can be resolved only in frame of article 318 of CPC that provides for return with 10 days deadline of a case or materials of the simplified pre-trial production to a prosecutor for consideration of an issue about institution against accused another more serious charge.

Article 318.2 of CPC says that if after that the prosecutor carrying out procedural management with preliminary investigation institutes new accusation then a court proceedings is restarted with pronunciation of this charge at the court session, and court proceeding is continued in common order.

Further, article 318.2 of CPC says that “during a court proceedings on an appeal of a victim or his legal representative the court can pass a resolution about availability in the deeds of an accused the features of more serious crimes”.

In connection with above stated, it is appeared a number of new questions the responds of which, from our point of view, the CPC does not contain. So, in article 318 of CPC is said that an issue about return of a case to the prosecutor for determination another more serious charge can be raised on a petition of the public prosecutor, a victim or his legal representative.

It turns out, that in the absence of similar petitions the court cannot pass a resolution on returning a case to the prosecutor for bringing up a new accusation, even in spite of deficiency of the old, actual accusation.

What to do if victim applies for aggravating charge and a prosecutor is against of this petition? Does it matter the availability in a case a decision of an investigator (inquirer) on cessation of the part of accusation, which is repeatedly become a subject of disagreement in a court? How to keep within 10 days if this case is a multi-volume and few people are accused on it? Is the time of familiarization of the participants of a process with the documents of the case included in these 10 days? Shall accused be passed to the court on new charges if article 318 of CPC does not provide this?

It seems, that without resolution of listed and other interrelated issues, a problem of the bound of a court proceeding cannot be also resolved.

In connection with above stated, from our point of view, the way out is in the following.

The first, it is necessary to supplement the law with provisions which oblige the body carrying out criminal process to pass a resolution on assessment all information about crimes and their participants before calling an individual as accused or before announcement about completion of the preliminary investigation. As result of this assessment, a part of such information that confirmed with combination of the evidences will be recognized by a basis of taking of a person as accused, and other part (in respect of the persons, events and actions) will be insufficient for that due to absence of the evidences or on other reasons. All this should find its reflection in the resolution which might be named with various names, but in compulsory order to have decision on the results of criminal prosecution in the appropriate part.

The absence of the resolution will be meant either mistake of the body carrying out criminal process or absence of information that is subjected to evaluation because of the end of criminal prosecution.

The second, it should supplement the law with article 303.3.10 of CPC, stating that absence of the appropriate resolution of the body carrying out the criminal process in respect of assessment of the results of criminal prosecution is attributed to the gross violation that exclude an opportunity resolving on essence of the criminal case or materials of the simplified pre-trial production.

The third, it seems necessary to provide the right to all participants of a process but not only to a public prosecutor, a victim or his legal representative, to petition for

court session on postponement of court proceeding and return a criminal case or material of simplified pre-trial production to the prosecutor.

The forth, it should add article 303 of CPC with provisions on the right of a court to break off an examination of the part of case or materials and return their prosecutor.

The fifth, it seems necessary to supplement article 318.2 of CPC with provision allowing to a court to postpone the court proceedings for 10 days as on the whole case (materials simplifies production) so in a certain part. In the second case, the proceedings on other part of the case (material) will be continued in common order.

If during 10 days the case returns to a court with new accusation then it should begin in order of article 299 of CPC from stage of taking to a court. But, if it is not presented new charges, and the case would return to a court with old accusation then the proceedings should be continued in common order.

If during 10 days the case is not returned to a court then it examination should be stopped in a part (person) which has been a basis for postponement, and in other part (persons), a court proceeding is subjected to continuation in a general order.

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