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**The stages of criminal legal proceedings
in respect of individuals not reached the age
of bringing to the criminal responsibility**

Abstract: On the basis of generally accepted provisions of the concept and essence of the stages of criminal proceedings are considered the stages of legal proceedings in respect of the individuals not reached the age of bringing to criminal responsibility.

Contents of the stages of the legal proceedings in respect of the minors provided by the article 435-1 CCP are contradictory in fact and are forming a clash with other rules of criminal procedure; it does not provide a solution of tasks of legal proceedings.

It is given the suggestions on changes and amendments to the legislation.

Keywords: legal proceedings; minor; the age of criminal responsibility; participant of process; Commission on Minors; clash.

According to the “Explanatory Dictionary of the Russian language”, a stage (from Greece-stadion) a period in development of something (2, p. 761). A similar interpretation of the stage is given by the “Modern Dictionary of Foreign Words” (5, p. 575). In spite of the monosemantic etymological interpretation of the concept “stage”, in the procedural science is no single point of view about the nature and content of this institution of criminal proceedings. In addition, the analysis of the existing ideas allows singling out the main and using a quintessential aspect of our research.

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Thus, Yu.K. Yakimovich believes that the stages are interlinked but relatively independent parts of the process, separated from each other by the final procedural decision which are characterized by the direct tasks (arising out of the ordinary tasks of criminal proceedings), by a circle of the bodies and individuals participating in the production of a case, by an order (shape) of the procedural activity (procedural procedure) and the nature of criminal procedural activity (8, p. 24).

On his opinion, each stage of the process is characterized; 1) the direct tasks arising out of the ordinary tasks of criminal proceedings; 2) a certain circle of the bodies and individuals participating in it; 3) an order (procedural shape) of activity determining by the content and direct tasks of this stage and particularities of expression of the common principles of a process in it; 4) the specific nature of criminal procedural relations arising between subjects if a process of the production on a case; 5) a final procedural act (resolution) that is completed a circle of the procedural actions and relations which is caused a transition of a case to the next level (if the case is not cancelled or suspended) (8, p. 26).

According to I.A. Pikalov, "... a stage of criminal process is an isolated part of the criminal proceedings directed to the reaching of specific tasks which are inherent only it" (3, p. 2).

I.A. Pikalov thinks that all criminal proceedings is built as a kind of the system of interlinked stages, which are presented themselves the independent parts of the activity of a subject of criminal process (an inquirer, investigator, prosecutor, judge or court), during implementation of which they (in frame of their competence) carry out a performance of the procedural actions (which are determined by the criminal procedural law) and accept the procedural decisions in form of the resolutions, and a court in the form of a sentence. Acceptance of such decision is a completion of the each separate stage and it is a procedural base for cancellation of the procedural activity on a criminal case or for transition of this activity to the next stage (3, p. 2).

I.A. Pikalov writes that "... in spite of that each stage is interlinked with other stages, at the same time it has a number of differences. They are manifested in the tasks that are executed on each, separately taken stage of the procedural actions,

which is possible and necessary to carry out only on certain stage etc.; i.e. those particularities which are determined this part of the criminal process in a system of the stages. These features are the signs of the each separately taken stage of criminal proceedings”.

Based on above said, the signs of a stage of criminal process can be formulated as follows:

- the direct tasks implemented on a specific stage;
- a list of procedural actions that is inherent only this stage;
- a final procedural act completing of a specific stage (3, p. 3).

According to I.A. Pikalov, the main stages through which is passed a production actually on each criminal case are:

1) an initiation of a criminal case that foresees a careful checking of the accuracy of information about committed or planned crime with purpose of finding of the signs of crime which will be sufficient to make a decision on initiation of criminal case or refusal in it;

2) a preliminary investigation carrying out in form of inquiry or preliminary investigation in order to establish an event of crime, individuals who are responsible in it committing, and also all other necessary circumstances which are the subject of proving on each criminal case;

3) an appointment of a court session (the stage of committal for trial). In this stage, receiving from prosecutor a criminal case, a judge should decide a number of issues: whether he can examine the case received on the merits, i.e. whether this case in his jurisdiction or it should be sent for examination to other court; whether it is grounds to return a criminal case to prosecutor for correction of the technical mistakes made by an inquirer or investigator; to cancel a production of criminal case or criminal prosecution; to suspend a production on a case if accused had hidden, had fallen serious ill or on some other valid excuse he cannot participate in examination of a criminal case, or it is necessary to wait for a decision of the Constitutional court on this case. If a judge does not see any grounds from listed above, he makes a

resolution about appointment of the court session and production on the case is passed the next stage;

4) judicial proceedings in a court of the first instance (a stage of examination of the criminal case on the merits). In this stage a judge personally or a judicial board (three judges or jury trial) resolve also a number of issues, in actually the same that have been resolved during preliminary investigation. This stage is finalized by passing of the resolution about cancellation of a criminal case (prosecution), or rendering of the verdict of guilty or not-guilty;

5) a production in a court of the second instance (appeal and appeal cassation production) is a checking stage of legitimacy, validity and impartiality of the decisions of a court of the first instance before an entry into the legal force;

6) an execution of sentence. The stage in which a resolution, sentence of a court (a judge) is executed, i.e. it is carrying out the resolution what to be done in respect someone. In addition, it is resolved a number of issues arising during execution of a sentence (3, p. 4).

To the additional stages through which a production of the criminal case is passed in extremely cases, I.A. Pikalov believes the next:

1) supervisory proceedings in which it is subjected to be reviewed the decisions of a court which have entered into legal force;

2) renewing of the cases on the new or newly found circumstances differ from supervisory proceedings not only by the grounds of production (during review of a court decision in supervisory order the production is not renewed), but and by the specific order of production on the criminal case on this stage, to which is preceded a repeal of resolution or verdict of a court on this case entering into a legal force.

According to I.A. Pikalov, in some cases, the criminal process is implied a specific order of the production on separate categories of the cases, i.e. such order in which is significant differences from the ordinary criminal proceedings:

1) a specific order of acceptance of a court decision if an accused person is agree with his accusation;

2) production on the criminal cases which are in jurisdiction of a magistrate judge;

3) production on the criminal cases examined by a court with participation of the jurors;

4) production on the criminal cases in respect of the minors;

5) production on the criminal cases about applying of forced measures of the medical nature;

6) production on the criminal cases in respect of separate categories of the individuals (3, p. 4-5).

On opinion of V.P. Kashepov, the criminal proceeding consists of the three parts: pre-trial production, court proceedings and execution of a sentence (7, p. 15-16).

Considering of the stages of criminal proceedings, B.T. Bezlepkin writes: “Criminal proceeding consists of a few stages reflecting the translational motion of a criminal case. Each of them is characterized: a) by the own tasks flowing from general tasks of a criminal process; b) by a specific list of participants; c) with the specific actions of these participants and legal relations, which are arise between them; d) with the specific documents by which are summarized all activity. Each stage has a strict defined an initial and final moments. Excepting the cases provided by the law, any criminal case consequentially goes through the following stages: 1) an initiation of a criminal case; 2) preliminary investigation; 3) an appointment of the court proceedings; 4) a court proceedings; 5) appeal production; 6) appeal cassation production; 7) execution of a sentence. They are called the ordinary. In addition, there are two stages of the criminal process, about which is accepted to speak separately: 1) a stage of production in supervisory instance and 2) a stage of resumption of the production due to the new opened circumstances. In order to a criminal case would enter in one of the stages, it needs extraordinary circumstances and a specific discretion of the officials that is provided by the law since we are speaking about extraordinary phenomenon – reviewing of entered into a force of

executed court verdict (maybe, partially or completely) on a criminal case” (1, p. 8-9).

Let's try to consider how the stated assertions are correlated with the provisions of the criminal procedural legislation of Azerbaijan Republic in part of court proceeding in respect of the individuals not reached the age of bringing to the criminal responsibility.

Content of the article 435-1 of the CPC of Azerbaijan Republic is allowed conditionally dividing a court proceeding in respect of the individuals not reached the age of bringing to the criminal responsibility at: a stage of pre-trial production; production in the Commission on Minors; a court production; appeal production; appeal cassation production and production on execution of the court resolution about sending a person to the special teaching and educational institution of a closed type (6, p. 428-431).

We note that in division is conditional as indicated stages do not correspond to the generally accepted criteria of the stages of criminal proceedings and sometimes they contradict them, about what we will talk below.

Earlier we noted that a court production in the form of preliminary investigation is a mandatory stage of court proceedings in respect of the individuals not reached the age of criminal responsibility but committed the socially dangerous acts, which contain the signs of grave or especially grave crime (4, p. 121-130).

It seems that tasks of the two mentioned stages are in tune with the tasks of criminal proceedings since flown out from them, but a list of participants is rather specific that is caused necessity it detailed consideration.

Speaking about the participants of a stage, we keep in mind the individuals participating in the criminal process and indicated in the article 7 and chapter 2 of the CPC. But, neither in the article 7.0.18 nor in chapter 2 of the CPC the individuals not reached the age of criminal responsibility (but committed grave or especially grave crimes) is listed.

In the article 100.2.2 of the CPC is said about incapable suspected and accused not reached the 14 years old age. But this is nonsense since according to the article 20

of the Criminal Code the criminal responsibility for the number of crimes begins only from 14 years old.

Thus, in the considering case as the participants we will have a full team of the prosecution party, and a defense party – only a person interrogated as a witness though not being such and one or two representatives, one of the which will be legal.

Anyway, there is no and should not be a defender since it is absent suspected or accused person.

The article 100.7 of the CPC is said about an incapable participant of criminal process who is incompetent independently to carry out his rights. But this provision has indirect attitude to our case about which will say bellow.

In dependence on situation, to the moment of initiation of criminal case an individual committed the socially dangerous deed can be known (obvious crime) or unknown (unobvious crime).

At the second case investigation carries out in the common order. But with appearance in a process of an individual not reached the age of bringing to criminal responsibility though suspected or it exactly known as committed of the socially dangerous deed, the specificity of a court proceeding is changed serious. Unfortunately, it is not to the best side.

This stage is finalized by passing a resolution on discontinuance of the criminal case which should be sent (no alternative procedure) to the Commission on minors.

According to article 432.6 of the CPC, a stopping of production on the criminal case in respect of a minor is anyhow allowed with consent of the minor or his relatives (other legal representatives) (6, p. 426).

According to article 281 of the CPC, a copy of resolution about discontinuance of production on the criminal case is sent by an investigator to a suspected or accused, civil plaintiff, civil defendant or their representatives. To the listed individuals are explained their right to familiarization with the materials of a criminal case and the order of appeal of resolution about stopping production on the case (6, p. 285).

The article 435-1 of the CPC does say nothing about familiarization with the materials of a case, but this stage of court proceeding should be obligatory taken in account since the issues resolved by the stage have significant importance for resolution of the tasks of criminal process.

From the content of article 281 of the CPC is seen that the actual participants of a production in respect of the individuals not reached the age of bringing to criminal responsibility (minor, his legal representatives, the representatives of a witness) are not indicated. From our point of view, this is omission that is subjected to eliminate.

In connection with absence of actual participants in a text of the law, it is arisen problems with submission of the appeals and complaints including in order of a judicial review.

In addition, in dependent on situation (a person was ill, hidden, it is not known his location) a production of the case can be suspended but it is said nothing about this. This is also omission that is subjected to eliminate.

Certain doubts are called a stage when a production is carried out by the Commission on minors. According to the law, the Commission on minor has a determining role in decision of an issue of sending a minor to the special teaching educational institution of a closed type. Obviously, a lawmaker had based on that the specialists (teachers, psychologists etc.) of the Commission on minors resolve this matter better than the lawyers.

Let's try to understand in fairness of this in an aspect of the translational motion of criminal case and resolution of the general and specific tasks of a court proceeding.

According to article 435-1.2 of the CPC, in established by the law procedure, on the base of the documents of criminal case the Commission on minors collects other necessary documents and submits appeal to a court of the first instance on the residence of a minor for examination of an issue on the possibility sending to special educational institution of a closed type.

What is meant by "other necessary materials" is not spoken in the law. But the practice shows that, as rule, these are the references in respect of parents, the certificate of inspection of living conditions etc.

But, in according to article 429 of the CPC, all issues should be resolved during preliminary investigation since they are a subject of proving on the case (6, p. 424).

In addition, it is remained unclear, who – an investigator or the commission – solves an issue on submission of the case to a court to determine punishment in the form of detention of a minor in a special educational institution of a closed type.

It is no doubt that this is a punishment in the form of depriving of freedom in spite of any camouflage terms which is called.

From content of the article 435-1 of the CPC is seen that an investigator is obliged to give effect to an issue of sending of a person to special educational institution of a closed type and submit the materials to the commission. The commission decides an issue about possibility its solution and in case of positive response, submits the case to a court.

It turns out that the commission has alternative and it can solve the issue negatively and not to submit an appeal to a court, and to return a case to an investigator (although the law nothing say about this, and on a practice never happened).

From our point of view, the stage of production in the Commission on minors should be included in a stage of preliminary investigation, where all appeared issues should be resolved with use of special knowledge. Under this, it is purposeful to add the article 140 of the CPC with provision that an issue about possibility sending a minor to special educational institution of a closed type is resolved only upon presence an appropriate report of the experts in psychology and medicine.

No less doubts are risen a provision about examination of an issue by the court of first instance by a place of residence.

It turns out that the individuals committing grave and especially grave crimes are judged by the courts of first instance but not in the courts of grave crimes. It is presented that this is a violation of the article 29 of the CPC.

Content of the article 435-1 of the CPC in respect of a stage of court proceeding and the issues examined in it, shows that essentially it is a formal, far from justice and the tasks of court proceeding.

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