

Teleological conditionality of the collection, examination and use of evidence by the prosecution party in criminal proceedings

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Summary

The article is devoted to the study of the patterns of teleological (target) conditionality of the collection, examination and use of evidence by the prosecution party in criminal proceedings. Teleology is considered by the author as a doctrine of purpose, expediency, according to which human activity is directed to a specific goal and subordinated to it. It is emphasized that in the legal doctrine the laws of teleology are reflected in the principle of expediency. In criminal procedural law, the principle of expediency can be considered in a broad sense (as the focus of the participants in criminal proceedings to achieve general goals, objectives of the criminal proceeding) and in the narrow sense (as the focus of the participants in the proceedings to achieve their own procedural goals).

It is proved that the goals (tasks) of representatives of the prosecution party are specified due to the procedural functions of such a subject, its procedural interest, the situation in criminal proceeding at its given stage, and a number of other factors. The implementation of such tasks may be adversely affected by the need to comply with official and unofficial indicators of detection and investigation of criminal offenses, significant workload, professional deformation, low level of education or insufficient personal experience of these persons.

It is established that within the evidentiary activity the representatives of the prosecution party carry out procedural actions, make procedural and tactical decisions, which are conditioned by the goals (tasks) of such subjects. The evidentiary activity of the representatives of the prosecution party is aimed at the realization of the public (social) interest and their procedural functions.

Keywords: criminal proceedings, evidence, collection, examination, use, subjects of proving, prosecution party, procedural functions, teleology.

The development of practice-oriented recommendations for the collection, examination and use of evidence in criminal proceedings requires a preliminary study of the specifics of such activities. Evidential activity that is carried out by authorized persons in criminal proceedings is, among other things, conditioned by the tasks (goals) that such persons face in the proceedings. These tasks derive from

the general tasks of criminal proceedings defined by the CPC of Ukraine and are specified by a number of factors (procedural status and interest of the subject of proving, the stage of the proceeding and the situation that has developed in it, professional and moral qualities of the person, etc.). The above gives grounds to assert the teleological (target) conditionality of proving in criminal proceedings, which has its own patterns and requires a separate study.

The specifics and determination of the procedural activity of the participants in the criminal proceedings were studied by O. Baev, O. Bululukov, I. Glovyuk, I. Ivasyuk, O. Kaplina, V. Koldin, O. Krestovnikov, S. Patyuk, V. Shevchuk, V. Shepitko and other scientists. Legal and practical problems of carrying out evidentiary activity in criminal proceedings were reflected in the works of V. Vapnyarchuk, I. Glovyuk, O. Kaplina, H. Slyusarchuk, O. Starenkiy, A. Stepanenko, O. Shilo, O. Yanovska and others. However, the main patterns that characterize the teleological conditionality of the collection, examination and use of evidence in criminal proceedings, have not received sufficient attention in the literature to date, which justifies the relevance of this article.

The purpose of the article is to substantiate the teleological (target) conditionality of the collection, examination and use of evidence by the prosecution party in criminal proceedings.

Criminal proceeding in general, and the procedural activities of its participants, are directly related to evidentiary activities. We agree with V. Vapnyarchuk that the subjects of proving in criminal proceeding are the court, the investigating judge, the parties to the criminal proceeding (paragraph 19 of Article 3 of the CPC of Ukraine), the victim, the civil plaintiff (their representatives, legal representatives), civil defendant (his representative), a representative of the legal entity in respect of which the criminal proceeding is conducted⁷. It is these participants in the criminal proceeding who take an active part in establishing the circumstances of the criminal offense and, based on the evidence available in the proceeding, take procedural actions, make procedural and tactical decisions.

Each of these entities has its own statutory tasks and pursues its own goals while performing its functions in the proceeding. We consider it necessary to investigate the connection between the specifics of the evidentiary activity of the representatives of the prosecution party and the tasks, the goals they have, through the prism of the philosophical concept of teleology.

In special literature, teleology is defined as the doctrine of purpose, expediency, according to which human activity is directed to a specific goal and subordinate to it, as well as the consideration of things, phenomena in terms of expediency as opposed to causality, or as a supplement to it. The teleological approach focuses on the question – for what purpose one or the other process is

⁷ Vapniarchuk V., Theory and practice of criminal procedural proof.: monograph. Kharkiv: Yurait, 2017. p. 408

carried out⁸. In the legal doctrine, the laws of teleology are reflected in the principle of expediency.

Expediency is one of the key principles of legal responsibility, where the mentioned principle consists in conformity of measures of legal responsibility to its purposes⁹. In criminal law, the principle of expediency is revealed through such key characteristics as the need to achieve the goals and objectives of criminal law, the choice of those criminal-law measures that may achieve the goals and objectives of criminal law and the relevance of criminal-law measures to specific circumstances and trends in criminal law¹⁰.

Within the criminal procedural law, this principle was not singled out by the legislator as an independent one. However, a systematic analysis of the provisions of criminal procedure legislation makes it possible to assert significant impact of the named principle on criminal proceedings and procedural activities of its participants. We agree with I. Ivasyuk, who believes that the principle of expediency is inherent in the criminal process of any state, including the Ukrainian one. According to the quoted author, the pre-trial investigation and trial should be rational, aimed to perform the tasks of the criminal process most effectively on the one hand, and to ensure respect for the rights and freedoms of its participants on the other¹¹.

The principle of expediency in criminal proceedings can be considered in a broad and narrow sense. In a broad sense, this principle directs the activities of participants in criminal proceedings to implement the general tasks of criminal proceedings. Such tasks form the purpose and the goals which should be reached as a result of the procedural resolution of any criminal-legal conflict.

Most generally, tasks of criminal proceedings are set out in Art. 2 of the Criminal Procedure Code of Ukraine. These include the protection of the individuals, society and the state from criminal offenses, protection of the rights, freedoms and legitimate interests of participants in criminal proceedings, as well as ensuring prompt, complete and impartial investigation and trial so that everyone who has committed a criminal offense is prosecuted to the extent of his guilt, no innocent person has been accused or convicted, no person has been subjected to unreasonable procedural coercion and that proper legal procedure has been applied to each participant in the criminal proceedings¹². In order to achieve the

⁸ Shynkaruk V., *Encyclopedic Dictionary of Philosophy* / H. Skovoroda Institute of Philosophy of the NAS of Ukraine. Kyiv: ABRIS, 2002. p. 742

⁹ *General Theory of Law*: edited by Petrishin O. Kharkiv: Law, 2020. p. 568

¹⁰ Stepanenko O., *The principle of expediency in the criminal law doctrine and criminal legislation of Ukraine*: Thesis. Cand. Sc. (Jurisprudence): 12.00.08. Odessa, 2017. p. 249

¹¹ Ivasyuk I., *Expediency as a philosophical and legal category and its manifestation in the system of principles of criminal proceedings*. *Our law*. 2013. №. 8. p. 122-127

¹² *Criminal Procedure Code of Ukraine*. Code of Ukraine; Law, Code 13.04.2012 № 4651-VI // Law of Ukraine / Verkhovna Rada of Ukraine. URL: <http://zakon.rada.gov.ua/laws/show/4651-17>

stated goals, only legal means should be chosen (parts 1, 2 of Article 9 of the CPC of Ukraine), which demonstrates the inseparable connection between the principle of expediency and the principle of legality.

In particular, all procedural decisions and procedural actions in criminal proceedings should be expedient. For example, in accordance with Part 1 of Art. 223 of the CPC of Ukraine, the purpose of all investigative (search) actions is to obtain (collect) new evidence and verify already obtained ones in a particular criminal proceeding. The factual basis for any investigative (search) action is the internal belief of the authorized subject about the possibility of achieving the purpose of such action. According to Part 1 of Art. 94 of the CPC of Ukraine, such a belief must be based on a sufficient set of appropriate, reliable and admissible evidence in the specific proceedings.

In our opinion, the narrow understanding of the principle of expediency in criminal proceedings is connected with the differentiation of procedural functions and tasks of the participants in criminal proceedings. This understanding is based on the focus of each participant in the criminal process on the implementation of his personal tasks, achieving his own goals. S. Patyuk rightly emphasizes that given in Art. 2 of the CPC of Ukraine tasks are general, but there are also tasks that are inherent in certain stages of criminal proceedings, to the parties to criminal proceedings, etc.¹³ It can be argued that the tasks of all subjects of proving in criminal proceedings are in one way or another aimed at the implementation of the general objectives of the proceedings and derive from them. These tasks are specified due to the procedural function of the subject, its procedural interest, the situation in criminal proceedings at its appropriate stage, and a number of other factors that need to be investigated.

Scholars define proving as the activity of subjects of criminal proceedings on collection and examination (verification and evaluation) of evidence, formation of their own positions on the basis of such evidence and implementation of these positions according to the criminal procedural law¹⁴. Evidence is collected and verified by carrying out the procedural actions provided by law. The result of proving (the use of evidence), in accordance with Art. 94 of the CPC of Ukraine, is to make certain procedural decisions in criminal proceeding. In this context, procedural decisions should be divided into intermediate ones (for example, about subsequent procedural actions in a pre-trial investigation or trial) and final ones (closing criminal proceedings, drawing up an indictment and sending it to court, final court decisions, etc.). Any procedural decisions are a necessary part of the procedural activities of authorized entities and are aimed at achieving their objectives in criminal proceedings.

¹³ Patyuk S., Tasks of criminal proceedings. Scientific Journal of the National Academy of Internal Affairs. 2013. № 1. p. 95-101

¹⁴ Kaplina O., Shilo O., Criminal proceedings. Educational and methodical manual, Kharkiv: Pravo, 2019. p. 584

In addition, within the evidentiary activity, authorized persons (investigator, interrogator, prosecutor) make tactical decisions, use tactical techniques and other tactical means to achieve the purpose of the procedural action or the tasks of the proceeding as a whole. V. Bernaz and S. Smokov note that procedural decisions consist in the choice of ways and means of achieving both general and specific tasks of the investigation. Such decisions, in contrast to procedural ones, do not directly cause emergence, change or termination of procedural relations, but affect the situation of the investigation in order to resolve it¹⁵. O. Bululukov writes that the adoption of tactical decisions by investigators is conditioned by the need to obtain evidentiary information and to identify the person who committed the criminal offense¹⁶. According to V. Bernaz, a tactical decision consists of the goal for which it is determined, the subject or subjects of its adoption and the means to achieve the goal [11, p. 45]. Thus, we can conclude that the tactical decisions of the investigator, interrogator and prosecutor are characterized by an obvious teleological (target) conditionality.

Within the framework of the proposed research, the process of goal-setting in criminal proceedings and the impact of the goals set for the representatives of the prosecution party in their evidentiary activities are of scientific interest.

The specific tasks of participants in criminal proceedings are primarily determined by their procedural functions. For the subjects of proving, evidentiary activity is one of the main components of their procedural functions.

I. Glovyuk defines criminal procedural functions as areas of criminal procedural activity, which are characterized by the presence of their own tasks, at the achievement of which the activities of the subjects are aimed. The criminal procedure function determines the rights and responsibilities of the subject of the process, determines its purpose and role [12, p. 40]. According to O. Baev, the criminal procedural decisions of the prosecutor, the investigator are determined by their functions in criminal proceedings and are aimed at ensuring the most optimal, rational criminal prosecution. Decisions of the defense, in his opinion, have the opposite direction and largely determine the entire course and complexity of criminal proceedings at all stages.

Evidentiary activity is a large part of the procedural functions of the prosecution party. In accordance with Part 1 of Art. 92 of the CPC of Ukraine, one of the responsibilities and, consequently, the tasks of the prosecutor, investigator and interrogator¹⁷ is to prove the circumstances provided for in Article 91 of the CPC of

¹⁵ Bernaz V., Smokov S., Investigator's decision (forensic, procedural and psychological aspects): monograph. Odessa: Publishing House of the Odessa Law Institute, 2005. p. 151

¹⁶ Bululukov O., Optimization of tactical decisions: subjective and objective conditionality. Problems of legality. 2016. №. 133 p. 166-177

¹⁷ Systematic interpretation of the cited norm in conjunction with Art. 40¹ of the CPC of Ukraine and other provisions governing the procedural status of the interrogator, allow us to conclude unequivocally that the duty and task of proving rests with him as well.

Ukraine. Provisions of Art. 36, 40, 40¹, part 2 of Art. 93 and a number of other norms of the CPC of Ukraine provide the listed subjects with a wide range of powers aimed at the implementation of evidentiary activities in criminal proceedings.

It seems that a correct understanding of the evidentiary tasks of the prosecution party is impossible without an analysis of the impact of the principle of publicity provided for by the Art. 25 of the CPC of Ukraine. According to the latter, the prosecutor, investigator (and interrogator) are obliged within their competence to initiate a pre-trial investigation in each case of direct detection of signs of a criminal offense (except when criminal proceedings can be initiated only on the basis of the victim's application) or in cases of receiving statements (notifications) about the commission of a criminal offense, as well as to take all measures provided by law to establish the event of the criminal offense and the person who committed it.

Thus, during the pre-trial investigation, the investigator and interrogator under the procedural guidance of the prosecutor are obliged to carry out evidentiary activities, which is to establish and confirm circumstances provided by Art. 91 of the Criminal Procedure Code of Ukraine in order to implement the task of ensuring a prompt, complete and impartial investigation and other general tasks of criminal proceedings. In court hearing, the prosecutor upholds the public (state) prosecution by submitting court evidence that confirms the position set out in the indictment in order to implement the task of ensuring a prompt, complete and impartial court hearing and other general tasks of criminal proceedings.

These subjects implement the evidentiary tasks by taking procedural actions, making procedural and tactical decisions required by the situation in the proceedings. In addition, these tasks, and hence the means of solving them, vary depending on the stage of the proceedings.

Specific goals achieved as a result of the evidentiary activity of the representatives of the prosecution party are dictated by their procedural functions: prosecution, pre-trial investigation, procedural guidance of the pre-trial investigation, operative support of the pre-trial investigation, etc. However, I. Glovyuk rightly notes that at the stage of pre-trial investigation it is difficult to fully differentiate criminal procedure functions, because in accordance with Part 2 of Art. 9 of the CPC of Ukraine, the prosecutor, investigator (and interrogator) are obliged to thoroughly, fully and impartially investigate the circumstances of criminal proceedings, identify both accusatory and exculpatory evidence and circumstances, which mitigate or aggravate the punishment, provide a proper legal assessment and ensure the adoption of lawful and impartial procedural decisions.

Special attention should be paid to the evidentiary activities of operatives as representatives of the prosecution party at the stage of pre-trial investigation. According to Art. 41 of the CPC of Ukraine, as a general rule, operatives do not have

procedural independence, cannot carry out procedural actions in criminal proceedings on their own and can't initiate or apply to the investigating judge or prosecutor. The mentioned subjects may carry out investigative (search) actions and covert investigative (search) actions in criminal proceedings only on the obligatory written instructions of the investigator, prosecutor, while using the powers of the investigator. Thus, in cases of collection or examination of evidence by the officers of the operational units, the subject of proving is the person who gave the relevant order, while the employees of the operational units themselves perform an auxiliary evidentiary function. However, operatives do make their own tactical decisions when carrying out evidentiary activities.

Another criterion that forms the specific objectives of the evidentiary activity of the participants of criminal proceedings is their procedural interests. Procedural interest can be defined as a conscious desire of the subject of criminal proceedings, which is due to the substantive interest or the need to implement criminal procedural competence/criminal procedural obligation in order to achieve the objectives of criminal proceedings and aimed at effectively meeting public, state or private needs. These interests are carried out in criminal proceedings by using legal remedies provided by criminal procedure law¹⁸.

O. Shpotakivska believes that public (social) and personal interests are most characteristic of the criminal process. The quoted author connects the public interest with the tasks of criminal proceedings, and its implementation – with the activities and powers of officials conducting criminal proceedings. In her opinion, personal interests are primarily inherent in persons who are directly interested in the results of the proceedings. Such persons are the suspect, accused person, victim, civil plaintiff, civil defendant¹⁹. We believe that the representatives of the prosecution party, as well as the investigating judge and the court in criminal proceedings do not have their own criminal procedural interests and instead are guided by the public interest, which is expressed in the previously analyzed Article. 25 of the Criminal Procedure Code of Ukraine.

Thus, the evidentiary activity of the representatives of the prosecution party is aimed at fulfilling their tasks in criminal proceedings and at realization of public (social) interest. To do this, such persons must choose the most effective and rational ways, means of gathering and examining evidence, make appropriate and legitimate tactical and procedural decisions in order to comprehensively, fully and impartially investigate the circumstances of criminal proceedings.

However, professional deformation, the need to meet formal and informal indicators of detection and investigation of criminal offenses, a significant

¹⁸ Glovyuk I., Criminal-procedural functions: theoretical and methodological principles and practice of implementation: Thesis. Cand. Sc. (Jurisprudence): 12.00.09. Odessa, 2017. p. 602

¹⁹ Baev O., Criminal procedural decisions and decisions in criminal proceedings. Scientific Journal of the Voronezh State University. 2009. № 1. p. 329-340

workload may force the prosecution to focus on the evidence of an accusatory nature and ignore the exculpatory ones, to abuse procedural rights or violate the requirements of procedural law in the course of evidentiary activities. The literacy of the means of proof is also influenced by the level of education and personal experience of such an authorized person.

Summarizing the above, it can be concluded that the investigator, interrogator and prosecutor choose certain methods, means of collecting and examining evidence, as well as make tactical and procedural decisions in view of their goals (objectives) in criminal proceedings. The tasks of such subjects originate from the general tasks of criminal proceedings and are specified due to the procedural status, procedural interest of the subject, his personal and professional qualities, the stage of the proceedings and the situation in it.

The evidentiary activity of the representatives of the prosecution party is aimed at the realization of the public (social) interest and their procedural functions. These persons must choose the most effective and rational ways, means of gathering and examining evidence, make appropriate and legitimate tactical and procedural decisions in order to comprehensively, fully and impartially investigate the circumstances of criminal proceedings. The implementation of such tasks may be adversely affected by the need to comply with official and unofficial indicators of detection and investigation of criminal offenses, significant workload, professional deformation, low level of education or insufficient personal experience of these persons.

Prospects for further research in this area are related to clarifying the patterns of teleological (target) conditionality of the collection, examination and use of evidence by the defense party, victims and other subjects of proving in criminal proceedings.

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