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The Purpose of the Criminal Procedure and Its Importance For Determining the Method of Criminal Procedure Activity

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Abstract: In this article, the author finds out that comprehensiveness, completeness and objectivity in the science of criminal proceedings are given a special status - the status of either a basic cognitive principle or a method. Without setting ourselves the task of separating the concepts of principle and method at this stage, we will only note that in both the first and second cases the most important and exceptional importance of comprehensiveness, completeness and objectivity is emphasized. And it is these categories in their unity that can lead us to the cognitive goal of the criminal process. It is they, in our opinion, that act as the very method of the criminal process, which nothing in the activity itself should interfere with and which should become the basis for the formation of the criminal procedural law and changes to it.

Key words: criminal process, comprehensiveness, completeness and objectivity of the criminal process, special status, objectives of the criminal process, goals of the criminal process, the meaning of the criminal process.

INTRODUCTION

The criminal process by its nature is a cognitive activity. This conclusion can be made due to the core provision of evidence in criminal proceedings, which is the essence, the basis of criminal procedural activity [1]. Meanwhile, “any activity is “methodological,” that is, it is always carried out using certain methods” [2]. This means, like any activity organized in a certain way, the criminal process must have its own method.

In criminal procedural science, the question of method in this aspect has not been raised. However, today, when changes in the criminal procedural law have acquired features of regularity and are not always systemic, it seems extremely important to understand what is the method of the criminal process and what is its significance for all criminal procedural activities. After all, a correct understanding of the method contributes to a correct understanding of the entire process and its organization. Having learned that there is a method and what it is in the criminal process, we will be able to trace the conditionality of the existing form of the process, the principles of the process, and also find in the process what interferes with its method and makes the activity ineffective. This is an attempt to find methodological flaws in the construction of today's criminal process, starting from the foundation, and not relying on often dubious practical experience, which only leads to patching holes, but not to eliminating the cause of inefficiency.

In finding and understanding the method of criminal proceedings, another category can help us - the goal. Any method of any activity is determined by the purpose of this very activity. Such a connection was identified even during the birth of modern philosophy. In particular,

Francis Bacon [3] and then Rene Descartes [4] wrote about the conditionality of any method by purpose.

Later, in a generalized form, a description of the connection between method and goal can be found in Hegel. The great philosopher's method is knowledge. Knowledge of how to act in order to comprehend the truth, the goal. This is correctly written about in the following fragment: "Since the goal is finite, it further has a finite content; thus, it is not something absolute or completely reasonable in itself and for itself. The means is the external middle term of the inference, which is the fulfillment of the goal; in the latter, therefore, the rational within it appears, as one that preserves itself in this external other and precisely through this externality. Insofar as the means are something higher than the final goals of external expediency; the plow is more honorable than those immediate pleasures that are prepared by it and serve as goals. The tool is preserved, while immediate pleasures come and are forgotten. In his tools, man has power over external nature, while in his goals he is rather subordinate" [5].

In criminal procedural science, the need to understand the purpose and method of the criminal process in order to build it in practice was also pointed out. The famous Austrian proceduralist J. Glaser wrote: "The structure adopted by the legal process depends on the theory of the process, based on the study of its goal and the means to achieve it" [6]. This emphasizes the special need to determine the goal of the process and to understand the connection between the goal and the means for constructing or understanding the entire legal process. Quoting Yu. Glaser, N. N. Polyansky added: "Clarification of the purpose of the criminal process is a task of outstanding theoretical and practical interest. Therefore, the question of the purpose of the criminal process should be considered as the first and main question of the emerging general theory of the criminal process" [7].

However, before denoting anything, it is worth making a reservation that we will be interested precisely in the cognitive goal of the criminal process, or more precisely, in the goal of proof, which, due to the core position of the proof itself, is the goal of the entire process. At the same time, we do not agree with the conclusion of R. A. Khashimov that the use of the phrase "goals of the criminal process" would be incorrect. According to the author, we can only talk about "goals in criminal proceedings" [8]. The main argument in favor of this conclusion is as follows: "The goal cannot be inherent in any systems and processes; the goal is inherent only in conscious human activity" [9]. We have already indicated above that the criminal process in its cognitive aspect is nothing more than a cognitive, conscious (in principle there can be no other activity) activity. Perhaps the author considers the criminal process more broadly, as a social phenomenon, etc., but its core, its essence is precisely its activity-based nature, due to which we consider it more than acceptable to talk specifically about the goals of the criminal process.

Of course, the criminal process is multi-purpose in nature, the number of goals of the criminal process is determined by scientists in different ways, but beyond the scope of our article are all the goals that are set for the criminal process outside of its cognitive characteristics, i.e. goals not related to proof. Moreover, the question of the goals of the criminal process, not related to proof, is resolved by the authors differently, depending on what the vision of the criminal process of a particular scientist is based on.

The question of the cognitive purpose of the criminal process was resolved simply for quite a long time. The purpose of evidence in criminal proceedings was (and is still considered by many) truth. The term "truth" itself in indicating the purpose of the criminal process was used by one of the first by Ya. I. Barshev in a work published in 1841. [10] The term "truth" was also used as an indication of the purpose of the criminal process [11] . Nowadays it can be argued that specifying truth as a goal in criminal proceedings is the most common in domestic science [12].

It is inappropriate to challenge the designation of truth as the goal of the criminal process, the goal of proof within the framework of this article. Moreover, at present there are works in which this work has been carried out, and most importantly, in these works there are arguments that seem convincing to us and have not yet been adequately refuted by anyone.

Thus, A. S. Barabash, after a serious scientific analysis and generalization of views on truth as the goal of the process, writes: "... the concept of truth in the cognitive process is vague and can hardly organize cognitive activity" [13]. Indeed, the goal must be specific. Only then will it be able to fulfill its organizing function in activity. The concept of truth in philosophy is not defined, and the understanding of truth as the correspondence of knowledge to reality immediately gives rise to a lot of questions: what is knowledge about; what kind of reality, if the crime happened in the past, etc. Any author's content of the term "truth" raises at least questions about the validity of it, since initially this is a philosophical category. Well, the author's definition of the concept "truth" again leaves questions about the specificity of the goal - in any case, it must be deciphered for the subject of the activity, so that he understands what is hidden behind the truth and how to strive for it.

Refusal to understand truth as the goal of the criminal process, according to A. S. Barabash, entails the following consequences: 1) the dispute about whether truth is the goal or principle of the criminal process is eliminated; 2) the basis for disagreement about the content of the truth established in the process disappears [14]. In other words, there is space to search for a real, concrete goal, rather than an abstract definition of it.

We have already raised the question above: what should be the knowledge that supporters of truth as the goal of proof propose to consider true? What is the content of this knowledge? The answer is obvious. The legislator himself determines what knowledge should be obtained. He does this in Art. 73 of the criminal procedure law, listing the circumstances to be proven. The latter, in turn, are based on criminal law, the norms of which act as a kind of program for the work of the subject of proof and fill the circumstances of Art. 73 specific content. Thus, the cognitive purpose of the criminal process is to establish the circumstances to be proven. We find confirmation that they should be considered as goals in Art. 85 of the Code of Criminal Procedure, which deals with the process of proof and emphasizes that it (proof) is carried out in order to establish the circumstances provided for in Art. 73 of this Code.

In this case, the circumstances are established when there is mutual correspondence of information about each other and their practical verification, which is carried out within the framework of experimental actions. Within the framework of such a dialogue, we obtain knowledge when we compare our existing assumptions, versions built on the basis of the initially received information, with reality, obtaining new evidence that transforms assumptions into confidence [15].

It is interesting that in some works in which truth acts as the goal of proof, revealing the content, the authors, one way or another, talk about establishing the circumstances to be proven. Thus, G.V. Starodubova writes that part of the truth is a sufficient set of information about the circumstances [16]. G.A. Pechnikov also points out that the truth is established through a comprehensive, complete and objective study of the circumstances [17].

So, at the center of criminal procedural activity is the goal of establishing the circumstances to be proven. List of circumstances Art. 73 indicates that information must be obtained about both the guilt and innocence of the person and the circumstances associated with one or the other. This, in turn, indicates that the subject of proof has the goal of establishing all the circumstances that have legal significance for qualifying the act, if its criminal nature is established, and determining the punishment, if it should be assigned accordingly. Contents of Art. 73 is determined by the provisions of the Criminal Code. It contains everything that is needed to ensure that the acquired knowledge is correlated with the norms of the Criminal Code, if there has been a crime. And the purpose of the criminal process is to gain knowledge about what happened in the past in order to be able to qualify the act. In the event that the acquired knowledge does not allow the past event to be classified as a crime, the criminal case is terminated or an acquittal is rendered.

What general method should the criminal process have in order to guarantee the fulfillment of the designated purpose? We have reason to believe that the method of criminal proceedings is the comprehensiveness, completeness and objectivity of the study. Only

comprehensive and objective knowledge can lead us to the cognitive goal of the criminal process discussed above.

Comprehensiveness and objectivity in their unity are the basis of dialectics in philosophy. It is indicated that it is these principles that should be decisive in relation to all other principles, because in their removed form they contain them in their content [18]. Different philosophers build different systems of principles of dialectical logic. But no matter how many of them there are - 4 or 20 - all of them are in one way or another based on objectivity and comprehensiveness. For example, the principle of the subject's activity in cognition is highlighted separately. But you can't explore comprehensively without being active. The requirement for activity naturally follows from the requirement for comprehensiveness. The same "absorption" can be seen in relation to other principles and provisions of dialectics. It should also be noted here that in philosophy completeness is part of comprehensiveness [19].

For criminal procedural science and reality, the comprehensiveness, completeness and objectivity of the study also have a special status. The most common understanding of this provision is as a principle of criminal proceedings. This tradition arose after the normative extension of this provision to all subjects of proof in the Code of Criminal Procedure of the RSFSR of 1960.

However, the current Code of Criminal Procedure of the Russian Federation no longer contained this provision at the time of adoption. The question of what the comprehensiveness, completeness and objectivity of the study now means hung in the air and required resolution, since the designated terms had not disappeared from the law. An indication of them can be found in Art. 152 and 154 of the Code of Criminal Procedure of the Russian Federation. True, in the first case only completeness and objectivity are mentioned, and in the second - comprehensiveness and objectivity. In addition, objectivity in conjunction with impartiality is separately mentioned (Part 6 of Article 340 of the Code of Criminal Procedure of the Russian Federation). Such a chaotic mention may indicate that the legislator cannot hide from these provisions in our process, even if there is an intention to actually remove them from the domestic criminal process.

The problem is that the normative consolidation of the principle of criminal procedure is its obligatory feature. In fact, deriving a principle from the norms of law in criminal proceedings is unacceptable. On this occasion, in one of the works of A. S. Barabash, it is correctly noted that in criminal proceedings there is a particular importance of normative consolidation of principles. It is due to the possibility of intrusion of state bodies into the personal lives of citizens during the investigation and consideration of criminal cases, and in some cases the restriction of constitutional rights can be very significant. Deriving the content of the principle by interpreting the norms can lead to the fact that, taking care of their own uniquely understood interests, representatives of state bodies will give such an interpretation and apply it in such a way that there will be no trace left of the guarantees of the rights and legitimate interests of citizens [20].

Nevertheless, the lack of direct normative support for the comprehensiveness, completeness and objectivity of the study does not prevent modern science from drawing an unambiguous conclusion that this triad is nothing more than the principle of criminal proceedings [21]. And even those who meekly accept the position of the legislator, who excluded comprehensiveness from the system of principles, write that to investigate comprehensively, completely and objectively is the direct responsibility of the subject of proof, despite the absence of direct instructions in the law [22].

We can only agree that the requirement of comprehensiveness, completeness and objectivity has not disappeared from the domestic criminal process. It is traditional for Russia in this area, as we found out above, and today it exists at least in the form of a principle of criminal procedure in the minds of individual scientists and law enforcement officers.

However, firstly, comprehensiveness still does not have normative support, but is nevertheless perceived as a principle. Secondly, is this a simple principle of the criminal process,

or is there something special in it that allows it not to be fixed, but to organize the process of investigating a criminal case?

The special status of comprehensiveness, completeness and objectivity has been emphasized ever since these terms received formalization and were filled with more or less clear content. And there was a serious philosophical basis for this. Let me remind you that we indicated that it is objectivity and comprehensiveness that are the basis of the dialectical method of cognitive activity.

Thus, in the collective work "The Theory of Evidence in Soviet Criminal Procedure" it is indicated that there are two principles that cover the institutions and norms of all procedural law: a) the principle of legality, b) the principle of comprehensiveness, completeness and objectivity of the study of the circumstances of a criminal case. Their content and significance are revealed in other, more specific principles of the criminal process [23].23 And if we take into account that the authors understand legality here as a general legal principle, then the first among procedural principles is comprehensiveness and others like it. With reference to the works of M.A. Cheltsov and other scientists, the authors state that this principle is expressed in all institutions of the law of evidence [24]. Y. P. Garmaev also points out: "Among the norms excluded from the current criminal procedural legislation by the newly adopted Code of Criminal Procedure of the Russian Federation, there is one that was perceived by many generations of judges, prosecutors, investigators and interrogators not just as a principle, but rather as the basis of the foundations of criminal proceedings." [25]. In S.K. Pitertsev we find the following on this matter: "It turned out that not only the most important, but also the only principle that determines the cognitive nature of all legal proceedings as a whole and aimed at ensuring proper - high-quality - knowledge of the circumstances of the crime both in pre-trial and judicial proceedings has been lost. its (legal proceedings) stages" [26]. A. S. Akhmadulin points out that comprehensiveness, completeness and objectivity in the hierarchy of procedural concepts should occupy a priority position [27]. And there are many such examples of giving comprehensiveness, completeness and objectivity a special status in criminal proceedings. For the most part, this is done intuitively, without demonstrating sufficient argumentation. However, given the place of comprehensiveness and objectivity in philosophy, this intuitiveness is easy to explain.

In science, although not fully expressed, there is still an understanding of comprehensiveness, completeness and objectivity as a method of criminal proceedings.

Thus, V.S. Burdanova considers this triad both as a goal of proof and as a research method. At the same time, when deciphering comprehensiveness as a goal of proof, the author points out that this means establishing all the circumstances to be proven, and the essence of the comprehensiveness method reduces to the mandatory fulfillment of a number of requirements [28]. At the same time, on the first aspect, we have only terminological disagreements with the indicated author. In terms of content, our interpretation of the goal outlined above practically coincides with the one given above. The second aspect is exactly what we pointed out - comprehensiveness is given the status of a method in criminal procedural science.

V. T. Tomin in one of his works writes about comprehensiveness, completeness and objectivity: "I also believe that there is no such principle in the domestic process... According to my calculations, the analyzed general position is a means... a means of implementing the principle of objective truth" [29].

We find the clearest understanding of comprehensiveness, completeness and objectivity as a method in N. G. Stoiko. He talks about the investigative, or "scientific" method, the essence of which lies precisely in the provisions under consideration. "The scientific method is a method of comprehensive, complete and objective examination of the circumstances of a criminal case in order to discover the truth. It requires each state body participating in the criminal process not to adhere to any one pre-established position, but to put forward and check all possible versions of both an accusatory and exculpatory nature, identifying every circumstance necessary to protect the legitimate interests of both the accused, and the victims. As a result, all versions must be excluded except one (when a system of evidence has been formed in which each piece of

evidence is necessary, and all together are sufficient to formulate reliable answers to all questions posed for resolution before the court)" [30]. And further, regarding the lack of indication of comprehensiveness in the modern Code of Criminal Procedure of the Russian Federation, the author writes that he does not officially indicate the need to use the investigative method. However, the method itself actually follows from a number of articles of the Code of Criminal Procedure of the Russian Federation. The author, conducting a comparative study, points to the consolidation of the same method in the criminal procedural laws of France and Germany [31].

So, in procedural science, individual scientists assign a special place to comprehensiveness, completeness and objectivity in the system of principles. For them, this is the most important and perhaps the only principle that determines the cognitive side of the process. This is not just a principle, it is something that covers all other principles and is the basis of all rules of criminal procedure law in terms of evidence. For others, comprehensiveness, completeness and objectivity are nothing more than a method of criminal procedural activity.

We pretended to find out how the cognitive purpose of the criminal process can help us in determining its method. The only cognitive goal that we have highlighted is the establishment of circumstances to be proven and obtaining reliable knowledge about them. It is possible to achieve this goal only if we rely on general epistemological laws to which knowledge in the criminal process is subject in the same way as scientific knowledge. The basis of modern scientific knowledge is dialectics, the essence of which in turn expresses comprehensiveness, completeness and objectivity.

We found out that comprehensiveness, completeness and objectivity in the science of criminal proceedings are given a special status - the status of either a basic cognitive principle or a method. Without setting ourselves the task of separating the concepts of principle and method at this stage, we will only note that in both the first and second cases the most important and exceptional importance of comprehensiveness, completeness and objectivity is emphasized. And it is these categories in their unity that can lead us to the cognitive goal of the criminal process. It is they, in our opinion, that act as the very method of the criminal process, which nothing in the activity itself should interfere with and which should become the basis for the formation of the criminal procedural law and changes to it.

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