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The Purpose of Criminal Procedure of the Police

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The article examines such categories as the purpose of criminal procedures, objectives and goals of the criminal procedure activity of the police. It also observes the correlation between these categories and shows the author's attitude towards their definition.

Keywords: purpose of the criminal procedure, objectives and goals of the criminal procedure of the police.

There have been debates among scientists (which still continue to be held) concerning purpose, objectives and goals of criminal procedure since long time in the past up till nowadays. The suspension of related issues affects negatively the organization of law enforcement, the arrangements of priorities during its implementation and, therefore, its overall effectiveness. Using the experience accumulated in the related areas of law (especially in the administrative proceedings, where law enforcement is mostly in the same legal and institutional environment) can help us to overcome this problem again.

The Criminal Procedure Code does not state the purpose of criminal proceedings and regulate its purpose. Article 6 of the Code is referred to partially remove this ambiguity: "The purpose of criminal proceedings". However, the content does not match its title and leaves more

questions than answers. To describe the purpose of something means to provide an explanation for its existence. The purpose of any trial is an effective implementation of the relevant rules of substantive law. In the case of criminal proceedings it is a question of criminal law. That is why we agree with Efimichev S.P. and Kalugina A.G. who believe that the main purpose of criminal proceedings is to ensure lawful, justified and equitable application of the criminal law that criminalize and punish perpetrators of certain crimes.

According to the first paragraph of Article 2 of the Criminal Code of the Russian Federation, the purpose of the criminal law is: the protection of the rights and freedoms of man and citizen, property, public order and public safety, the environment and the constitutional system of the Russian Federation of criminal

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violations. Undoubtedly, the implementation of these objectives depends greatly on the quality of the substantive law and other circumstances beyond the competence of the person conducting the criminal proceedings. At the same time, one cannot but take into account that the law enforcement of practice-oriented departmental communication can lead us to an effect opposite to the one that has originally been envisaged by the legislator (even in the case of formal compliance with established procedural rules). In particular, the administrative and jurisdictional police practice provides a lot of examples.

In our view, Paragraph 1 of the first part of Article 6 of the Criminal Procedure Code establishes a very important purpose of criminal proceedings that is protection of rights and lawful interests of individuals and organizations affected by the crimes. This means not only physical help in the restoration of violated rights and interests, but also protection to ensure the safety of interested people because of their involvement in the criminal proceedings. The presence of such an article is a great advantage of the Criminal Procedure Code in comparison with the Code of administrative offenses of the Russian Federation. An obvious omission and oversight made by the legislator is that information about the victim, his / her representative and witnesses at the administrative proceedings becomes available to the people responsible for the crime. The reasons for revenge are quite obvious if you take into account that the imposition of an administrative penalty may result in serious consequences for him / her, for example, parole revocation and the unexpired term of service, dismissal (e.g., because of disqualification from driving), administrative detention and so on. Thus, on the one hand, the victim (witness) reported on administrative responsibility for ensuring that knowingly give false testimony (Article 17.9 of the Code of administrative offenses), on the

other hand, he is provided with no guarantee of security. Obviously, the conditions of the Federal Law of 20 August 2004 № 119-FA “state protection of victims, witnesses and other parties to the criminal proceedings” are not applicable in this situation. Consequently, law enforcement officials do not fulfill the goal of personal security and even threaten him to some extent.

Paragraph 2 of the first part of Article 6 of the Criminal Procedure Code contains a commitment to protect human freedom from non-legitimate and unjustified charges, convictions, restrictions on rights and freedoms, that is, it directs law enforcement agencies to protect the mentioned people from themselves. In our opinion, such permission cannot also be regarded as an objective of criminal proceedings, because the sure method to follow him should abolish the whole law enforcement. The given permission rather contains specified form of legitimacy principle (with a requirement of an active behavior of a law-enforcer in case of a violation or its possibility of rights and freedoms of an individual), which conforms the heading of the second chapter of the Criminal Procedure Code.

Part 2 of Article 6 of the Criminal Procedure Code reflects the purpose of criminal proceedings, as it defines the essence of a concept “implementation of the criminal law”. Unfortunately, the attempt of the legislature to change the practice of policing has not been so successful. Termination of the proceedings initiated by the police is still frequently with the defects in policing.

Opinions in the juridical science regarding the aims and objectives of criminal proceedings usually come in the following: protection of rights, the establishment of the truth, the implementation of the substantive law, the punishment of the offender, the settlement of the dispute, fighting crime, etc. The dominant factor which predetermines the content of the

approaches listed above is a priority of private to public basis in criminal procedure. In addition, the view that the former one prevails, has become increasingly popular in recent years. However, by viewing things in such a way, one omits the existence of an obligation of specially created agencies in every case of crime disclosure to commence proceedings, investigate the case and examine it intrinsically. As a result, by not taking into account the public character of criminal procedure, “from extreme criminal procedure development that was peculiar to Soviet period, when the interests of the state prevailed during the implementation of criminal procedure, we rush at the opposite extreme, seeing the purpose of criminal procedure only in private interests’ security”.

This can be clearly demonstrated even in comparison with the sphere of administrative jurisdictional police activity, where the principle of publicity has very serious peculiarities. If the officials directly find out enough information which indicate the presence of an administrative offence, which is attributed to their competence, a decision to institute proceedings should be made basing on its reasonability and sufficiency of other non-jurisdictional measures undertaken by the police, except the cases directly stipulated in legislation (for example, part 1 of an article 27.12, parts 1 and 2 of an article 27.13 and others of the Code of administrative offences). In other words, if instituting and investigating a case is in essence a state reaction, programmed by the legislation, to the crime committed, administrative proceedings is first and foremost an act of administrative effect, carried out by the police in order to fulfill its goals.

While determining the goals of the criminal procedural activity of the police, it is insufficient, in our opinion, to focus exclusively on the legal purpose of the criminal procedure. It is known that legal process is a peculiar channel for the

operation of legal regulation methods. This lets us consider criminal procedural activity as one of the forms of executing appropriate bodies’ and agencies’ authoritative activity. Even performing criminal proceedings, a policeman is still a policeman. Therefore, it is logical to suppose that every activity by the policeman must be carried out in conformity with the purposes of the police and other provisions of the Federal Act of 7 February, 2011 №3-FA “Police Act”. Furthermore, inability of the police to meet these requirements (even in case of formal fulfilling of the Code of criminal procedure rules) does not let us to assess overall activity of the police as satisfactory. We might suppose that this is the reason why the Code of criminal procedure does not formulate the purposes of criminal procedure. Established in the text of an act as the realization of criminal responsibility norms, it (purpose) will have axiomatic, on the one hand, and ultimately generalized character, because criminal procedure is connected to the specific character of subjects executing it, one way or another.

Goals are certain stages on the way to reach the final purpose of the criminal procedural police activity. In the case concerned the matter is, in our opinion, total, precise and timely realization of criminal law norms as an instrument to achieve goals connected with crime deterrence, thus securing reliable protection of rights and freedoms of human and citizen, of property from illegal infringements, maintaining public order, securing public safety in the sphere of law-enforcement agencies’ competence. We strongly believe that this is the only reason, why the legislator decided to vest the police with criminal procedural powers.

The absence of precise formulation of criminal procedure goals in the Code of criminal procedure inevitably affects the rightness of priorities’ arrangement in the law-enforcement activity, it complicates formation of qualitative

criteria for law-enforcement agencies and promotes the formation of law-enforcer's mechanistic-fragmentary perception of legal-normative material construing the provisions of the Code of criminal procedure (when the process is simplified to the plain fulfilling the requirements of an Act).

Some scientists think that the absence of criminal procedure goals is the most serious disadvantage of the Code of criminal procedure. Indeed, this peculiarity of the Code could hardly be commented, taking into account that the Code of civil procedure (article 2), the Code of arbitration procedure (article 2), the Code of administrative offences (article 24.1) contain formulations of corresponding processes' goals. The Soviet Code of criminal procedure determined the goals of the criminal procedure as well.

Meanwhile, the question about the list of criminal procedure goals may be more complicated than it seems to be. For example, V.O. Belonosov and N.A. Gromov believe, that "the main and primary goal of criminal procedure" is detection of crimes. The same goal was established in the article 2 of the Soviet Code of criminal procedure.

In the meantime, even together with an activity on exposure of perpetrators, such a formulation does not provide comprehensive, total, objective and timely clarification of circumstances of each particular case, which is obviously required for achieving the criminal procedure purpose. In addition to that, an exposure of crimes and perpetrators cannot be regarded as a goal which reflects the specifics of criminal procedure. Achieving of a mentioned effect is frequently provided not during the criminal procedural actions, but as a result of police's supervision powers and performing investigation and search operations.

In conclusion, we want to note that the experience, concerning administrative proceedings, accumulated by administrative science, might promote effective solution of a question about the goals of criminal procedure. This assumption is supported not only by the similarity of normative-legal conditions of criminal procedure and administrative proceedings, but also by almost 30-years of application of formulations reflected in the current version of an article 24.1 of the Code of administrative offences of the Russian Federation.

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О цели уголовно-процессуальной деятельности полиции

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В данной статье подвергаются анализу такие категории, как назначение уголовного судопроизводства, цель и задачи уголовно-процессуальной деятельности полиции. Раскрыто соотношение данных категорий, предложен авторский подход к их определению.

Ключевые слова: предназначение, назначение уголовного судопроизводства, цель, задачи уголовно-процессуальной деятельности полиции.
