GUILTY PLEA IN THE CRIMINAL PROCEDURE OF UKRAINE

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Taking into consideration a high crime rate in Ukraine, the urgent problem of procedural form differentiation arises. Mainly the necessity to accelerate and simplify the proceedings arises in those cases, when to the court sufficient evidence of a person's guilt is served, and she/he does not deny it. In such cases, observing the rights of trial participants, it is possible to try a case without a complete hearing.

Thereby, considerable attention attracts the guilty plea institute, which is widely used in England and the USA, where 70-90 percent of all criminal cases are tried in a simplified manner by entering into the plea between the party for the prosecution and the party for the defense.

In Soviet times, plea agreement as the reason for the reduction and acceleration of criminal case solution was exposed to sharp criticism. However, searching of ways to reduce the judges workload, rapid review and resolution of cases, taking into consideration the ensuring of the accused's rights, compelled researchers to change their attitude - from the critical point and complete rejection to attempts to find the advantages of positive features of the agreement over the negative.

Will Ukraine support the idea of simplification criminal procedures? The answer is contained in the Criminal Procedural Code in draft, worded by V. Moisyk, which provides the implementation of a special judicial decision-making institute.

The drafters propose two conditions, which enable the court to award a sentence without conducting judicial investigation and judicial debates:

1) Full and unconditional consent of the accused (defendant) with the charge brought and civil lawsuit.

2) Making an oral or written motion by the accused after the pre-trial investigation or by the defendant during preliminary judicial hearing, for application of special judicial decision-making procedure.

However, in addition to the abovementioned general conditions, one shall follow the additional conditions:

- Simplified procedure may be applied in cases of misdemeanours or not grave crimes;
- Motion shall be made voluntarily, after consultation with the counsel, and with the awareness of its nature and consequences:
- Brought charge to the person is reasonable and supported by the evidence cumulated in the case, that is, conclusions of person's guilt are not based solely on his guilt pleading;
- The prosecutor and the victim did not object against the motion filed;
- Punishment can't be severer than 2 / 3rds of the maximum term or degree of the most severe kind of punishment foreseen for that crime.

Guilty plea institute is also fixed in the Criminal Procedural Code in draft, prepared by the National Commission for Strengthening Democracy and Consolidation the Supremacy of Law of 11 September, 2008. The draft provides for the court obligation to check the agreement in compliance with the law. This will be an additional guarantee for objective and fair adjudication. However, if the terms of the agreement contradict the law or violate the rights, freedoms or interests of the parties or other people, the court shall not approve it.

Guilty plea is also widely used in some European countries: France, Germany, Spain and Italy. Such procedure responds to international standards: the right to a fair trial (Article 6 of the Convention on Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political Rights), guarantees the presumption of innocence, the right not to testify against himself, right to protection, prompt court hearing and appeal against the court decision.

The advantage of special decision-making procedure application basically consists in criminal justice realization economies and reducing the burden on the judicial system, reducing the terms of detention of the accused and the defendant in custody during the pretrial investigation and court hearing, prompter recovery of the damages caused to the victim.

The introduction of such a procedure is designed to simplify the process and minimize the criminal proceedings costs, and also persuade the defendant to cooperate with the prosecuting agency that permits quickly and effectively uncover the crime.

The new procedure, undoubtedly, has a number of advantages. Therefore, we consider this institute should be introduced in the Ukrainian criminal justice system as soon as possible. It is called upon to be not an exclusive, but usual, the most common form of criminal prosecution realization, which is to save time and the resources in litigation.

BEGINNING OF HUMAN LIFE: CRIMINAL-LEGAL MEANING

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Life is a process that lasts and has its beginning and end. It is the most important, inalienable, inviolable weal of a person. In a.3 Constitution of Ukraine it is declared that human being, his or her life and health, honor and dignity, inviolability and security are considered in Ukraine to be the highest social value.

Determination of initial and final moments of life has an essential criminal – legal value, because it allows to distinguish intentional deprivation of person's life and illegal abortion.

The works of Y.V. Baulin, S.V. Borodin, V.O. Glushkov, O.V. Gorohovs'ka, V.K. Hryshchuk, V.T. Dziuba, M.I. Zahorodnikova, M.J. Korzhanskyi, V.M. Mamchur, V.O. Navrotskyi, V.I. Osadchyi, L.A. Ostapenko, A.A. Piontkovskyi, O.I. Rarog, V.V. Stashys, T.D. Tsybulenko, S.D. Shapchenko, S.S. Yatsenko are devoted to the issue raised above.

There are four approaches for defining the beginning of human life in the theory of criminal law, according to which the right to life arises: 1) from the moment of conception, 2) from the moment of first breath, 3) from the beginning of physiological childbirth, 4) from the moment of birth.

The objective of this work is the research of theoretical provisions concerning the beginning of human life, which is the object of criminal – legal protection. The author aims to give specific arguments as to the correctness or incorrectness of each approach, proposed in theory of criminal law concerning the determination of human life beginning.

The church still remains to be the first to support the idea that life begins from the moment of its conception. O. Rogova adheres to the similar position. She asserts that the limits of the right to life should be extended in time to the moment of fertilization. The argument in supporting of this position is that the prenatal period of existence and development of human being is a prerequisite for his survival after birth, as a necessary and indispensable stage in human development. Therefore, the prenatal period of human life should be protected by law as well as human life after his birth at any of its stages. National legislator does not protect such interests of a person. We consider this viewpoint may be used only at the theoretical level. To put life under the criminal – legal protection from the moment of fertilization is inadmissible, because it is almost impossible to fix the exact moment of conception.

V. Navrotskyi and G. Sharypova are the supporters of the second approach – the definition of life beginning from the moment of first breath. G. Sharypova considers that actions against the fetus during his passage through the generic ways, as well as against already born fetus, but still not breathing, cannot be considered the actions against human life. However, this point of view is very questionable, since there are other signs of life apart from breathing as well. Thus, according to a. 2.1."Instruction on the determination of live – born, stillbirth and perinatal period criteria", affirmed by the Ministry of Health of Ukraine of 29 March, 2006 No. 179, other signs of life include: heartbeating, umbilical cord pulsation, or random movements of casual muscles that sometimes precede the first inhalation. I think that absence of some features does not mean absence of life. To my mind, it is inadmissible to determine the beginning of human life only depending on the sign, which is not unique and cannot appear accidentally.

The representatives of another approach extend time limits of human life and link up the criminal – legal protection of human life with the beginning of physiological childbirth (V.I.Borisov, O.Dombrovs'ka, M.I.Zagorodnykov, M.J.Korzhanskyi, L.Ostapenko, O.I. Rarog, T.D. Tsybulenko etc.). Thus, M.J.Korzhanskyi asserts that childbirth does not begin with bringing a child into the world, but since the time of birth pangs. I can not agree with this position, because the physiological childbirth process is not limited in time, on the whole, and sometimes lasts from several hours to 15 – 17 hours or even longer. Unfortunately, at the beginning of physiological childbirth, and even during the process of delivery, nobody can say definitely, and, moreover, guarantee, that a child will be born alive and viable.

The fourth point of view, highlighted in modern criminal literature (A.M.Krasikov, M.O. Tryasoumov etc.), says that the initial moment of life should be determined on the basis of live – born criteria, established by the Ministry of Health, whereby live birth is the complete expulsion or extraction of the conception product from mother's body, regardless of the pregnancy duration, who,