

Concept of procedural expenses in criminal procedural law

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Key words: *Concept of procedural expenses, concept, analysis of significance, component parts of the concept of procedural expenses, criteria of distinction of procedural costs from other expenses of criminal legal proceedings*

Annotation: *The article deals with the critical analyses of the institute of procedural expenses, problems of their criminal-procedural legislation. The author worked out definitions based on criteria of distinction of procedural costs from other expenses of criminal legal proceedings.*

Criminal justice is always accompanied by some material costs, which are referred to as procedural costs in criminal procedure law. This institution, in addition to the organizational and material support for the implementation of procedural actions at all stages of criminal proceedings, serves as a material basis for the criminal process and protects the financial and material interests of the participants in the process. The study

of its legal nature shows that the mechanism of its application has not yet been clarified, its legal boundaries have not been specifically defined, which in turn adversely affects the effective implementation of the objectives of the criminal procedure law and causes a number of problems in law enforcement practice. It actualizes the necessity of research of scientific and practical problems of the institute of procedural costs and development of their optimal solutions. First of all, it is necessary to bring clarity to the legal regulation of the institute of procedural costs, and then undoubtedly formulate the principal conceptual apparatus of this institution of criminal procedure.

It should be noted that the former legislation referred to this institution as legal costs, and is now called procedural costs. This is due to the fact that the concept of "procedural costs" is somewhat broader than the term "legal costs". Thus, if the concept of legal costs expresses only the material and organizational support of procedural actions



related to the trial, the concept of procedural costs provides for the funding of reimbursement of costs of participants in criminal proceedings at all stages of the criminal proceedings, in particular, the activities of persons responsible for the conduct of criminal proceedings, the parties defending their interests in the criminal proceedings, as well as persons assisting in the administration of justice.

Naturally, the substantial expansion of the scope of procedural costs dictates the existence of a new approach to its procedural and legal definition. For, the majority of definitions of the concept of the institute of legal costs data in domestic and foreign sources do not fully disclose the essence of the institute of procedural costs. In the textbooks of criminal proceedings, it is noted that the procedural costs - is the amount of money paid by the state to some participants in criminal proceedings for the fact that they have fulfilled their obligations, as well as for the storage and sending of physical evidence². As can be seen from the definition, the procedural costs are limited to the payment of money to some participants in criminal proceedings for the performance of their obligations, as well as for the storage

and dispatch of physical evidence, and thus attempt to cover all types of costs.

However, procedural costs do not only consist of higher costs, but also have a wider range of legal effects, both in terms of their properties and their different objectives. Also, from the point of view of the source of security, it should not be forgotten that the procedural costs are not fully paid from the state budget. In particular, article 318 (5), (6), (7) and (8) of the Code of Criminal Procedure does not specify the source of procedural costs at all, whereas article 318 (1) and (4) of the Code of Criminal Procedure only allocate the costs paid to the interpreter to the State budget in full.

The study of foreign experience has shown that the term "procedural costs" has been used in Russian criminal procedure law since 2002 instead of the concept of "legal costs". This is especially noticeable in the views of such scientists as B.T.Bezlepkin, V.I.Radchenko, O.Yu.Kuznetsov, I.A.Pikalov and K.B.Kalinovsky. In particular, according to Radchenko, the procedural costs are the costs of criminal proceedings, which are covered by the state budget or by participants in criminal proceedings. As for this, it should be noted that not all procedural costs are covered by

² See Mirensky B.A., Rakhmankulov A.H., Kamalkhodzhaev Zh., Kadyrova V.V. Criminal Proceedings of the Republic of Uzbekistan: Textbook / Academy of the

Ministry of Internal Affairs of the Republic of Uzbekistan, T.: 2012. -384 C

the parties to the criminal proceedings. Under article 319 of the Code of Criminal Procedure, persons in loco parentis, while retaining the average salary for the entire duration of the summons to assist the person responsible for the criminal proceedings or article 320 in cases involving offences committed by minors, the court may assign the payment of procedural costs to lawyers' offices, public associations or the public, or to the parents of a juvenile convict. If, however, funding from the State budget is the main indicator of procedural costs, then the wages paid from the State budget for the performance of their duties to the bodies and persons responsible for criminal proceedings and other costs must also be included in the list of procedural costs. However, while these costs are taken into account in shaping the overall cost of criminal proceedings, they cannot be attributed to the institution of procedural costs in terms of their legal nature. This means that the legal relationship between the institution and the procedural costs should be analysed in depth before the institution is defined.

In this sense, the definitions proposed by K.N.Yemelyanov and S.V.Bazhanov, who directly investigated the topic of procedural costs more fully disclose the features and sources of compensation for procedural costs. In particular, according to

K.N.Emelianov, "Procedural costs are the expenses provided by the criminal procedure law of the subjects carrying out judicial proceedings (bodies of inquiry, preliminary investigation, prosecutor's office and court), as well as other participants on realization of criminal procedure activity on an establishment of the fact and circumstances of the criminal violation of legal relations protected by the criminal law, collected from the person recognized as guilty in commitment of a crime, other persons participating in criminal court proceedings. Although this definition focuses on the sources of compensation for procedural costs, in contrast to the above definitions, it states that the issue of compensation for these costs may also be entrusted to other parties. However, in our view, these elements are insufficient to cover the entire institution under study and to define its boundaries, as well as to identify its differences from other costs of criminal proceedings. For this reason, without denying the abovementioned inconsistencies and differences in approach in the definition of procedural costs and the definitions given on their basis, it is proposed to develop a definition, which, through the universal coverage of procedural costs and the definition of its boundaries, through the disclosure of its features will make it

possible to identify its difference from other costs of criminal proceedings. At the same time, by means of detailed analysis of the detailed analysis of the criminal procedure definition of the institute of procedural costs it is necessary to start moving in this direction.

Since the term "spending", which was used by the legislator to describe the types of costs in Chapter 40 of the CPC of the Republic of Uzbekistan, consists of such concepts as (spend) using for what-nothing to lose, spend, (spend) spend their money, spend, spend. It is known that from the economic point of view the word "spend" means funds and material values spent by one party in favor of the other party in civil relations or funds and material values that are spent for public relations without returning them in the future in material form. They are spent irrespective of the desire of the person who carries out the expenses in connection with necessity and though in the future their place is compensated in the concrete form, however as a result of it the person who carries out expenses can receive moral-psychological satisfaction, calmness. Therefore, not all funds spent in the course of criminal proceedings can be assigned the status of costs.

Firstly, certain funds spent in the criminal process are used to obtain testimony, expert opinions, specialist assistance, and physical

evidence that are important to the criminal case.

Secondly, the CPC provides that all expenses after the resolution of the criminal case in the manner prescribed by law are recovered from the defendant or other subjects of the criminal process.

In addition, pre-trial and in-court costs incurred by a particular party in fulfilling its procedural obligations or the objectives of the criminal process are paid as compensation in connection with the proceedings. That is, the choice of means and means of proof. Compensation of expenses is mandatory for responsible authorities and legal assistance for those involved in the justice process. If the provision of assistance in the required form at the expense of the expenses paid to the participants is an obligation, then the use of assistance, i.e. the testimony, conclusions of the expertise and others is the right of the responsible authorities. In other words, this form of relationship between participants in criminal proceedings is similar to a civil contract.

Definitions such as "payment," "payment," "compensation," and "compensation" are more commonly used in determining the institution of procedural costs: 1) Obtaining relevant money and rights from (instead of) seized, lost, purchased or damaged items; 2)



fulfilling the payment obligation to return the received money and debt;

3) compensation for damage caused, its coverage, compensation for losses, blood feud. Synonyms of the term "waste", which are the words "waste", are interpreted differently. If "spending" means past actions and the limit of its content is limited, the word "expense" is interpreted as "out of pocket" and the content repeats the word "cost". Also, the word "expense" according to the etymological meaning means expense, the expense for something, in terms of content suggests a specific purpose, and is interpreted as the means expended for the purpose of satisfying the product in any form or achieving any action. Also, the term "cost of content" does not express the public relations, i.e., the direction, source of the expenditure and the scope of the expenditure is broad in comparison with the expenditure, it includes it. From a psychological point of view, the use of the concept of spending for expressing material costs in criminal proceedings creates a perception in the minds of the law enforcer that the legislator mentions them as material costs arising in the course of criminal proceedings and, in itself, excludes the obligation to pay them. If they related to expenses, they would guarantee compensation in the future as an economic concept and oblige to pay them.

It means that the use of the term "expense" in criminal proceedings instead of the term "expense" not only logically and in terms of content corresponds to the purpose, but also on the basis of the potential of the language of knowledge does not give an opportunity to adequately and fully reflect the circumstances related to the organization of investigation and trial in the norms of the procedural legislation.

Terminological properties of procedural costs are an important factor in the description of this concept. However, it entails the need for a critical analysis of the criteria for determining procedural costs that should be taken into account when improving them:

The first criterion is the orientation of procedural costs to the implementation of the priority tasks of the criminal procedure legislation, quick and complete detection of crimes, exposure of the perpetrators and ensuring the correct application of the law so that everyone who has committed a crime was subjected to fair punishment and no innocent person was brought to justice and convicted. In this regard, it should be mentioned that the costs of materially equipping the workplaces of employees responsible for criminal proceedings, salaries for the performance of their duties or other payments, as well as payments to experts, specialists and interpreters for the



fact that they performed their duties during the investigation, preliminary investigation or trial are not related to procedural costs. This is the basis for considering the procedural costs only those costs that have been spent on the tasks of the criminal procedure law.

The second criterion is the focus of procedural costs on the implementation and execution of the tasks of criminal proceedings. The importance of material needs arising during the implementation of financially unsecured procedural actions and their satisfaction makes responsible officials and persons assisting them to solve this problem at their own expense and as a result they have hope for the outcome of the procedural actions they are interested in. In short, procedural costs meet the material and moral needs of persons carrying out procedural actions and participants, their responsible approach to the process and other factors, that is, the practical professional potential of the investigator, available material-organizational and social-psychological aspects, creates the mutual conditions for the action of proportionality, become a material condition for increasing the efficiency of investigative actions, and ultimately achieve a qualitative result.

The third criterion is to assess the effectiveness of the bodies responsible for criminal proceedings on the basis of

procedural costs. In other words, the number of calls from agencies of inquiry, prosecution, investigation and judicial authorities to persons as witnesses or other participants, the number of their involvement in the process of investigation, the appointment of several experts on the same fact, the repeated conduct of homogeneous investigation activities, the return of criminal cases by the prosecutor for additional investigation, the increase of additional costs as a result of this, and on the basis of this it is possible not only to determine the psychological costs of criminal court proceedings

In addition, the concept of procedural costs includes the following deductive components of the part

Firstly, the costs of the organisational activities of the investigator, the investigator and the courts, in particular financial guarantees and material and technical means. Financial guarantees should cover each action from the moment a criminal case is initiated by the investigator and the investigator to his or her legal authorization, and should even take into account the circumstances that may arise in connection with the targeted activity. In this regard, ensuring the performance of the tasks of state, criminal procedure legislative documents, along with their direct assignment to the bodies of inquiry,



investigation, prosecution and courts should include actions to pay the obligations related to the implementation of such activities. Consequently, although the criminal procedure law regulates each part of these costs, i.e. the costs associated with the capture of a person, their forcible removal and search, storage and dispatch of physical evidence, they do not reflect the sources of their compensation and the procedural procedure for their compensation;

Secondly, the costs of material support for the costs of participants in criminal proceedings who facilitate criminal proceedings. This includes the cost of coming to the place of investigation of the victim and his or her representatives, witnesses, experts, specialists, interpreters, witnesses, public prosecutors and public defenders, the cost of renting a place of residence, per diem costs, funds associated with distraction from normal activities, ensuring the preservation at the workplace of the average monthly salary for the period of delivery of the person to the investigator, prosecutor or summons to court. In turn, based on the share of their participation in the proceedings, participants are organized incentives, compensation of expenses, and their establishment in the criminal legislation is undoubtedly the basis for the conscientious performance by participants in criminal proceedings of their procedural

duties, and also serves to improve the quality of judicial proceedings;

Third, the costs associated with the storage and movement of evidence. That is, the storage of the evidence collected, especially physical evidence, without compromising the properties that are important to the case, as well as the financial costs associated with sending, delivering and using it with caution. As the implementation of these measures requires special conditions for the storage. In addition, the production process also identifies costs that cannot be attributed to any of the three types of costs mentioned above. These include the costs of extracting a corpse in the process of exhumation and burial, compensation for physical evidence damaged or completely destroyed during an experiment or examination, compensation for persons who participated as statisticians for identification purposes, the allocation of a criminal case for special proceedings, and other similar costs of criminal proceedings. These, in turn, may be expanded in the light of the circumstances of the case. e of physical evidence, these costs are increased during the long-term storage process. Due to the lack of optimal storage of physical evidence in practice, in most cases, the storage of small evidence and its recording is usually entrusted to a junior inspector or a person in charge, while the storage of large evidence is entrusted to the duty station or



penalty areas of the DASBS (motor vehicles). Most of the large-size evidence is stored in uncovered locations, unprotected from sun and rain, but there are no designated persons responsible for its preservation. These circumstances, in addition to causing a number of discrepancies in case management, also have a negative impact on the enforcement of sentences and court rulings. Also, these costs are manifested in the delivery of physical evidence from the place of storage to the place of investigation, inspection, expertise, related investigative measures, evaluation or obtaining the opinion of a specialist, return to the rightful owner, the costs associated with road vehicles in the execution of the court sentence and payments to the participants who were attracted for assistance. The lack of security

of such payments in itself weakens the process of working with physical evidence and, as a result, cannot but affect the quality of evidence and the establishment of the truth.

On the basis of the mentioned circumstances it is possible to develop the following scientific-theoretical definition: ***procedural costs*** - *the means aimed at material and technical support of the organization of the activity of bodies responsible for criminal proceedings, allowing to assess and protect the financial interests of participants of criminal proceedings contributing to the production of procedural actions, the quality of conducting procedural actions related to the storage, sending, examination of evidence, as well as other costs.*