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THE FUNDAMENTAL IMPORTANCE OF THE BAN ON TURNING FOR THE WORSE FOR THE CRIMINAL PROCEDURE SYSTEM

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The article deals with the problem of the expediency of a criminal case's returning to the prosecutor at the stage of appointment and preparation of a court session in Russian criminal proceedings. This problem is relevant to the science of criminal procedure.

The purpose of the study is to analyze critically the practice of returning of a criminal case back to the prosecutor in order to correct mistakes made at the pre-trial stages of the proceedings according to the new concept of justice independence and the absence of an accusatory bias in the court functioning.

The methodological basis of the study is a set of scientific techniques, focused mostly on the dialectical approach, which made it possible to determine the essential characteristics of the prohibition to turn the criminal proceedings in Russia for the worse. Both general scientific (analysis, synthesis, systematic method) and specific scientific methods (formal-legal, historical-legal, comparative-legal) of knowledge were also used. The analysis helped to formulate the position of understanding the turn for the worse as an independent principle of criminal procedural law, to study the procedural form of the turn for the worse. The synthesis method made it possible to determine the return of the criminal case to the prosecutor at the stage of appointment and preparation of the court session as a holistic institution of the criminal procedure. The systematic approach allowed to determine not only the mixed nature of the mechanism for changing the prosecution to a more serious one, but the investigative organization of pre-trial proceedings and its place in the structure of criminal proceedings, the separation of the investigative and "accusatory powers" of the prosecutors as well as their balance. The historical method let us trace the evolution of the prohibition to turn the Soviet and Russian criminal procedural systems for the worse. The comparative-legal method made it possible to assess the potential of domestic legislators' reception of foreign experience of regulating the prohibition to turn for the worse and formulate proposals to improve the Russian criminal procedural legislation.

The main scientific results of this research consist of justification of the conclusion of the conversion expediency of the domestic judicial proceedings to the adversarial model of accusation which is carried out within the trial on the previously filed charge. The presentation of a new charge (criminal action) in court and the procedure of supplementing the charge change it for the worse. This model of re-indictment for the worse for the defendant appears to be fairer and more convenient both for the prosecuting authority and for the legal organization of combating crime. The changeover to the suggested form of implementation of the ban to turn for the worse in the institution of bringing and changing charges in court is possible only in a systematic link with the reform of the preliminary investigation.

Conclusion. The institution of the criminal case returning by the court to the prosecutor in order to change the charge to a more serious one when implementing the adversarial model of bringing charges in the criminal procedure system of Russia will fully satisfy the concept of independence of justice administration and the absence of an accusatory bias in the activities of the court, while at the same time with fairly organized the prosecutorial power aimed at countering crime.

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1. Introduction

A critical analysis of the institution of returning a criminal case to the prosecutor by the court in order to correct errors made at the pre-trial stages of production while qualifying the committed crime is due to the new concept of the independence of the administration of justice and the absence of an accusatory bias in the activities of the court. Changes made in recent years to the Code of Criminal Procedure of the Russian Federation, expanding the possibilities of a turn for the worse, in the absence of an unambiguous understanding of both the concept of "turn for the worse" and a number of procedural aspects of this problem, causes ongoing disputes in criminal procedure science, as well as difficulties in law enforcement practice.

The relevance of the research topic is determined by the need to substantiate the optimal model for bringing a new charge within the framework of the trial and the procedure for supplementing the charge, changing it for the worse.

A sufficient number of studies have been devoted to the problem of a ban on a turn for the worse in domestic criminal procedure science. So, V.D. Potapov, in his work on the issue under consideration, noted conflicts in the regulation of the inadmissibility of a turn for the worse, manifested in the absence in Art. 401.6 of the Criminal Procedure Code, indications of the significance of the violations committed as a basis for initiating a cassation check and the need to clarify the criminal procedure law in this part [1, p. 15-16].

K.V. Ivasenko, in his study formulated the concept of a ban on a turn for the worse, defined it as a rule, not a principle. The author also described the procedure of the mechanism, desirable for the Russian criminal process, for overcoming the prohibition to take a turn for the worse, including bringing a complaint or presentation by the prosecution to the control instance and considering it by the court only within the arguments set forth in the complaint (representation) [2, p. 13].

S.A. Trukhin, comes to similar conclusions. He studied various aspects of the inadmissibility of deterioration in the position of the face in detail. The author also substantiated the need to enshrine the criteria for the concept of "deterioration of the situation of a person" in the law, suggesting that it should be understood not only as an increase in punishment, a change in the criminal legal qualification to a more serious crime, but also a change in the "grounds for terminating a criminal case from rehabilitating to non-rehabilitating, increasing the size of the penalty in a civil suit, etc." [3, p. 13-15].

I.V. Kilina, having examined the institution of the prohibition on turning for the worse in criminal procedure law thoroughly and came to a number of significant conclusions, including determining the material and procedural grounds and conditions for turning for the worse at the stage of preparation for the trial and in the court of first instance [4 , With. 15-16].

At the same time, the monographic works mentioned above, despite their fundamental nature, are more devoted to the analysis of the prohibition on turning for the worse in the framework of the supervisory and verification stages of criminal proceedings and the rules for overcoming it.

2. Understanding the prohibition of taking a turn for the worse

In the criminal procedural literature and with a restrictive interpretation of the content of the prohibition to turn for the worse, its fundamental significance is recognized. Such an interpretation of the prohibition to take a turn for the worse is certainly correct, but does not exhaust the entire content of this procedural and legal prescription. In our opinion, it has a broader - systemic significance for the entire criminal process, its effect is not limited to relations between judicial instances, but also applies to relations between the court and the prosecutor.

As understood the legal nature of this procedural prohibition, we consider two points, firstly, it is addressed to the court, and secondly, its subject is related to changing the charge to a more serious one or significantly different in actual circumstances from the previous one. We draw a direct connection between the prohibition on taking a turn for the worse, the rule on the identity of charges in court (Article 252 of the Code of Criminal Procedure of the Russian Federation) and the

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procedure for bringing and changing charges.

Based on the meaning of the articles of Chapter 2 of the Code of Criminal Procedure of the Russian Federation, it is necessary to rank among the principles of the criminal process only those rules that apply to all stages of the process or, at least, to pre-trial and trial proceedings.

The analyzed prohibition can be recognized as the principle of the criminal process, since its regulatory impact extends both to relations between courts of various instances and to their relations with the prosecutor due to the need to change the charge on which the accused was put on trial for a more serious charge, or with a legal , or the actual side, or both sides.

We believe that this prohibition extends to pre-trial proceedings and is not limited to the trial stages. In the relationship between the higher and lower courts, an important, but not the only aspect of this prohibition is manifested. Its other component is manifested in the mechanism for implementing the relationship between the prosecutor, as a representative of the "accusatory and investigative" power of the state, and the judiciary in connection with the nomination and change of the accusation in the direction of toughening. For the organization of a common system of checks and balances between the various branches of the rule of law in the criminal process, both of these parts of the prohibition on taking a turn for the worse are important.

We believe that the essence of the ban on a turn for the worse is inextricably linked with the institution of prosecution. After all, it is the subject and grounds of the accusation that ultimately constitute the object of criminal procedural relations between the parties and the court in connection with the revision of the decision of the lower court by the higher instance. This is especially evident in the decision of the court to return the criminal case to the prosecutor.

The institute of prosecution, as is known, along with the law of evidence, constitutes the organizational basis of the entire criminal procedure system [5, p. 75-86]. Hence our conclusion about the principles of analyzed procedural prohibition for the criminal procedural system.

Thus, the prohibition on transformation for the worse and the legal norms derived from it, which regulate the process of changing the charge after the criminal case has been sent to court, are of institutional importance for the organization of the central criminal procedural relationship: the accuser - the court - the accused. The procedure of power separation, the independence of the judiciary and, ultimately, the general organization - the type of criminal proceedings depends on the way the criminal procedure rules of this institution regulate the procedure for the implementation of the powers of the participants in the process regarding the prosecution.

The appearance of norms in our criminal procedural legislation (clause 6, part 1, part 1.1-1.3 of article 237, part 3 of article 389.22, part 3 of article 401.15, paragraph 6 of part 1 of article 412.11 Code of Criminal Procedure), allowing the court to return the criminal case to the prosecutor from any judicial institution to charge the defendant with a more serious crime, indicates that the legislator has completely abandoned the "court-prosecutor" model of relations originally laid down in the code, the subject of which is the prosecution and its change to a more serious or significantly different factual circumstances compared to the one for which the accussed has already been brought to trial.

The former procedural model was built on the rigoristic interpretation of the authors of the Concept of Judicial Reform in the RSFSR (1991)[1] on the prohibition of the court to carry out criminal prosecution: "the court must be freed from any rudiments of the function of criminal prosecution." This, in turn, influenced the understanding by the authors of this Concept - I.L. Petrukhin [6, p. 46-53; 7, p. 27-30], T.G. Morshchakova [8, p. 36-45] - a ban on turning for the worse as a guarantee of the right of the accused to the fact that the court, on its own initiative, neither directly nor indirectly will allow the transformation of his situation for the worse. The court should not allow, through the procedure of returning the criminal case to the prosecutor, the presentation of a new, more serious charge against the defendant, and even more so, it itself has no

[1] Resolution of the Supreme Council of the RSFSR of 24.10.1991 No. 1801-1 "On the Concept of judicial reform in the RSFSR" // Vedomosti SND and Supreme Council of the RSFSR. 1991. No. 44. St. 1435.

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right to subject the defendant to criminal prosecution in connection with new facts of his criminal activity revealed in the judicial investigation.

Sharing this maxim in 1999, the Constitutional Court of Russia actually canceled at first Article 232 of the Code of Criminal Procedure of the RSFSR[2] and the procedure for returning a criminal case for additional investigation regulated by it, and then terminated Articles 255, 256 of the Code of Criminal Procedure of the RSFSR[3], thereby eliminating the Soviet criminal procedure mechanism for changing charges by the court: as unacceptable for adversarial proceedings "link" between the power of prosecution and the court.

In view of the abolition of the institution of returning the case by the court for additional investigation, the court had to consider the criminal case within the charges on which the case was sent to it by the prosecutor, a court session was scheduled, and if it was not confirmed during the judicial investigation, the court had to acquit or terminate the criminal case on a rehabilitating ground . If new facts of the criminal activity of the defendant are revealed they being transferred through the prosecutor's office to the preliminary investigation body, become the basis for a new criminal case and the subject of a new charge.

This mechanism of interaction between the criminal prosecution authorities and the court on the subject of the charge that was laid down in the original version of the Code of Criminal Procedure of the Russian Federation (2000): the norms described in Articles 237, 405 of the Code excluded the possibility of the court returning the criminal case to the prosecutor due to the incompleteness of the evidence of the prosecution irreparable in the judicial investigation or misidentification of its subject matter. Commenting on the legal organization of relations between the court and the prosecutor that had developed at that time in connection with the viciousness of the prosecution revealed during the consideration of the case, the scientists noted: “Since turning the charge for the worse in court is prohibited, the court does not have the right to pass a guilty verdict, adjusting the charge in the true, but unfavorable for the accused side . It seems that in this case a guilty verdict can be issued only on the old charge indicated in the decision on the appointment of the court session, unless, of course, the accuser has renounced this charge” [9].

Such a criminal procedure mechanism did not forgive the mistakes of the criminal prosecution authorities. It assumed a higher level of preliminary investigation and proof of accusations, for which the investigative-prosecuting authorities were not ready. In addition, this mechanism was based on the idea of passivity of the court, which is largely alien to the mentality of domestic judges. Due to the impossibility of the criminal procedure system to correct (promptly) the errors of the prosecution, the legitimate interests of the victims also suffered. The criminal procedure system did not fulfill its purpose in terms of counteraction to crime and protecting victims. Because of this, it was criticized by professionals.

It should be noted that despite the separation of powers the domestic law enforcer still retains corporate unity in the understanding of the “correct” (in the sense of the “convenient” for him structure of criminal justice) and therefore advocated in a consolidated manner in favor of changing the current state of affairs. Initiatives to resolve the difficult situation came from representatives of the prosecutor's office, preliminary investigation bodies, and from the judicial authorities [10, p. 7; 11, p. 122-126].

An expression of the general desire of the professional community was the project to restore the Soviet model of additional investigation, hiding behind the concept of objective truth[4], which may have been the reason for the failure of the legislative initiative. Although the constructive idea itself was soon implemented in positive law.

The Constitutional Court of the Russian Federation began to receive complaints and requests for verification of the constitutionality of the provisions of Art. 237, 405 of the Criminal Procedure Code of the Russian Federation regarding

[2]Resolution of the Supreme Council of the RSFSR of 24.10.1991 No. 1801-1 "On the Concept of judicial reform in the RSFSR" // Vedomosti SND and Supreme Council of the RSFSR. 1991. No. 44. St. 1435.

[3] Resolution of the Supreme Council of the RSFSR of 24.10.1991 No. 1801-1 "On the Concept of judicial reform in the RSFSR" // Vedomosti SND and Supreme Council of the RSFSR. 1991. No. 44. St. 1435.

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the need to protect the rights of victims, but also a more balanced position of private and public interests. The legislator, under the influence of the struggle for the return of the institution of additional investigation, which unfolded in the Constitutional Court of the Russian Federation, gradually began to restore the institution of additional investigation, and with it the canceled investigative model of changing the accusation for the worse. An intermediate step in this lawmaking was the addition of Article 237 of the Code of Criminal Procedure of the Russian Federation with part 1.1. At this stage of the transformation of the mechanism for returning the criminal case to the prosecutor by the court, some scientists still made attempts to stay on the positions of understanding the prohibition on turning for the worse, formulated in the decision of the Constitutional Court of Russia dated 20.04.1999 No. 7-P and interpret the new positive-right in a restrictive sense, and Namely: the return of the criminal case to the prosecutor for the presentation of a more serious charge should be only in the event of the occurrence of new socially dangerous consequences that arose after the criminal was sent to the court [12, p. 10-14]. But then Federal Law No. 64-FZ[5] supplemented Article 237 with part 1.2. And then followed the decision of the Constitutional Court of Russia[6], and the legislator hastened to consolidate this position in positive law: by introducing paragraph six into part 1 of article 237 of the Criminal Procedure Code of the Russian Federation

The history of the struggle for the restoration of the institution of additional investigation was described in detail in the criminal procedure literature [13, p. 82-88; 14, p. 60-62; 15, p. 1246-126516, p. 98-103; 16, p. 20-21; 17, p. 96-100; 18, p. 41-44]. There were various, sometimes very harsh assessments of what happened: "the actual departure from the basic values of adversarial justice in favor of a strong state (court) and the inquisitorial process"[20, p. 6-12]. Without sharing the sharp conclusions and, all the more so, the tone of the adversarialists, one cannot help but recognize the failure of the attempt to impose a ban on the court from performing the function of criminal prosecution by returning the criminal case to the court for further investigation. There was a restoration of the mechanism of interaction temporarily eliminated between the judicial and investigative-prosecuting authorities in connection with the need to present a new charge to the accused or a significant change in the previous one that arose after the criminal case was sent to the court.

However, it must be said frankly that it was inevitable. Such an institution is needed by the criminal procedure system, and in this, Professor N.A. Kolokolov is right [21, p. 28-35]. For the simple reason that in any criminal procedure system there should be a similar mechanism for “correction of the charge”, including the presentation of new charges after the initial charge has been brought to trial.

N.P. Kirillov and I.G. Smirnova, based on the need for strict observance of the rights of all participants in criminal proceedings, they believe that if at the stage of pre-trial proceedings “procedural violations committed by the bodies of inquiry or preliminary investigation” are discovered, the court has the right to independently or at the request of the prosecution party return the criminal case to the prosecutor “to remove obstacles its consideration by the court" [22, p. 119]. Similarly, T.K. Ryabinina considers the possibility of returning the criminal case to the prosecutor an important procedural guarantee of the observance of the rights of the victim in criminal proceedings [23, p. 513]. In the same vein, but linking it with the moral side of criminal proceedings, its social justice and the need for comprehensiveness, legality, completeness and objectivity say N.S. Manova and M.A. Baranov [24, p. 577].

Another question is how this mechanism can be organized. It is known that in various criminal procedural systems, the action of which is based on different procedures for bringing charges: investigative or judicial, this mechanism is fundamentally different [25; 26; 27; 28, p. 27-30].

3. Model of changing the accusation for the worse

In the criminal process of a number of states, including those that were previously part of

[6] Resolution of the Constitutional Court of the Russian Federation No. 2013 No. 16-P / 2013 “In the case of the constitutionality of offenders of the first part of Article 237 of the Code of Criminal Procedure of the Russian Federation in connection with the

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complaint of a citizen of the Republic of Uzbekistan B.T. Gadaev and the request of the Kurgan Regional Court" // Collected Legislation of the Russian Federation. 2013. No. 28. Art. 3881

the USSR, the procedure for bringing charges has changed to the judicial one. For example, paragraph 268 of the Estonian CCP "Limits of the Court Proceedings" contains norms that the prosecutor may, before the completion of the judicial investigation, file a motion to amend and supplement the charges. The norms of this paragraph regulate the procedure for the prosecutor to present a new charge against the defendant on the basis of the circumstances established during the court session. In accordance with Articles 337-341 of the CCP of Ukraine, during the trial, the prosecutor may change the charge and bring an additional charge if new factual circumstances of the criminal offense of which the person is accused are established. A similar institution is contained in Article 326 of the CCP of Moldova "Changing the charge in a court session to a more serious one" and the legislation of a number of other states.

In a criminal procedure system based on the investigative institution of accusation, the prosecutor cannot bring a new charge at the trial stage. Therefore, the court has no choice but to return the case through the prosecutor to the investigator authorized to make this procedural decision, i.e. the issuance of a decision on the involvement as an accused.

The procedural-legal form of accusation in the modern Russian criminal process is an investigative one, it is a calque from the Soviet model: there is a complete analogy between chapter 23 of the Code of Criminal Procedure of the Russian Federation and chapter 11 of the Code of Criminal Procedure of the RSFSR. For all the years of the Russian code, marked by numerous changes to this law, the chapter on the procedure for bringing charges has remained untouched by the legislator. This indicates the importance of this institution for the entire legal organization of the process, including the relationship between the court and the accusatory and investigative authorities.

The modern model of relations between the judicial and accusatory-investigative authorities on the subject of the accusation is the result of the evolution of the investigative model of pre-trial proceedings that was originally laid down in the code. The changes affected only relations within the accusatory and investigative authorities: the investigator received procedural independence, and the prosecutor was deprived of the authority to both bring and change charges. The accusation is formulated and put forward in the framework of the investigative unilateral procedure - by issuing a decision to bring him as an accused. Investigative power has full power to accuse, formulate, substantiate, and present it.

The concept of "accusatory and investigative power" that has become widespread in modern science [29, p. 383-401] points to the mixed nature of modern power to accuse. It reflects the investigative organization of pre-trial proceedings and its inclusion in the structure of criminal proceedings; the division of investigative power in the person of the head of the investigative body, the investigator and the "accusatory power" of the prosecutor; as well as the balance of powers within this procedural system: the investigator brings charges and involves him as an accused, the prosecutor oversees the legality of the investigator's procedural activities and makes the final decision on the fate of the prosecution in a criminal case.

Procedural decisions to change charges in the course of pre-trial proceedings are taken by the body of preliminary investigation independently or as a result of the return of the criminal case by the prosecutor. The investigator is authorized to change the accusation for the worse for the accused (Article 175 of the Code of Criminal Procedure), the investigator, the body of inquiry has similar powers (Articles 225, 226.7 of the Criminal Procedure Code of the Russian Federation). The prosecutor has the right, in accordance with paragraph 2 of part 1 of Art. 221 of the Code of Criminal Procedure of the Russian Federation to return the criminal case to the investigator for the production of an additional investigation, changing the scope of the charge or qualifying the actions of the accused or redrawing the indictment with their written instructions. The prosecutor has similar procedural powers in relation to the body of inquiry.

The prohibition against taking a turn for the worse in the form of a corresponding change in the

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charge comes into effect after the case has been brought into the court. Prior to this, the accusatory-investigative authority has the right to dispose of the prosecution.

After the court accepts the criminal case for proceedings, the powers of the public charge to order the prosecution - in the form of a refusal to support the prosecution in whole or in part (Article 246 of the Code of Criminal Procedure of the Russian Federation). Due to the prosecutor's lack of authority to bring charges, he cannot do so in court either. The prosecutor has the right only to support the charge, formulated in the final procedural decision of the preliminary investigation body, which he approved. The court itself cannot go beyond the charges on which the accused was put on trial, such a provision was also laid down in the Soviet code (Article 254 of the Code of Criminal Procedure of the RSFSR) and reproduced in Art. 252 Code of Criminal Procedure of the Russian Federation. In such a procedural system, there is only one way out of the situation when, during the consideration of a criminal case, it became clear that it was necessary to transform the charge in the direction of toughening: return the case for additional investigation.

As you know, prohibitions are introduced in order to break them. The most important component of the concept of the ban on turning for the worse is the system of exemptions from this general ban, in the form of rules about who, when, and, most importantly, in what order can “violate” this ban.

In the criminal procedural system, the only possible investigative procedure for resolving the issue of transforming the charge for the worse after the transition of the process to the judicial stage has developed. In an adversarial criminal procedure system, with a fundamentally different nature of the relationship between the prosecution and the court, it is allowed to bring a new charge by the prosecutor, possibly in compliance with the procedure for a fair trial. Such a legal organization of changing the charge in the context of the prohibition on changing the position of the defendant for the worse requires, firstly, a judicial procedure for bringing charges; secondly, the real separation of the judicial and accusatory powers; and thirdly, and most importantly, adversarial, fair criminal proceedings.

In the theory of the criminal process A.O. Mashovets [30] has developed a project for the domestic criminal procedure institute to change the charge in the direction of worsening the position of the defendant during the trial of a criminal case in court. Its fundamental differences from the existing institute of additional investigation are as follows: firstly, the basis for a new charge will be only the circumstances established during the judicial investigation, and secondly, the procedure for bringing a new charge will be held under the control of the court and providing the defense side with a real opportunity to defend themselves from the new accusation; thirdly, the proof of the new accusation is guaranteed by the general fair trial.

This project is based on two conceptual developments of the Nizhny Novgorod school of processualists: “The doctrinal model of criminal procedural law of evidence”[31] and the theory of “accusatory power”[32], the essence of the latter lies in the interpretation of the prosecution and the concentration of accusatory power in the prosecutor. According to the views of Nizhny Novgorod scientists, the prosecutor, as the head of the prosecution authority, should have discretionary powers to prosecute. During the proceedings in a criminal case in court, the prosecutor, as a subject of discretion, disposes of the material and procedural rights to accuse. By “substantive law” is meant a change in the subject of the accusation (criminal action), while procedural rights mean, first of all, the right to prove the accusation. The transition to the judicial procedure for filing an initial charge will also make it possible to change the charge to a more serious one in court when establishing the grounds for this decision. Thus, the prohibition on taking a turn for the worse acquires a completely new meaning, namely, the court cannot, on its own initiative, decide to change the charge for the worse for the defendant, however, the public prosecutor, in a manner that ensures the right of the defendant to defense, has the right to bring a new charge on factual grounds. established in the course of the trial. We believe that it is possible to bring a new charge only in the court of first instance, which means that the criminal case is returned by any higher court not to the prosecutor, but to the court of first instance.

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Thus, there is an ideological and theoretical foundation for the creation in the domestic criminal process of replacing the institution of additional investigation with the institution of bringing and changing charges in court. The only thing left to do is to carry out the reform of the preliminary investigation, which was carried out by many states of the neighboring countries .

After the storm and onslaught of introducing an adversarial element into the domestic criminal procedure system, it stabilized on the former center of gravity: the investigative power for prosecution, which became even more independent of the prosecutor than before. In connection with this, there was also a restoration of the previous model of returning the case to the court for additional investigation - in order to transform the situation of the accused for the worse.

The main reason for the failure of the initial version of the ban on turning for the worse in the mechanism of changing charges in a criminal case accepted by the court for proceedings is that the preliminary investigation was not reformed and the Soviet investigative model of bringing and changing charges was retained.

In the conditions of a mixed criminal process, where the power to involve as an accused and bring charges belongs to the investigator, and the prosecutor is not only limited, but deprived of the right to bring charges, it is possible to turn the position of the accused for the worse due to the need to bring him a more serious charge only in the form of return for investigation.

This model is the only one possible in a mixed, transitional type of process, and therefore extremely inefficient. Its mechanism is associated with all investigative procedural costs, temporal (violation of a reasonable period of proceedings in the case, expiration of the statute of limitations for criminal liability), and most importantly - human rights: the investigator is not limited in the rights to prove and bring a new charge, the rights of the victim suffer, in including the right to access to justice.

A more reasonable and fair option in comparison with this model, as well as an absolute ban on additional investigation, which formed during the formation of a new concept of a mixed criminal process, was an adversarial procedure for bringing a new charge in court, based on an adversarial model for bringing charges in court.

4. Conclusions

With the transition to an adversarial model, the main step of which will be the introduction of a judicial procedure for bringing charges (criminal action), the procedure for supplementing the charge, changing it for the worse as part of the trial on a previously filed charge, is radically changing.

The judicial procedure for re-indictment for the worse for the defendant is not only fairer, but even more convenient for the accusatory power and the legal organization of combating crime. The punitive component, the effectiveness is much higher, which is clearly demonstrated by the American justice system, built precisely on such a model.

However, the transition to this form of implementation of the prohibition on turning for the worse into the institution of filing and changing charges in court is possible only in a systematic link with the reform of the preliminary investigation.

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