

Reasonableness of separation of criminal cases

Abstract: It is considered the issues of separation (singling out) of criminal cases, circumstances, which are substantiated legality of the decisions made.

Grounds and purposes of separation of criminal cases, correlation of separating of criminal prosecution production with separation of criminal case are studied.

Special attention to the issues of separation of production in respect of minors is paid.

Suggestions on changing and supplementing of criminal procedure legislation are given.

Keywords: criminal case; criminal prosecution; production; separation; an investigator; prosecutor; court; separate examination; a minor.

Speaking about reasonableness and legality of criminal cases joining we may say about detailed information regarding to essence and interrelation of “reasonableness” definition. General ideas in respect of joining of the criminal cases linked with etymological and terminological meaning of this definition are in the similar rule applied to separation of the criminal cases.

As it noted above, an order on united and inseparable subject of prosecution has an important criterion role in decision on separation of criminal cases.

Actually, discrepancy of similar elements of the component part means that this similar elements are independent and do not have any relations. Therefore, they cannot be investigated in frame of one criminal case. Discrepancy of new-opened facts in prosecution with course of investigation of specific criminal case shows appearance completely independent subject of prosecution and importance of their separate production.

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It is important during examination of participants of crime to be based on criminal and legal characteristic of this criminal circumstance when is taken a decision about it separation.

We should note that crimes committed in complicity are distinguished by social and legal particularities. On social view, crimes committed in complicity are more danger than crimes committed with one individual. Specific legal characteristic of such crimes give grounds to recognize them as independent institution of criminal law.

These crimes should not be separated in other criminal case as complicity is characterizing sign of them. Generally, independently of the participant number in crime, separation of criminal complicity case should not be done. Therefore, it should be created an investigative group if number of accused persons is considerable.

It is required observation of the rule on separation of criminal case that provided in legislation if necessary to divide criminal cases in separate productions. These courses, during separation of criminal cases are arisen necessity to determine participating features each participant of it; i.e. one complicated subject of prosecution is divided into the two independent subjects. Such approach provides principle of separation of the prosecution subject.

According to criminal law theory, the provisions about repetition of crimes give an opportunity to join such categories of crimes in one production and the same time (under some circumstances) separation in various investigative productions. In compliance with article 16.3 of the Criminal Code of Azerbaijan Republic, it is not considered to be a repeated crime if it was committed by a person who was released from criminal responsibility, expunging of record of conviction or paid for the crime committed earlier (in an order provided by the Criminal Code) [3]. This article just shows that it is not required presence legal results of previous crime to appearance repeated crime. The same crime cannot be assessed as repeated one if a person was released from responsibility, expunging of record of conviction or paid for the crime committed earlier [1, p. 42].

During legal evaluation of the same elements discrepancy of these elements mean complex unit and indivisibility of prosecution subject. If mentioned similar elements are not found in various criminal cases then it is important to join these cases. It is not allowed to separate criminal cases in such circumstances.

Legal assessment of actual aspect of the elements are differ under variety of the subjects of accusation. Due to independence of accusation subject authorized body should separate this criminal case and investigate them as different criminal cases.

According to article 50 of the Criminal Procedure Code of Azerbaijan Republic, separation of production on criminal prosecution is allowed in all cases if under all circumstances associated with prosecution are possible thorough, complete, objective and timely examination [4].

According to the authors, who studied a content of the norms, separation of production on criminal prosecution should be provided three main terms:

- 1) if it arises necessity to;
- 2) if separation of production does not impede to a complete, comprehensive and objective investigation of circumstances on a first and second criminal cases;
- 3) if it is possible to do separately court examination each of these cases [5, p. 219].

Production of investigation on preliminary investigation in respect of a minor not reached the age of criminal responsibility should be separated on a chance if the minor participated in crime together with adults.

An issue on separation of production on criminal prosecution is decided by an investigator, prosecutor or court.

Under comprehensive, complete and timely investigation of circumstances on criminal case is understood establishing, collection, evaluation and checking all circumstances and arguments, which should be proved. Possibility separated examination of criminal case reflects an opportunity to determinate circumstances in preliminary and separated criminal prosecution, investigative actions or other procedural actions including implementation of independent court examination.

Criminal procedure legislation directly provides important cases when criminal prosecution production may be separated. So, according to article 211.2 of Criminal Procedure Code of Azerbaijan Republic, an investigator or prosecutor, who carrying out preliminary investigation supervision, may separate production on criminal case into the two separate cases in presence of the following terms:

1) if together with charging an accused person crime is established another crime, which was committed by other known or unknown individuals and the accused person had not participated in this crime;

2) if during preliminary investigation of criminal case is found elements of another crimes;

3) if preliminary production of criminal case in respect of accused person is suspended and regarding to other accused individuals is continued;

4) if on criminal case together with other accused individuals to criminal liability is held a minor not reached the age of criminal responsibility (under possibility to separate production);

5) if during closed judicial session the grounds is concerned to one accused person and is not concerned to other one;

6) if volume of a criminal case is too big and due to the reasons may impede providing the rights and legal interests of participants, delaying in investigation and lodging a case in court.

Crime in which together with adults participated a minor who not reached the age of criminal liability should be separated in two production on a stage of pre-trial production (preliminary investigation). Here we are talking about division on the two separate case and one of them should be in respect of a minor participating in crime or grave crime and who not reached the age of criminal liability and due to this should be sent to a specific closed educational institution [2, p. 133].

In compliance with article 41.2 of the Criminal Procedure Code of Azerbaijan Republic, an inquirer, investigator or prosecutor may not make a decision on prosecution stopping if justifactory grounds are absence or not permission of accused (suspected) person. In this case, in compliance with Criminal Procedure Code rules,

production on the criminal case is continued and finalized by the resolution of a court.

Production on criminal case in which together with adults participate a minor should be divided on a stage of pre-trial and on a chance to separate in independent production. This should provide comprehensive, complete and objective investigation (art. 431 of the Criminal Procedure Code).

If during of investigative actions is founded that somebody of the participants is mentally incompetent or after commission of crime is found his psychic illness, under application of medical mandatory measures production of these actions should be separated from criminal case in another one.

Under separation of prosecution on criminal case it should be separated all activity of the accused individuals on prosecution but not some episodes of it. If anyone of the accused persons escaped from law enforcement bodies then criminal case in respect of him may be separated into independent production. Legal books note that production of such kind of cases are stopped in the most cases [2, p. 133].

We should note that in respect of actual particularities of accusation subject interconnection but also legal estimation is possible to examine independent elements as jointly (in one criminal case) so and in separation (in different criminal cases). Interconnected relations of the similar elements of prosecution subject may come to demand of unity and impartibility, and also other principles and demands.

Criminal Procedure legislation classifies the following requirements:

- 1) necessity to provide protected by the law interests of an individual, observation of the constitutional rights of a man and citizen;
- 2) possible separation of production on criminal case in respect of certain categories of individuals (for example, minors);
- 3) separation and examination of case material in a court with jurors in the cases priveded by the law and request on the individuals brought to responsibility.

Accusation may be an independent subject under multiplicity of criminals or as return crime. This shows that such category of crimes may be separated. In other side, neither process nor results of evidence one of the accusation cannot impact on the

evidence results another one. This provision is provided in article 49.2 of the Criminal Procedure Code.

The same time, it is not excluded discrepancy of examined accusation subject with the second similar elements. This fact is allowed to put forward ideas regarding to examination of accusation in one criminal case. But, at this time an independence of the accusation is protected and kept.

Consequently, examined type of mutual connection among the similar elements of the accusation subject, i.e. legal assessment discrepancy is meant presence of few independent accusation subjects. This allows to examine them as in frame one production and so in various criminal cases. Consequently, necessity for determination of actual facts jointly or separately is provided in criminal procedure legislation. Undoubtedly, such demand as joining of criminal cases so and separation will be provided in proper articles and common indicators. The main term is a correspondence to their requirements.

Unlike circumstances of joint production of criminal prosecution, separation of the criminal cases, decision on which is accepted by an investigator or prosecutor, criminal cases range on separation is restricted by a court decision. So, a court has the right to make a decision on division of criminal cases if it has sufficient grounds. This provision is stipulated in article 49.5 of the Criminal Procedure Code.

Concerning to separation of criminal cases, it should be exact determined which materials (documents) will be divided before acceptance a proper procedural document. The same time, it should be specified which documents should be in original or which – in copies. If some document will be included into the materials of criminal case then it is important to keep a copy of this document in an initial criminal case. In course of division of criminal cases, the copies of investigative documents should be witnessed.

In compliance with article 211.3 of the Criminal Procedure Code and if one or few terms that provided by article 211.2 of this Code are available, criminal case may not be separated under presence of obstacles, which impede to comprehensive, complete and objective investigation all circumstances associated with criminal

prosecution. Naturally, there is no any grounds for acceptance of prosedural decision in these circumstances.

Decision and its content on separation of criminal cases is regulated by criminal prosedure legislation. So, according to article 211.4 of the Criminal Procedure Code, decision about separation of criminal case should indicate the following:

- 1) grounds for separation of criminal case;
- 2) episodes and individuals, which are caused criminal case separation;
- 3) the article in criminal law, which stipulated separation of criminal case;
- 4) decision about subsequent preliminary investigation and acceptance in own production of criminal case.

List of materials and decisions, records, documents, copies or originals of material evidence are included in resolution about separation of criminal case.

List of materials included in the resolution consists from two copies: one remains in a body carrying out preliminary production; second one is handed on separated criminal case. Resolution about separation for 24 hours is sent a prosecutor who carrying our procedural supervision on preliminary investigation.

Participating in preliminary investigation accused person, his legal representative or defender, and also a victim, civil plaintiff, civil defendant and their legal representatives are informed about separation of criminal case and its investigative direction.

Determination of time frame of the new investigation is one of the most important issues after acceptance resolution on criminal case separation. We should note that this issue is regulated by criminal procedure legislation.

So, the terms of preliminary investigation is stipulated in article 218 of the Criminal Procedure Code. It is noted in legal books that the terms for production of preliminary investigation, which provides article 218 of the CPC, but provisions that stipulated in articles 218.6, 218.7, and 218.8 allow prolonging in proper sequence of this terms by superior prosecutors. Complexity, specific complexity and outstanding complexity of criminal case are shown in these norms as the grounds for prolongation terms of preliminary investigation. Such complexity may be expressed with

multiplicity of criminal deeds, committed in few places, joining number of criminal cases in frame of one production, presence large number of accused persons, victims, witnesses in criminal case, investigative actions, which are required long time – complex expert examinations, financial and economic inspections and other such kind productions [4, p. 643]. Undoubtedly, separation of criminal cases can be one of the terms.

Thus, in course of taking into consideration a level of mutual relationship of criminal cases, the elements of accusation subject, in compliance with criterion of unity and indivisibility of accusation subject acceptance a decision on separation assists to fulfill as a legal ground requirement.

On based of above mentioned we may come to the following results.

Reasonableness of resolution about necessity of separation of criminal cases determines specific important grounds. Just these grounds compose a content of the resolution about criminal case separation. Under presence of sufficiency evidence confirming existing base, just the grounds create important exact determination of accusation subject.

In course of taking a resolution in respect of separation of criminal cases, unity and indivisibility of accusation subject acts as the main principle.

Requirement on joining and separation of criminal cases appears under below stated terms:

- 1) violation of the accusation subject unity (sufficient grounds for joining of criminal cases);
- 2) establishing of other subjects of accusation or presence of their elements (sufficient ground for joining of criminal cases).

Possibility for taking of examined procedural resolution determines mutual relationship between the elements of accusation subject.

Consequently, an important purpose of the institute for separation of criminal cases is to establish exact frames of specific crime. In its turn, this serves deciding requirements for reasonableness criminal cases separation, and also providing of legality for separation of criminal cases into the various productions. Observance of

human rights and freedoms is one of the assisting characteristics when is taken such kind important decision on reasonableness for separation of criminal cases. Separation of the criminal cases creates favourable conditions for implementation comprehensive, complete and objective production of investigation of criminal cases.

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