

**EMERGENCY OF GUIDING FACTORS OF THE LEGAL PROCEEDINGS
OF UKRAINE**

Paper discusses the emergent nature of the forming of guiding factors of the criminal justice system, which include its tasks, purpose and function. Using a systematic approach, the nature of the goals and objectives of criminal proceedings is investigated. The conclusion that the purpose of criminal proceedings should be only emergent is drawn. It is emphasized that as a basis of the approach to the definition of the guide and system factors, which are the goals, objectives and purpose of criminal procedure, must be the understanding of their emergent nature, which deprives the criminal justice system its subjectivism and determines its objective result.

Key words: *system theory, emergence, purpose of criminal proceedings, function, tasks.*

The construction or the improvement of any system must begin with an understanding of strategic factors that are at the base of the formation, define the essence and the content of such a system. This is caused by the fact that these factors usually have a fundamental and methodological importance during creation or conversion of certain systems. The effectiveness of the new system and its quality indicators always have direct communication with the contents of the strategic factors that in criminal proceedings in the first place are the goal, objectives and its purpose.

Each system, as academic philosophers emphasize, consists of a number of specific items, but their work is a subject to a global goal, which haunts the system and what is its purpose [1, p. 8]. The focus on the solving of key contradictions in the

given conditions of the environment is the basis of all systemic phenomena, determines the nature of the system, its structure, dynamics, organizational mechanisms and processes [2, p. 118]. For the criminal process, as for other systemic effects, purpose, tasks and appointments are major factors. These signs are a vector of members of criminal proceedings, combine in a single direction of movement and form its unified mechanism and structure. A clear definition of strategic factors in the theory of criminal process is crucial for the further reform of this sphere, the construction of the new subsystems. However, despite this importance, theoretical regulations about the aims, objectives and purpose of the Criminal Justice today have many internal contradictions, cause plenty of debates among scientists. The main reason that causes a similar state of theoretical conceptualization is the lack of an optimal approach to understanding that will clearly define the meaning of these concepts, their nature and relation with other components of the criminal justice system. Modern scientists mostly use approaches, based on an analysis of the current legislation, or those that are based on the understanding of the semantics of these terms. While the research are almost not taken into account the achievements of the theory of systems, its categories and axioms. To one of the following dispositions belongs the emergency, which should be taken into account when examining the result of the functioning of the system as a special property that determines the final content of the system (system effect in effective understanding). This state of the criminal procedural science determines the relevance of theoretical studies aimed at the exploring of the content categories that determine the focus of the criminal justice system, using a systematic approach.

Issues about the nature and content of the strategic elements of criminal justice have repeatedly been the subject of research scientists-processualists. A considerable attention was paid to the aspect of the ratio of the purpose and tasks, assigning stages and functions of the criminal proceedings. Significant contribution to the theory of the criminal process about these theoretical dispositions made such researchers as

A. Alexandrov [3], A. Barabash [4], N. Gazetdinov [5], and A. Dubina [6], A. Kozyavin [7], M. Costin [8], L. Loboyko [9, p. 273], V. Malyarenko [10], L. Maslennikova [11], O. Mizulina [12], O. Popov [13], B. Rozovsky [14, p. 17], V. Tomyn [15, p. 53], V. Shibiko [16] and others. Despite the great interest of the part of scientists, outlined questions remain problematic. In the works of researchers it is almost not applied a systemic approach, directing factors of the criminal justice system are not with position effect. To address the following research questions about the meaning and value of strategic factors in criminal justice, relying on the fact that the criminal process is the social system, you must first investigate the basis of formation of the factors of the criminal process. Accordingly, the purpose of this study should be considered the scientific results as theoretical dispositions that define the emergency content of the factors of criminal proceedings and substantiating the feasibility of this approach to the interpretation of these categories, what are the objectives, purpose and destination. The objectives of this work, respectively, include a gradual learning of the named elements with the use of a systemic approach.

Most modern researchers consider the goal of criminal justice only in the subjective light. Examining the contents of this category, T. Malyarchuk states that the goal of the criminal process should be realized by the subjects of criminal procedural activity both at the legislative and law exercising levels, because without a clear formulation of the objectives, in his opinion, it is impossible to achieve effective results in any sphere of human activity, including criminal-procedural [17, p. 181]. The researcher defines the socio-psychological basis for the term "goal" in criminal proceedings of A. Kozyavin [7, p. 52]. As the subjective installation for an investigative judge is considered the purpose of criminal proceedings by O. Mizulina [12, p. 92]. To determine the approach to the understanding of the content of this item we'll refer to the scientific dispositions of the theory of systems.

Theoretical dispositions are developed in two directions: some scientists believe that goal is inherent in any system of [1, p. 8] and others that only in the

complex type systems [19, p. 19]. Within this study it is senseless to define this issue definitively, considering the fact that the criminal process is a complex system, which is the goal of any position of scientists. Regarding these dispositions should it should be emphasized the objective tone, with which experts in the field of systems theory characterize the goal. This guiding and system creating sign covers all the activities and the elemental composition of the system.

Considering the above mentioned, the purpose of criminal proceedings should have a level at which it can cover the entire system of criminal procedure. The mentioned above cannot be described with the most of the positions of scientists that this goal is called the application of substantive criminal law [11, p. 117], revealing the truth in a criminal case, establishing culpability and fair punishment of the person who committed the crime, disengagement from arbitrary allegations an innocent person and the implementation of the educational influence on citizens [20, p. 24]; the result, which directed the criminal procedural activity, and how it ends (a sentence or other final judgment in a criminal case) [3, 3].

Defined problems exist not only in theoretical terms that define the purpose of criminal proceedings and other strategic factors. O. Chepurny, examining the function of criminal prosecution, calls it generating, the major function of the criminal process. Its nature scientist considers in that it is the fact of committing the offence and the need for the criminal prosecution of the person who committed the crime, causes to criminal procedural activity [21, p. 38]. N.Shchegel expresses a similar attitude towards the prosecution [22, p 74]. These opinions of scientists can be called a narrow approach, which is possible only within a separate criminal proceedings. A broad approach in the system of the forming factors must be taken into account of all the main circumstances that absorb the existing functions and directing the elements of the criminal process.

Returning to the strategic factors that determine the directions of the criminal procedural system, you should pay an attention to such deep-rooted category of the

theory of systems, which is an emergency. Deadline is the standard of theoretical dispositions of this branch of science, which means the system properties that are not inherent to separate its elements and are detected during its functioning as a whole. E. Vinograj understands as an emergency the presence of the whole system of the properties that are absent in its elements, taken separately. Thanks to the emergency system, according to the scientist, and becomes capable of solving actual disputes: integrated features that provide this ability is usually absent in separately taken component [2, p. 145]. Application of this category in the concept of the comprehension factors of criminal proceedings, in our opinion, should give a high result.

The goal of the criminal justice and its appointment should not have been taken to the desires of the individual parties to the proceeding or be determined by the direction of a single criminal procedural function (or more) or more of any single item. The purpose of criminal proceedings should only be emergent, determine the entire system as a whole, absorb both functions and a criminal procedural form, as well as the principles of criminal process, etc. This is a complex phenomenon, which contains many components (hierarchical elements), that must meet the purpose of the criminal proceedings on the level of functioning of the whole system of criminal procedure.

Additional substantiation you can get during the comprehension of many fundamental principles of criminal justice. Especially it becomes apparent when examining the content of the principles of adversarial criminal proceedings and equality of its members before the Law and Court. The relationship of the individual elements, the consequences of their joint functioning lead to the outcome of the criminal proceedings, which defines its purpose. For example, A. Soldatenko determines the adversarial and the equality of the parties as a legal relationship that actually exists and provides the Organization performing a variety of functions to separate his subjects [23, p. 109]

Emergency characterizes the criminal process not only at the level of the whole system, but also in certain criminal proceedings. The result of them must conform to the actions of all the parties to the proceedings, is outlined in a form. In addition, the characteristic sign of owning the individual subsystem of criminal process, what are the functions of the stage or individual procedural acts. Effectiveness as the prospect of a goal of many of these elements should not boil down to content the goal of its individual components.

On the one hand, the protection of individuals, society and the state from criminal offences is impossible without joint action parties, criminal proceedings and the functioning of the criminal process in general. This should be noted regarding the protection of rights, freedoms and lawful interests of the participants of criminal proceedings that can exist only as the result of interaction between the elements of the criminal process. On the other hand, these tasks may not be independently executed by only the separate components of the criminal procedural system, which is, for example, the side of the prosecution or defense, etc.

The above mentioned allows us to affirm that the basis of the approach to the definition of the strategic factors, which is the goal, task and purpose of criminal proceedings, must be based on the understanding of their emergency nature, which eliminates the subjectivity of the criminal justice system and brings it to the objectivity of the results.

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