THE OBJECTIVE OF ENCOURAGING COOPERATION IN CRIMINAL PROCEEDINGS
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ABSTRACT
Currently, there is no consensus as to the objective of the criminal proceedings or to encourage cooperation in the criminal proceedings. Through a set of general and specific scientific methods, processes of stimulating cooperation in criminal proceedings are discussed. The author suggests representing the objective of the criminal process and stimulating cooperation in this process in the form of resolving a criminal conflict, analyzing the advantages of this approach for setting goals and revealing the activities of the investigative bodies and courts while they restructure the essence of the criminal proceedings to resolve the conflict associated with the commission of a crime. The article represents the potential of this method of resolving criminal conflicts to encourage cooperation in criminal proceedings. Conclusion. The author concludes that the cooperation of participants in criminal proceedings, preliminary investigation bodies and courts becomes an effective mechanism for achieving the main objective of criminal proceedings, namely the resolution of criminal conflicts.

Keywords: Objective of criminal proceedings. Encouraging participants to criminal proceedings. Cooperation in criminal proceedings. Criminal conflict.

O OBJETIVO DE INCENTIVAR A COOPERAÇÃO NO PROCESSO PENAL

EL OBJETIVO DE FOMENTAR LA COOPERACIÓN EN LOS PROCEDIMIENTOS PENALES

RESUMO
Atualmente, não existe consenso quanto ao objetivo do processo penal ou de incentivo à cooperação no processo penal. Por meio de um conjunto de métodos científicos gerais e específicos discute-se processos de estimulação da cooperação em processos penais. O autor sugere representar o objetivo do processo penal e estimular a cooperação neste processo na forma de resolução de um conflito penal, analisa as vantagens desta abordagem para a definição de metas e revela as atividades dos órgãos de investigação e tribunais enquanto estes reestruturam a essência do processo penal para resolver o conflito associado à prática de um crime. O artigo representa o potencial desse método de resolução de conflitos criminais para incentivar a cooperação em processos criminais. Conclusão. O autor conclui que a cooperação dos participantes no processo penal, dos órgãos de investigação preliminar e dos tribunais se torna um mecanismo eficaz para a concretização do objetivo principal do processo penal, nomeadamente a resolução dos conflitos penais.


RESUMEN
Actualmente, no existe consenso sobre el objetivo del proceso penal ni para fomentar la cooperación en el proceso penal. A través de un conjunto de métodos científicos generales y específicos, se discuten los procesos de estimulación de la cooperación en el proceso penal. El autor sugiere representar el objetivo del proceso penal y estimular la cooperación en este proceso en la forma de resolución de un conflicto penal, analizando las ventajas de este enfoque para fijar metas y revelar las actividades de los órganos de instrucción y juzgados mientras reestructuran la esencia del proceso penal para resolver el conflicto asociado a la comisión de un delito. El artículo representa el potencial de este método de resolución de conflictos penales para fomentar la cooperación en los procesos penales. Conclusión. El autor concluye que la cooperación de los participantes en el proceso penal, los órganos de instrucción y los tribunales se convierte en un mecanismo eficaz para lograr el objetivo principal del proceso penal, a saber, la resolución de conflictos penales.

INTRODUCTION

The basis and direction of any activity is determined by its goal, which forms the functions of participants to such an activity. Criminal proceedings should also comply with this rule. However, their goal governs the entire system of criminal justice, adjusts its structure to its needs and selects principles to build criminal legal relations. Although criminal procedure law does not state any objective of criminal proceedings, both law enforcement and legal science claim that the above-mentioned objective exists and is achieved. We do not consider the role of criminal proceedings (Article 6 of the Criminal Procedure Code of the Russian Federation) that is closely connected but do not fully coincide with their objective. Some scholars identify the role and objective of criminal proceedings based on S.I. Ozhegov's Dictionary of the Russian Language (OZHEGOV, 2010), but we do not share this opinion. If the explanatory dictionary presents the role and objective as synonyms, it does not mean that they will be substitutable in any context (this dictionary also contains other meanings: the goal is understood as the object of striving, something that is needed and is desirable to accomplish, 699) and the role is regarded as a sphere of applying something.

Each use of a term or concept is individual; stereotyped interpretation is not appropriate even if it is extremely convenient for analysis. This approach is common to this study. We believe that the goal of criminal proceedings is understood as the result to which they (criminal proceedings) are directed, and the role of criminal proceedings answers the question: why are they (criminal proceedings) needed? There are arguments supporting this position.

According to S.I. Ozhegov, the goal indicates a certain result, to which the subject comes in the course of activity. Thus, the goal is something finite and achievable. In this regard, the most suitable term is "result". The Great Soviet Encyclopedia understands the goal as an element of human behavior and conscious activity which characterizes the anticipation of some result and the way of its implementation through certain means. The definition refers to a result rather than a process or activity. Article 6 of the Criminal Procedure Code of the Russian Federation mentions protection as a continuing process and activity rather than a result. This circumstance confirms the discrepancy between the concepts of "objective" and "role". We should admit that the wording "the role of criminal proceedings" is not appropriate since it is possible to assess the achievement of the goal, but the role cannot be evaluated in any way.

The role of criminal proceedings exists as something fair, virtuous and unreal. We will not dwell on this issue, otherwise, we risk revealing circumstances indicating that the legislator made such an amendment intentionally (just to be on the safe side). It is done to protect criminal proceedings and their participants from "accusations" of not achieving the initial goal. The Charter of Criminal Proceedings of 1864, the Criminal Procedure Code of the RSFSR of 1922 and the Criminal Procedure Code of the RSFSR of 1960 indicated goals of criminal proceedings (the establishment of objective truth) but they subsequently disappeared from the legal field. Since this goal could not be achieved, the legislator rejected it. There are still heated discussions about this decision. Some scholars oppose the institute of objective (material) truth (YAKIMOVICH, 2013); while the others support its revival in the scientific and law-making field (KOZLOVA, 2012).

METHODS

To achieve the study objective, we used a set of universal (dialectical), general scientific (analysis, synthesis, deduction, induction, systemic approach, extrapolation, analogy, comparison, abstraction, specification, idealization, etc.) and special scientific methods (historical, legal-interpretive, legal-technical, formal-legal, statistical, etc.).

RESULTS

While studying alternative, conciliatory, restorative and other homogeneous procedures of criminal proceedings, scholars considered the overall goal in the form of establishing the truth. Thus, P.V. Edilova analyzed the legal regulation of a pre-trial cooperation agreement and focused on objective truth as the main goal of criminal proceedings (Edilova, 2017). At the same time, she cited other authors who wrote about legal, objective and material truth while examining the objective of criminal proceedings (for example, M.S. Strogovich, M.A. Cheltsov, V.T. Tomin, A.R. Belkin, G.P. Kornev, A.P. Ryzhakov, etc.). However, P.V. Edilova did not reveal her attitude to objective or other truth (whether the establishment of objective truth should be considered the goal of criminal proceedings or not) and did not mention possible goals of criminal proceedings (there is only a proviso that there are such goals).
The difficulty is caused not by the fact that the author did not understand the essence of this institute. In relation to conciliation procedures, it is impossible to set a goal, i.e. to establish objective or some other truth. In this case, the truth is not attainable. Regardless of supporters of this institute, the truth exists only at the moment of committing a criminal act; after that, there is only a subjective perception of the crime, traces, criminal case files, etc. It is quite remarkable that 78% of law enforcement officers believe that only 75% of criminal cases achieve the goal of criminal proceedings (Figure 1).

In our opinion, criminal proceedings cannot have any goal since the latter has no clear boundaries, the same perception or the possibility of achieving. The goal of criminal proceedings that is clearly defined also affects the goal of cooperation and its promotion.

**Graphic 1.** How often does criminal prosecution achieve the goal of criminal proceedings?

![Pie chart showing the percentage of cases achieving different goals of criminal proceedings.]

**Source:** Search data

There are also other viewpoints. The paragraph "Drawing up a pre-trial cooperation agreement" in T.V. Topchieva's monograph proves the correctness of its title. Before proceeding to a pre-trial cooperation agreement, she studied the role and purpose of criminal proceedings. At the same time, the scholar based her judgments on the existing concepts of goals: criminal investigation; exposing perpetrators and bringing them to justice; the fair punishment of perpetrators; establishing the truth; fighting against crime (TOPCHIEVA, 2015).

Without making any special efforts to analyze the above-mentioned goals of criminal proceedings, she concluded that "the objective of modern criminal proceedings should be understood as the protection of individual rights and freedoms in the sphere of criminal relations, as well as traditional provisions for the Russian legislative process: "determining the person guilty of committing a crime, bringing the latter to justice and imposing a fair punishment". Citing another's conclusion (the position of I.A. Cherdynseteva is provided in quotation marks [CHERDYNSETEVA, 2008], T.V. Topchieva did not consider the specifics of conciliatory and recovery procedures that comprise a pre-trial cooperation agreement. Regarding the goal of a pre-trial cooperation agreement, she wrote that this type of document aims at assisting the suspect (accused) in investigating group crimes and identifying previously unknown crimes. It is clear that "assistance" does not fit into the proposed goal of criminal proceedings. We believe a stereotyped understanding of such goals is unacceptable in this case.

Other scholars express similar opinions. For instance, E.I. Popova emphasized that the investigator concluding a pre-trial cooperation agreement should compromise with the suspect (accused) while pursuing the sole purpose of ensuring the comprehensiveness, objectivity and promptness of investigation (Popova, 2011). Indeed, the establishment of such a goal of criminal proceedings fits into the current coordinate system but does not consider the specifics of conciliation procedures. In addition, law enforcement officers have not reached a common opinion on the objective of criminal proceedings but most of them believe that the goal is either to
restore justice or resolve a criminal case on the merits (Graphic 2).

Graphic 2. What is the goal of criminal proceedings?

Source: Search data

The misinterpretation of the "goal" concept is typical of not only the criminal process but also of its certain institutes, in particular, a pre-trial cooperation agreement. While working on her Candidate's thesis, M.E. Kubrikova defined the goal of concluding a pre-trial cooperation agreement as actively encouraging a person who agreed to cooperate with the investigation, solving a crime, identifying accomplices in such a crime and searching for the property obtained as a result of the crime under consideration (KUBRIKOVA, 2013). In our opinion, such a goal is not correctly formulated since it presupposes a result rather than an action. Moreover, this understanding significantly narrows the true meaning of this reconciliation and restorative procedure.

Some scholars highlight a more global goal of a pre-trial cooperation agreement. For example, A.S. Aleksandrova and I.A. Aleksandrova saw its objective in the fight against crime (ALEKSANDROV, ALEKSANDROVA, 2009). Other scholars distinguish the goals of this institute. According to Ya.V. Loshkobanova, a pre-trial cooperation agreement aims at obtaining reliable information from the suspect and accused of the circumstances (all or part of them) listed in criminal procedure law (LOSHKOBAANOVA, 2015). Later she concluded that it is necessary to determine different goals of a pre-trial cooperation agreement: prosecutors strive to obtain reliable information; the suspect and the accused try to mitigate their punishment.

None of the proposed options discloses the true meaning of cooperation in the sphere of criminal proceedings. In this regard, establishing the truth and fighting against crime are recognized as defective within the framework of our concept of encouraging cooperation in the criminal process and within the framework of general criminal proceedings. We have already noted that goals and functions of criminal proceedings should be considered in two ways: on the one hand, goals are viewed as the formation of a system of evidence; on the other hand, goals are to resolve criminal conflicts. Moreover, the latter version of goals assumes a slightly different type of the criminal process associated with the establishment of a full-fledged adversarial and compromising (restorative, conciliatory) form.

It was established that the cooperation of participants in criminal proceedings is the joint activity of the persons involved in the criminal process aimed at resolving a criminal conflict (dispute). This is due to the fact that the resolution of a criminal conflict (dispute) has certain universality and realism and can be the same for all participants in the criminal process. However, the proper and real goals of joint activities are doubtful. If the proper goal is to resolve a criminal conflict, the real goal is to form a system of accusatory evidence in cooperation with preliminary investigation bodies and resolve a criminal case on the merits in cooperation with a court.
For example, a preliminary investigation body or a court has a certain goal, and the person cooperating with them participates in their activities. The prosecution strives to protect the rights and legitimate interests of persons and organizations that suffered from crimes. The defense needs to form a system of accusatory and exculpatory evidence, protect individuals from unlawful and unfounded accusations, convictions and restrictions on their rights and freedoms, etc. We believe a true joint activity should presuppose criminal and procedural actions for general purposes rather than a specific court or party to the criminal process.

Our conclusions are confirmed by other scholars. According to A. Ashworth, there are two paradigms for defining goals of criminal proceedings: "the paradigm of punishment" where the key goal of criminal proceedings is to use punishment (repression) and restore "peace" between the state and the criminal, "the paradigm of restoration" where the key goal of criminal justice is not to punish but to restore the victim's rights and eventually the rights of the state(Ashworth, 1994). Both paradigms are closely interconnected and confirm the idea that the goal of criminal proceedings is not the establishment of objective truth or the fight against crime. On the contrary, this understanding provides more arguments in favor of resolving a criminal conflict as the goal of criminal proceedings.

**DISCUSSION**

It is not a new idea to consider the resolution of a criminal conflict as the goal of criminal proceedings. This is evidenced by numerous theses, monographs and articles, whose content and titles contain the appropriate wording. In this context, we cannot but mention the scientific works of L.V. Golovko(Golovko, 2003), A.A. Bryzhinskii (BRYZHINSKII, 2005) E.V. Popadenko (POPADENKO, 2008), Yu.V. Kuvaldina (KUVALDINA, 2011), M.A. Lavnov (LAVNOV, 2015). At the same time, they do not mention the concept of encouraging cooperation in criminal proceedings to resolve a criminal conflict. Moreover, no one sets such a goal as the objective of cooperation in this sphere. On the one hand, this confirms scientific novelty and gives significance to original ideas. On the other hand, it complicates scientific research and makes scholars search for the truth "through the ruins of the related problems". It should be noted that 15% of law enforcement officers who participated in the survey, either intuitively or deliberately, indicated that criminal proceedings aim at resolving a criminal conflict.

A conflict is usually understood as a collision, serious disagreement, or dispute. In relation to a criminal conflict, such a dispute, disagreement or clash should occur in the criminal realm. Under criminal law, it can be assumed that this dispute arises and exists based on a committed criminal act or an act containing constituent elements of a crime. Consequently, there is a person having the rights, freedoms and legal interests protected by criminal law, society or state with the interests protected by criminal law and a person who violated these rights, freedoms and legal interests. Such violations cause a conflict. The violation of the rights, freedoms and legitimate interests protected by criminal law is the subject matter of a conflict. The defense and the prosecution are parties to such a conflict.

The person who committed the act containing the constituent elements of a crime, and the person, society and state in respect of whom it was committed, will be direct participants of a conflict. The other persons and organizations involved in criminal proceedings (both the defense and the prosecution) are indirect participants of a conflict. In addition, the specifics of a criminal conflict lies in the fact that the obligatory rule of conflicts (the opposing parties should take direct and active actions against each other) works differently: often only the person who commits a criminal act is active, and the other party is passive (especially, if it is society or state). However, we should keep in mind that confrontation occurs not only during an offense but after its commission (the main confrontation between the prosecution and the defense).

Each party struggles for evidence to determine their version of the crime in question. Moreover, the prosecution (namely, the prosecutorial jurisdiction) acts on behalf of the state, performs actions to restore and protect the rights, freedoms and legitimate interests of individuals, society and state. The defense (suspect, accused, defender, etc.) tries not only to protect against unjustified suspicion, accusation and prosecution but also provides all kinds of (legal and illegal) opposition in relation to investigators, interrogators, investigative agencies, etc. From this perspective, a criminal conflict is characterized not only by general signs of a conflict but also contains several special features.

Firstly, any conflict goes through two stages: the emergence of intention and the commission of a criminal act; the detection (identification) of a criminal act until the resolution of such a conflict in court. Secondly, confrontation consists in the fact that the person in relation to whom a criminal act was committed wants to restore their violated rights and freedoms and hold the offender criminally liable. The subject of investigation
seeks to clarify the circumstances of the event and establish the circumstances to be proved. The suspect (accused) and the defense attorney aim at avoiding criminal liability (at least, minimizing it) using various methods of counteraction. In this regard, a conflict can have a variety of forms.

Along with the main conflict (between the victim and the suspect (accused), an additional one might arise between the subject of investigation and prosecution (court) and the defense (suspect or accused, defense lawyer), as well as between the subject of investigation and prosecution (court) and the victim (their representative, etc.). Like cooperation, a conflict can comprise all participants in criminal proceedings.

However, this does not mean that all-round cooperation in the sphere of criminal proceedings presupposes a conflict between all of its participants. This goal-setting of criminal proceedings not only allows cooperation but also makes it a real means of resolving a criminal conflict. In particular, it is possible to apply reconciliation and restorative mechanisms. The scheme is as follows: conflict – cooperation – resolution. At the same time, cooperation is based on consent (compromise or reconciliation) which leads to the implementation of joint activities to achieve a common goal.

Such consolidation helps optimize criminal and procedural activities, excluding unnecessary procedures and actions. It will be enough for law enforcement officers to resolve a conflict between the opposing parties to terminate criminal proceedings. In this case, the sphere of criminal legal relations can get rid of the defective system of indicators (for example, by the number of initiated criminal cases, by the number of criminal indictments sent to a court, by the number of convictions, etc.).

Thus, the resolution of a criminal conflict as the goal of criminal proceedings allows solving the eternal problems of the criminal process associated with the accusatory bias and alleged adversarial nature. D.A. Yakupov noted that the consequences caused by the accusatory bias are extremely significant: an innocent person is subject to undeserved or illegal punishment (YAKUPOV, 2007). While condemning plea deals, the scholar stated that the consequences of an acquittal bias are no better: the criminal (rapist, murderer, serial killer) walks free and continues to commit atrocities; the victim does not believe in justice, law and state protection of their rights and decides to administer justice themselves; society gets twice as many crimes and an aggressive environment in which it is no longer possible to live, only to survive.

Indeed, both biases in the criminal process cannot be represented in extremis. Nevertheless, D.A. Yakupov probably supports the accusatory type of criminal proceedings and cannot reason in a departure from his own views. This applies not only to this scholar. Most processualists (both practitioners and theorists) have similar opinions: "a thief should sit in jail", "he who does not punish evil, commands it to be done", "If a case is initiated, there should be a guilty verdict", "If a criminal case is initiated, criminal charges cannot be dropped", etc. We believe that this rhetoric has negative consequences and demonstrates negative aspects of the accusatory bias.

**CONCLUSION**

We believe that the negative impact of the exculpatory approach is unreasonably overrated. The famous quote of the English jurist William Blackstone ("It is better that ten guilty persons escape than that one innocent suffer") has already become the golden rule in developed legal systems. This idea demonstrates that the accusatory approach can be harmful to criminal proceedings. Indeed, the consequences of unlawful punishment are much more significant than exemption from criminal liability.

Furthermore, this approach should not be taken categorically: the resolution of a criminal conflict does not mean acquittal or exemption from criminal liability. On the contrary, the goal of criminal proceedings presupposes the appointment of the most adequate and just measure of responsibility for the illegal act in question, which will satisfy the conflicting parties. This form of criminal proceedings allows excluding disputes about the proportionality of punishment, the validity or unreasonableness of a particular criminally-remedial response. Cooperation helps to solve unsolvable situations. In this regard, the cooperation of participants in criminal proceedings, preliminary investigation bodies and courts becomes an effective mechanism for achieving the main goal of criminal proceedings, namely the resolution of criminal conflicts. While encouraging cooperation in the sphere of criminal proceedings, the legislator also encourages the achievement of their main goal. Thus, forms and types of incentives are regarded as a means of achieving the goal of criminal proceedings.
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