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Humenné

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Анотація

У статті досліджуються відносини професійного навчання та їх система. Запропоновано авторські класифікації відносин професійного навчання. Критеріями є склад учасників цих відносин, підстава виникнення та характер волевиявлення сторін.

Summary

The article researches relations of professional training and their system. Authorial classifications of professional training relations are proposed. Criteria are composition of their members (subjects), basis of arising, character of the will.

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Systematization of materials of the criminal proceedings

Систематизація матеріалів кримінального провадження

H. M. Stepanova, Yu. V. Tereshchenko, M. Y. Kulyk

Ключові слова:

систематизація, кримінальне провадження, слідчий, прокурор, слідчий суддя.

Key words:

systematization, criminal proceedings, investigator, prosecutor, investigating judge.

Statement of the problem: currently the equipment design, the procedure for systematization and filing of materials of criminal proceedings are not regulated by legislation, not enough attention is paid to this in the scientific and practical textbooks. In sufficient detail an issue was covered in the "The desk book of the investigator" which was published by Prosecutor General's Office of the USSR in 1949, but the recommendations are outdated currently, especially with the adoption of the new Criminal Procedure Code of Ukraine in 2012.

The design and systematization of materials of the criminal proceedings is not just technical work, it is quite a complex creative process that requires not only knowledge of legislation, but also understanding and analyzing the collected evidence in criminal proceedings and their procedural sources.

Sometimes, even with efficiently and carefully conducted pre-trial investigation there are problems during the trial related to the inappropriate equipment design, to the unreasoned systematization and filing of criminal proceedings. A negative reaction in the judges cause sloppy prepared and filed materials of criminal proceedings, the absence of necessary system and reference data. Such deficiencies make it difficult to study the materials of the proceedings, research and evaluation of evidence.

In criminal proceedings a significant number of documents of different legal and procedural value with large amount of information is usually accumulated. In this regard, it is appropriate to place materials in a defined order, namely to organize them.

Systematization of materials of the criminal proceedings gives as first reducing time for searching for one or another documents and facilitating the work with them. As second it helps to focus on defined documents relating to certain episodes, raised versions. As third it facilitates the evaluation of recorded evidence in the criminal proceedings.

Analysis of recent research and publications. During validity of Criminal Procedure Code of Ukraine in 1960 the problematic issues of systematization of criminal proceedings were researched by such scientists as I.Yu. Hlovatskyi, V.T. Maliarenko, H. V. Yurkova and others. However, from November 20, 2012 entered into force the new Criminal Procedure Code of Ukraine, whose thesis on the systematization and preparation of the materials of the criminal proceedings requires detailed analysis.

Object of an article is a scientific analysis of criminal procedural law on systematization and execution of the criminal proceedings.

The main results of the research. Concluding the pre-trial investigation it is necessary to organize and to formalize technical results of the criminal proceedings. Practice has produced two main forms of systematization of the criminal proceedings, namely the sequence of their location: chronological and thematic.

In chronological systematization the sequence of documents in materials is determined by the date of their preparation or receiving of an investigator or prosecutor. This form is the most widespread in large proceedings concerning amount and number of episodes.

Thematic systematization means a grouping of materials on suspects or crime scenes in multivolume and many episodic of the criminal proceedings materials. Within each group documents can be placed in chronological order, so that the combination of both forms of systematization is possible (mixed form) [3, 290].

Based on the above it should be noted that the systematization of the materials of criminal proceedings is not only organizational and tactical, but also procedural issues. It allows to control the evidence involving into proceedings, processing protocol of investigators and detectives, observance of procedural law guaranteeing the rights of participants in the pre-trial investigation.

Placing of materials in a defined sequence facilitates the work of a head of a pre-trial investigation and the prosecutor who examines the proceedings, helps in controlling the quality of an investigation.

In some cases it is directly pointed a sequence of documents placing in law. Thus, according to article 105 CPC of Ukraine the applications to the protocol of investigative action are attached. The applications to the protocol are: specially made copies, sample of objects, items and documents; written explanations of professionals who participated in the relevant proceedings; transcript, audio and video recording of proceedings; photo boards, schemes, casts, computer information media and other materials that explain the content of the protocol. Relevant objects join to the protocols of these investigative (detective) actions in the proceedings to which they were produced.

Quite often, the order of procedural documents is specified through the fact that the law fixes a defined sequence of carrying out of appropriate actions in pre-trial investigation.

For example, during forensic examination of a person the procedural documents are as follows: resolution of prosecutor, protocol of forensic examination of a person (art. 241 CPC). When conducting a search or inspection in the room or in other possessions procedural documents should be placed in the following order: the request of the investigator agreed with the prosecutor, the investigating judge's ruling, voluntary consent of the holder, memo on the rights of person in the room of which the search or inspection, investigation report of investigative actions, applications to the protocol are conducted (art. 233–236 of CPC).

In some cases, the law regulates the systematization of the criminal proceedings, which formalized the appointment and conduct some independent, but connected with each other investigative operations. For example, before the presentation of identification of persons or objects the interrogation of a people must be conducted who will recognize about the characteristics and circumstances in which they watched for the person or object (articles 228, 229 CPC). Therefore, the documents will be placed in the following order: the interrogation protocol of the victim (witness), protocol of presentation for identification of persons or objects. In carrying out the simultaneous interrogation of two or more persons, the documents should be placed in the following order: the interrogation protocol of interrogated persons in the testimony of people in which there are differences, protocol of simultaneous interrogation of two or more persons (p. 9, art. 224 CPC).

Proceedings by the continued investigation is better to turn up for a pattern in old hard not numbered cover and or to number with the soft graphite pencil, and before the end to the turn up ready for new openings in the cover and it will have a neat appearance. It is recommended to make a pattern with 5 holes for the binder and then there is no need to make new holes by the alteration. It is not recommended to number the sheets of proceedings with ink, colored pencil or other hard wiped dyestuff, because it is quite often necessary to renumber the proceedings.

In accordance with the requirements of part 1 of article 290 CPC a suspect, his defense, the legal representative are reported about the completion of the preliminary investigation and are provided with an access to the pre-trial investigation.

Materials are presented in a bound and numbered style. Members are given an opportunity to review all records of criminal proceedings (exceptions are only material on the security measures that remain separate from the criminal proceedings). This rule also concerns to cases when in the proceedings several episodes of criminal activity were investigated and participant is involved only in one or more of them.

During the reviewing of the records of proceedings, participants are allowed to make some extracts. According to parts 4, 5 of article 290 CPC an access to materials includes the ability to make copies or display materials. In the for review given documents an information that will not be disclosed during the trial may be deleted. Deleting should be clearly marked with the designation on the particular sheets of criminal proceedings. At the request of the parties, the court may allow an access to information that has been deleted.

The following right is given to individuals in order to provide opportunities to refer to evidence in court with the sheets note of proceedings on which they were set out.

Presenting additional pretrial investigation materials (materials of petitions of participants) is not recommended to change the previous order of the documents in the proceedings.

In drawing up the documents and their study is not recommended to emphasize words or phrases do other notes when typing on the computer to allocate important places of the text in a different font or color. By the investigators structured documents it is not allowed any corrections in text or postscript.

At the systematization of criminal proceedings for the filing it is necessary to align the sheet on the outside, but be careful not to turn up the text. To trim stitched proceedings is not recommended because part of the text almost always is almost always cropped.

Cassette and video tapes, diskettes and CDs, other electronic media are not for filing to proceedings. In accordance with articles 98–100 CPC of Ukraine they should not be kept in the criminal proceedings, and in proceedings as evidence.

If the document is material evidence (forged bill, false witness, etc.) it must be stored in a sealed envelope of appropriate size in the criminal proceedings. The name and number of the proceedings are written on envelope, is certified by the signatures of the investigator, witnesses, if necessary by specialist and others. Such documents are not allowed to bend, cut, make holes in them, put numbers to make other changes. After the document review protocol it can take his copy, if necessary colored.

In multi-volume proceedings the reference letter is filed in the last volume reference letter that materials which are volume. If during the investigation (investigation) or investigative (detective) actions the video is carried, the protocol of video watching is added. Photo boards, plans, schemes are only joined to a specific protocol of an investigative (detective) action. There can not be one and the same photograph or scheme to the main and to the additional protocol of the crime scene search. If the person was interrogated several times then interrogation is filed by chronology.

These recommendations are common to all criminal proceedings, although, depending on the features of the proceedings, availability and specific evidence and documents, each proceedings is formed by investigator individually, but you can not violate procedural and logical links.

Conclusions. In view of the material the following conclusions can be drawn.

Materials of proceedings are presented for review in filed and numbered form. The law does not set the rules that the materials of proceedings should be systematized before filing of materials, but there are such "unwritten" rules of systematization through the practice:

- materials of the criminal proceedings should be organized not only after the end of the preliminary investigation, but during of the proceedings, which saves time and energy of investigators;
- materials are filed in a folder with heavy paper or cardboard. The filed proceedings should look like a well-bound book;
- materials of allocated proceedings tend to be placed without changing their systematization;
- in one volume of the proceedings 200–250 sheets are filed;
- the sheets of proceedings are numbered but not the pages. As first request for pre-trial investigation is filed and numbered;
- depending on the complexity of the criminal proceedings, its volume, the number of suspects and other circumstances apply chronological (materials are organized by date of investigative (detective) and other procedural actions), thematic (for scenes, suspected or objects of criminal activity) and mixed methods of systematization of material proceedings are applied.

A positive importance of study with the case is that:

- it allows to parties to prepare fully to defend their rights in court.
- it helps to identify and remove deficiencies and gaps of pre-trial investigation.

The complex of procedural actions with the review of participants of pre-trial proceedings with the materials of proceedings is a procedure with compulsory optional actions in proceedings.



Анотація

У статті розглядаються типи та правила систематизації кримінального процесу. Надані пропозиції щодо вдосконалення кримінального процесу та внесення доповнень до чинного Кримінально-процесуального кодексу України.

Summary

The article deals with the types and rules of systematization of the criminal proceedings. The further improvement issues and proposals for making additions to the valid Criminal Procedure Code of Ukraine are defined.

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