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Research Article

# Problems of Legal Regulation of" International Standards " of Unified Inquiry

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**Abstract**
Taking into consideration opinions of leading researchers in the field, the article presents an analysis of the notion "standardization" of the form of action used in researches devoted to the problem of development and improving criminally-remedial forms of action, on the example of the evolution of the inquiry procedure in the shortened form. A conclusion is drawn that the content of the term standardization of the form of action is the search of the most efficient procedures of pre-trial proceedings in terms of minimization of procedural time limits, simplification and efficiency of the proceedings. An analysis of the practice and features of streamlined pre-trial procedures abroad that generally qualify for the role of "international standards" is conducted.

# Introduction

In consideration of the term "unification", first of all, let us turn to Wikipedia, as most researchers do today. According to the website, the term unification (from Lat. unus "one" + facio "do"; combination) has several meanings. First - "bringing to the uniform system or form" (Wikipedia, 2020). In this sense this term is used, for example, by the authors of the textbook "The Course of Criminal Proceedings". In their opinion, the idea of criminal proceedings unification (the uniformity of the procedural form) is illustrated by uniform stages of Russian criminal proceedings, under which they understand "procedurally similar stages of criminal proceedings" (Criminal proceedings, 1989). The researchers Kruglikov and Smirnova (2008) believe that under unification in criminal law we understand "the process conducted by legislative bodies ensuring uniform legal regulation of similar (homogeneous) or concurring (identical) social relations in the process of creation or perfecting regulatory norms and their elements" (Kruglikov & Smirnova, 2008). One can present numerous opinions of other researchers who deal with the problem of unification. Most of them concur that this term used in cases when there is a need to bring various legal relations that subjects of criminal proceedings enter to a single legal and procedural order, common for all participants. Mainly, in such researchers they take legal relations arising on the stages of legal proceedings as an example. However, as evidenced by practice, such approaches do not always apply to pretrial proceedings.

Academic community still remembers conventional premise common in the first half of the last century about dual pretrial investigation in which the procedural order was regulated by common legal regulations and procedures, for which there was a single evidence system, including the sources of proof information, order of its collection and use. The differences of two forms of pretrial investigation - inquiry and preliminary investigation - were of pretty formal nature, since shorter terms of inquiry were compensated by the procedures of their prolongation, and participation of defense lawyer, form of familiarization of parties with the materials of a criminal case and certain small differences were seen as insignificant. The main difference of the dual procedural form of pretrial investigation was in the subject of pretrial proceedings: investigator or detective.

The famous specialist Yakimovich (2003), when evaluating the above-mentioned problem, characterized pretrial procedure as "highly" monolithic and practically differentiated. When speaking about problems of pretrial procedure, he has not found any significant differences of modern inquiry procedure and pretrial proceedings that, in his opinion, existed at the beginning of effectiveness of the RF Criminal Code. When answering the question "What is the difference between inquiry and investigation conducted by police detectives?", he said, "Practically no difference" (Yakimovich, 2003). We think that the existing situation with procedural reglamentation of two seemingly different procedural forms is the result of the above-mentioned interpretation of the term "unification" by its advocates that persistently promote unification of procedural forms of pretrial proceedings precisely from the position of bringing them to a single procedural standard in procedure, terms, procedural means and evidence system. Unfortunately, such developments of researchers were adopted in the legislative process, which led to significant affinity of procedural forms of inquiry and pretrial proceedings in main institutions. This stereotype of perception of pretrial proceedings, including accelerated procedure – inquiry in its shortened version – still dominates in law-drafting activities in correction of criminal law. Golovko (2010) expressed criticism of this view. He evaluated the difference between pretrial investigation and inquiry as "no less artificial conceptual difference", where investigation "is usually done by the same police bodies, unified in their aims and procedural means". He concluded that "all attempts to theories such parallelism have been unsuccessful" (Golovko, 2010).

But then questions arise: must procedural forms always be uniform? Is such approach always helpful for criminal procedural legal relations? Are there any conceptual errors in a wish for uniformity?

It is pretty symbolic that Wikipedia contains several definitions of the term "unification". "Unification is also a common and efficient method of elimination of excessive diversity by reducing the list of acceptable elements and solutions, bringing them to uniformity. Unification is a type of systematization that is aimed at distribution of objects in a certain order and sequence and creates a clear easy-to-use system" (Wikipedia, 2020). We believe that such interpretation of definition of the term unification is more reasonable in application to accelerated and simplified inquiry – inquiry in its shorter form, as this type of criminal procedure is defined in Chapter 32.1 of the Criminal Procedure Code of the Russian Federation (hereinafter - the CPC). When characterizing certain procedures and procedural orders in respect to separate investigational and judicial actions, stages and phases of judicial trial in general, perhaps, there is a need to bring the practice to a common standard, and in these cases using the term "unification" in its first meaning may be fitting; but when characterizing pretrial and accelerated proceedings, conceptual accents change, and in our opinion, the second meaning of the term "unification" is more appropriate in respect to this field of criminal procedure. First of all, because unification of the form of criminal procedure on the stage of pretrial proceedings presupposes not just a wish for uniformity of the mentioned procedures in itself, but even more so - individualization and generalization of them in relation to one another with taking into account specific tasks, search and development of the efficient procedures in terms of the reasonability of their time limits and simplification in the system of procedural economy.

Besides, these individual peculiarities that allow to differentiate procedural forms that are similar in their tasks define their differentiation. Such, for example, the researcher of the problem Mishchenko (2019) and Levchenko and Mishchenko (2019) believes that unification as a form of law-drafting activity is a positive thing because it allows to regulate criminal procedural order, its time limits and cost of trial (Andreeva & Trubnikova, 2017). Our attempted excursus into the concept basis is directly related to the topic put in the title of the paper, since it allows to analyze the above-mentioned conclusions through the lens of foreign practice of accelerated and simplified pretrial proceedings, single out their common features names "international standards".

It is notable that the premises of unification of pretrial proceedings (police inquiry) in a criminal case from the point of view of foreign reality lie in the basis of the "international legal standards" that, by the way, up till now were never legally formalized in any codified form; this direction is already pretty clearly defined. At the same time, if yesterday the initiative of formation and legal formalization of "international standards of procedures of pretrial proceedings" was a scientific hypothesis, then today it gained huge support of international community. In any case, formation of these standards is successfully going forward. It is no surprise that this problem in the last decade became the focus of attention of the United Nations Organization.

In particular, in the last two UN Congresses on prevention of crime and criminal law (2010: Salvador, Brazil and 2015: Doha, Qatar) the questions of perfecting the mechanisms of crime fighting in the modern context were discussed. As the result of both Congresses, their participants concluded that among the problems that have a negative impact on the crime situation one can single out the time of investigation and the absence of regulations on simplified trial procedures and their ineffective use. The opinions of the Congress participants come down to the fact that above-mentioned problems lead to unacceptable delay in finalizing investigation and taking a case to court. In this regard, according to some researchers, the key features of different models of international legal procedures of simplified proceedings, for example, in Europe, are the following: limited list of criminal wrongdoings where simplification is possible; small social danger (severity) of the crime and its punishment; insignificance of the damage caused by the crime; obvious criminal events, simple circumstances of the crime; shorter time limits as compared to full pretrial investigation; simplified order of collecting and recording of evidentiary information; admissibility of deviation from the range of basic criminal law principles - first of all, the requirements of comprehensive and complete investigation (only substantial evidence is subject to recording, and only urgent investigative actions are subject to conducting);the procedural peculiarities of simplified proceedings and the system of procedural guarantees are clearly stated by law; special regulations and terms for "changing" simplified proceedings into regular ones; for criminal cases with simplified (accelerated) proceedings a special order and time limits of judicial scrutiny are prescribed.

It is not hard to notice that for most enumerated criteria national "inquiry in shorter form" still falls

under "international standards", regardless of how critically we perceive it. The procedural form of fast-track inquiry still needs to be perfected in a whole range of aspects, of course, but overall, this is the case. In our opinion, precisely the above-mentioned features can be considered the criteria that define accelerated and simplified proceedings, police inquiry and that can fully qualify as "international standards", i.e., standard regulations, common features that such proceedings must adhere to. In this regard the most respected representatives of the global community recommend both researchers theorists and practitioners on the national level develop mechanisms for increasing efficiency of criminal trial, specifically by shortening the timespan between the moment of committing a crime and court sentence, and by implementing the procedures of criminal trial into the criminal procedural legislation of all countries. Most likely, such recommendations are reasonable to consider in legislative work too.

It is noteworthy that in the national criminal procedure research lately more and more researchers processualists began calling for unification, that is "speeding-up", "simplification" and "cost-cutting" of court trial. Let us add here that when speaking of procedural economy, legislators and law enforcers from different countries try to cut down, first, financial and second, human resources by measuring trial costs with the reached effect. According to Andreeva and Trubnikova (2017) opinion, which is hard to disagree with, procedural economy is achieved by "narrowing the fact to be proven, possibility of using witness statements, collecting evidence and the possibility to exclude evidence check from the proving process" (Andreeva & Trubnikova, 2017). Indeed, there is nothing unusual in the fact that the unified inquiry procedure is used with various simplifications and reasonable deviations from the classical, traditional preliminary investigation, since a crime usually is pretty obvious, the involvement of a certain person in it is practically assured, and the procedure comes from the need of procedural economy. We can add only one thing here – in our opinion, unified inquiry must have its own specific proving system, different from preliminary investigation. Despite the fitness of shortened inquiry to the relations existing in the questions of fighting mass crime of small and medium severity, unfortunately, it must be noted that the legislator has not found it possible to approach the questions of reglamentation evidence sources in more detail in cases where the fast-track inquiry can be applied.

In particular, in such cases evidentiary information comes from the same sources that are used in preliminary investigation proceedings. At the same time, within the accelerated inquiry the performance of such investigatory actions as forensic examinations, searches, crime reenactments and some others that require time and resources and in no way facilitate optimization (that is simplification and speeding-up of the procedure) are hardly reasonable. And of course, legislator has made reasonable provisions for certain omissions from the proving process procedures used in preliminary investigation: nonperformance of reexaminations; duty to perform only those investigatory and procedural actions nonperformance of which may lead to losing evidentiary information; non checking evidence if it was not disputed by other parties or other, which in themselves can be perceived as independent evidence system for fast-track inquiry. However, we mean here a situation that would be similar to international practices, when within the fast track inquiry there was a developed evidence system, unique for this procedural form and reflected in law. As it is implemented in most countries with Anglo-Saxon and Continental legal systems in relation to the procedures of police inquiry (Girko, 2019; Girkoa et al., 2019).

In researches that we conducted over the years we studied the practice of accelerated pretrial proceedings in different states that adopted both classical (Romano-Germanic) and continental (Anglo-American) legal systems. Thus, among the European Union countries we studied the criminal procedural law of the Great Britain, Germany, Italy, France, Portugal, Denmark, Belgium, the Netherlands and Spain. Separately we also investigated the procedures in the US and some countries of the CIS and the former USSR, for example, Azerbaijan, Belarus, Georgia, Kazakhstan, Kirghizia, Moldova and Estonia and the formerly socialistic countries - Poland, the Czech Republic, Slovakia. We drew the following conclusions: under "summary proceedings" (simplified trial) international legislators understand a procedure that, in their opinion, would, first, speed up the process of criminal trial, second, provide higher efficiency level of the criminal justice system, and third, minimize costs. Then a reasonable question arises: what defines the demand for certain formalization of a procedural form, lies in the basis of certain exceptions and nuances? We share the opinion of Nikolyuk (2018), according to which a procedural form is secondary in relation to the subject of criminal procedural activity. Only a complex of criteria, among which the purpose would be the most significant, allows to reveal the qualitative distinction of a certain order of criminal procedural activities (Nikolyuk, 2018).

In the basis of simplification of criminal prosecution in minor offences lies plea of guilty, and in certain cases other conditions as well (cooperation in investigation, compensation of damage, etc.). The elementary analysis of the police investigation practice shows that it is characterized by common features, where we can name the same old efficiency, simplicity of recording factual data, absence of bulky in their structure investigatory and court activities, protocolary nature of the closure of proceedings. They are united by a common aim: to define if a crime was committed, and if so, then what kind of crime, by whom and under which circumstances. In our opinion, exactly these features are the criteria that characterize the fast-track and simplified trial and police inquiry and can fully qualify as "international standards", common features inherent in such trials.

It appears that precisely they need legal confirmation on the international level.

## Reference


Andreeva, O., & Trubnikova, T. (2017). ABUSE OF RIGHTS IN CRIMINAL PROCEEDINGS: SOME RESULTS OF THE STUDY. *Juridical Journal of Samara University, 3*(4), 86-94. doi: https://doi.org/10.18287/2542-047X-2017-3-4-86-94

Criminal proceedings. (1989). Course of criminal proceedings. from https://www.litmir.me/br/?b=626633&p=1

Girko, S. (2019). Are there any standards of unified pre-trial production? *Belongs among others institutions-journal, 6-7*(30).

Girkoa, S., Kharchenkob, S., Rumyantsevc, N., & Samelukd, M. (2019). Accelerated Inquiry: Unification and Differentiation of the Procedural Forms. *system, 7*(12), 75-81. doi: https://ijicc.net/images/vol7iss12/71206_Girko_2019_E_R.pdf

Golovko, L. (2010). Police Reform in the context of modernization of pre-trial proceedings in the Russian criminal process. 22, from http://www.iuaj.net/node/484

Kruglikov, L., & Smirnova, L. (2008). *Unification in criminal law*: Law center Press.

Levchenko, O., & Mishchenko, E. (2019). UNIFICATION OF THE CRIMINAL PROCEDURE LAW IN THE ASPECT OF HERMENEUTIC SCIENCE. *Legal Bulletin of Samara University,, 5*(1), 31-35. doi: https://doi.org/10.18287/2542-047X-2019-5-1-31-35

Mishchenko, E. V. (2019). Problems of unification of norms of procedural form in criminal proceedings. from https://ceberleninka.ru/article/n/problemy-unifikatsii-norm-protsets

Nikolyuk, V. V. (2018). *On the issue of special proceedings in the Russian criminal process*. Tomsk: Tomsk state University Press.

Wikipedia. (2020). The Internet resource. from https://ru.wikipedia.org/wiki/%DO%A3%DO%BD%DO%B8%D1...запрос

Yakimovich, P. (2003). Pan TD pre-Trial procedure under the criminal procedure code of the Russian Federation (participants of pre-trial procedure, evidence and proof, initiation of criminal process, inquiry and preliminary investigation): Saint Petersburg: publishing house" Legal center Press.