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CATEGORIES OF JUDICIAL DISCRETION

Despite the fact that the evaluation of evidence requires judicial discretion, the criminal procedure law contains a number of provisions concerning the rules of evaluation of evidence (for example, the conditions for recognizing evidence as appropriate, admissible, etc.). So judicial discretion in the evaluation of evidence is carried out in accordance with legislative instructions, which allow to unify the jurisprudence in determining the relevance and admissibility of evidence. In addition, at present in the doctrine of criminal procedure there is a large number of scientific papers that are devoted to the properties of evidence and their evaluation, which in fact reveals the features of judicial discretion in the evaluation of evidence. In this regard, it should be noted that there is no need to investigate this issue separately and pay attention to other forms of judicial discretion in court proceedings.

If we analyse the relevant provisions of the CPC of Ukraine, we can distinguish the following categories of judicial discretion:

1) judicial discretion concerning the procedure for examining evidence (the court appoints an examination at the request of the parties to the criminal proceedings or the victim (Part 1 of Article 332 of the CPC of Ukraine), independently appoints an examination in cases established by the CPC of Ukraine CPC of Ukraine), determines the issues to be asked to the expert in case of appointment of examination (Part 3 of Article 332 of the CPC of Ukraine), determines the amount of evidence and the procedure for examining them taking into account the position of the parties (Part 2 of Article 349), if it is inexpedient to examine the evidence on those circumstances that are not disputed by anyone (Part 3 of Article 349 of the CPC of Ukraine), asks the accused questions throughout the interrogation to clarify and supplement his answers, requires specific answers from the accused (Part 1, 2 of Article 351 of the CPC of Ukraine), removes questions from the witness that do not relate to the essence of the accusation (Part 8 of Article 352 of the CPC of Ukraine), requires specific answers from the witness (Part 11 of Article 352 of the CPC of Ukraine), decides to repeat witness experience (Part 14 of Article 352 of the CPC of Ukraine); decides on the summoning of an expert for interrogation (Part 1 of Article 356 of the CPC of Ukraine); appoints simultaneous interrogation of two or more already interrogated experts (Part 4 of Article 356 of the CPC of Ukraine); decides on the review of material evidence at their location (Part 2 of Article 357 of the CPC of Ukraine); decides on the announcement of the content of documents in court (Part 1 of Article 358 of the CPC of Ukraine); excludes the document from the evidence or appoints an appropriate exami-

nation for this document (Part 3 of Article 358 of the CPC of Ukraine); decides on the reproduction of audio or video (Part 2 of Article 359 of the CPC of Ukraine); engages a specialist to study audio and video recordings (Part 3 of Article 359 of the CPC of Ukraine); uses the advice of a specialist (Part 1 of Article 360 of the CPC of Ukraine); asks questions to a specialist (Part 2 of Article 360 of the CPC of Ukraine); decides on conducting an on-site inspection (Part 1 of Article 361 of the CPC of Ukraine);

2) judicial discretion concerning the procedure for conducting a judicial investigation (the court decides on the application of measures to ensure criminal proceedings and conduct investigative (investigative) actions at the request of participants in criminal proceedings (Article 333 of the CPC of Ukraine); decides on the interrogation of accused by videoconference (Part 3 of Article 351 of the CPC of Ukraine), decides on the interrogation of a witness in the absence of another witness (Part 5 of Article 352 of the CPC of Ukraine), decides on the interrogation of a witness from another room (Part 9 of Article 352 of the CPC of Ukraine); decides on leaving a witness in the courtroom after interrogation (Part 15 of Article 352 of the CPC of Ukraine); decides on the interrogation of a child witness by videoconference (Part 4 of Article 354 of the CPC of Ukraine);

3) judicial discretion concerning the provision of criminal proceedings (the court decides on the expediency of starting the trial from the beginning in case of change of judge) (Part 2 of Article 319 of the CPC of Ukraine); limits the statement of prosecutor (Part 4 of Article 347 of the CPC of Ukraine), establishes the possibility of considering a civil claim without the participation of a civil plaintiff (Part 1 of Article 326 of the CPC of Ukraine), decides on the possibility of proceedings without civil plaintiff (Parts 2, 3 of Article 326 of the CPC of Ukraine), decides to suspend the proceedings (Article 335 of the CPC of Ukraine), decides to hold a court hearing by videoconference (Article 336 of the CPC of Ukraine), suspends the speech in the case of establishing signs of delay in the trial (paragraph 5 of Part 1 of Article 349 of the CPC of Ukraine), appoints simultaneous interrogation of two or more already interrogated participants in criminal proceedings (Part 15 of Article 352 of the CPC of Ukraine); determines the procedure for interrogation of a minor witness (Part 1 of Article 354 of the CPC of Ukraine); determines the procedure for speaking in court debates (Part 4 of Article 364 of the CPC of Ukraine); suspends the speeches of participants in judicial debates (Part 6 of Article 364 of the CPC of Ukraine); resumes clarification of the circumstances after the last word of the accused (Part 4 of Article 365 of the CPC of Ukraine);

4) judicial discretion concerning the provision of judicial proceedings (the court decides on the involvement of a reserve judge (Part 1 of Article 320 of the CPC of Ukraine), takes the necessary measures to ensure proper litigation in the status of the presiding judge (Part 2 of the Article 321 of the CPC of Ukraine), decides on the case of the accused in case of non-appearance in court (Part 1 of Article 323 of the CPC of Ukraine), establishes the seriousness of the reasons for non-appearance of the prosecutor and defence counsel (Part 1 of Article 324 of the CPC of Ukraine); sufficient time necessary to acquaint the defence counsel and the prosecutor with the materials of the

criminal proceedings (Part 4 of Article 324 of the CPC of Ukraine), decides on the possibility of a trial in case of non-appearance of the victim (Part 1 of the Article 325 of the CPC of Ukraine), applies measures of criminal procedural coercion to witnesses in the event of their absence (Part 1 of Article 327 of the CPC of Ukraine); in the courtroom (Part 1 of the Article 328 of the CPC of Ukraine); allows participants of the court session to deviate from the rules of conduct in court (Part 1 of Article 329 of the CPC of Ukraine); decides on the application of measures to violators of the court procedure (Article 330 of the CPC of Ukraine); decides on the merging and separation of materials of criminal proceedings (Article 334 of the CPC of Ukraine); decides the petition of the participants in the proceedings (Part 1 of Article 350 of the CPC of Ukraine); interrupts the stay in the deliberation room for rest with the onset of night time (Part 2 of Article 367 of the CPC of Ukraine).

Thus, it can be concluded that the court's ability to apply discretion in criminal proceedings is quite wide. At the same time, it should be noted that in most cases such a discretion concerns either the procedure for examining evidence or the procedure for conducting a trial. At the same time, the legislator consistently implements his thesis "a judge is an arbitrator", significantly limiting the role of the court in the process of forming the amount of evidence and their examination. Indeed, it is the court that determines the amount of evidence to be examined, but only the evidence provided by the participants in the criminal proceedings can be assessed. The court cannot, at its own discretion, increase such a body of evidence, and its reduction requires a fairly thorough argument.

Ключові слова: суд, суддівський розсуд, дослідження доказів.

Key words: court, judicial discretion, examination of evidence.

БЛОКІНЬ РУСЛАН МИХАЙЛОВИЧ

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ОКРЕМІ ПИТАННЯ ПРОЦЕСУАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ В УМОВАХ РЕФОРМУВАННЯ ПРАВООХОРОННОЇ ТА СУДОВОЇ СИСТЕМИ

У статті розглядаються проблеми кримінальної процесуальної відповідальності в умовах системних реформаторських перетворень та їх вплив на правоохоронну та судову системи держави, є актуальним в умовах викликів сьогодення, в тому числі в умовах загрози національній безпеці. На підставі ґрунтовного аналізу норм Кримінального процесуального кодексу України (далі – КПК), Кодексу України про адміністративні правопорушення (далі – КУпАП) розкрито передумови застосування заходів кримінально-процесуальної відповідальності,