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### SECTION 32. Jurisprudence.

## PROCEDURAL SAFEGUARDS IN INVESTIGATING AND ADJUDICATING CRIMINAL CASES BY SUMMARY PROCEDURE

**Abstract:** This article describes the various types of simplified procedure in the foreign law and is the author's opinion on the need to provide procedural safeguards in the event of the introduction of a simplified procedure in the criminal proceedings in Uzbekistan, as well as disclose the concept and importance of procedural safeguards.

**Key words:** summary proceedings, simplified procedures, tselerantnoe proceedings, procedural safeguards, legality, validity, fairness.

**Language:** English

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### Introduction

In the age of information technologies one of the most urgent issues is to ensure the efficiency of criminal justice. This problem is relevant to each state, no matter what the legal system is functioning. One way to improve efficiency is the introduction of summary judgment procedure.

The general theoretical level (as evidenced by the analysis of practices) accelerated and simplified the proceedings, which is most conveniently termed tselerantnoe (from the Latin. Selerantes - fast, rapid) - these are forms of criminal procedure, which are designed to resolve criminal cases in a shorter period, and simplified rules on [1].

### Materials and Methods

An analysis of the views of the scientific community shows that the main tasks of summary judgment are such tasks as: a) procedural economy, that is, reducing the time, effort and money used to resolve part of the criminal cases and release them for production on the most complex cases; b) the approach of the moment of punishment of those responsible at the time of committing the crime in order to enhance the preventive effects of the procedure and proceedings of criminal punishment; c) a reconciliation of the parties; d) prompt restoration of violated rights of victims [1].

As a rule, the simplified procedure provides the participants of the process, however, and sometimes

even more advantageous guarantees for their rights and interests, than ordinary legal proceedings.

The task of ensuring the efficiency of criminal justice has become the focus of attention and the Presidential Decree of October 21, 2016, № UP - 4850 "On measures to further reform the judicial system, strengthening guarantees protection of the rights and freedoms of citizens" [2], which is an essential instrument to ensure the development institute of summary judgment in the criminal proceedings in Uzbekistan. For example, the decree provides for expansion of the institute of exemption from criminal liability in connection with reconciliation of the parties, which is a type of summary judgment. In turn, in the program of comprehensive measures to further reform the judicial system, strengthening guarantees protection of the rights and freedoms provided for preparation of proposals for implementation in the criminal trial of a simplified procedure of pre-trial and trial proceedings in cases of crimes that do not pose great danger to society.

Of course, this problem requires a comprehensive study and analysis, so that the legal regulation in line with today's needs and enhance the effectiveness of the fight against crime. One aspect of the study is to get acquainted with the experience of foreign countries on the simplification of criminal justice, which can be used in the development of the domestic legal solutions in this area.



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An analysis of foreign legislation shows the functioning of the various forms of summary proceedings.

In criminal proceedings, the developed countries have adopted such forms of summary proceedings as a "total output" (England), "plea bargain" (USA), "conditional refusal to initiate a criminal prosecution", "criminal orders" (France), "the accelerated production" (Germany) [3].

In criminal proceedings in England there is a so-called summary proceeding [4]. Procedural regime of the total of the trial as a whole little formalized. The peculiarity of the total production is: the absence of a preliminary hearing; resolution of the case solely magistrate; participation of defence counsel is not mandatory; in some cases, trial in absentia is made (without the participation of the accused).

In the US, under the simplified procedure is mainly considered the case of less dangerous crimes. For the case in a simplified procedure requires the written consent of the accused. After receiving the consent of the accused magistrate must inform him in detail about the rights. On the essence of the charges and that the punishment that threatens him; of his right to invite the defense, or to have appointed counsel; What he is not obliged to make any statements, and if they do, they may be used against him; What does he have the right to be tried by a judge of the district court; What he may require that the magistrate or district judge tried him before a jury; What if he did not give consent to the hearing by a magistrate, that he has a right to have his case pre-checked district judge, as well as the circumstances under which he may be released from custody pending trial.

In practice, in these cases a trial is rare, because in most cases the accused admitted his guilt. All the production is reduced only to clarify the name and surname of the accused and the definition of the penalties, but there is even more simplified procedure. For example, the defendant in the summons to the court reported that the amount of the fine, which it may be subjected to in the event of a conviction. Typically, such a notification is perceived as a very broad hint. Instead of appearing in court charged with mail send this amount and the case is considered ended.

France also operates a simplified production, which according to the legislation of the prosecutor has the right to arbitrarily refuse to initiate a criminal prosecution. Known and an institution like the criminal law 'a penalty by agreement', according to which the prosecutor has the right to prosecute offer to pay into the treasury of the penalty in a certain amount and half of the amount of the fine set for the offense as a punishment. If the judge approves the agreement, the prosecution is not carried out.

In Germany, the production of the simplified procedure is called a "writ of punishment" [5]. Code of Criminal Procedure of the Federal Republic of Germany establishes the possibility of accelerated of the cases considered by the judge alone or with the participation of.

One of the central issues in the operation of these facilities is the issue of procedural safeguards, as the problem of ensuring the rights of individuals in criminal proceedings is one of the constant progresses of current issues in any democratic state.

On this issue draws attention to the International Covenant on Civil and Political Rights, which stipulates the responsibilities of each of the state - party to the Covenant to "ensure that any person whose rights or freedoms recognized by the Covenant are violated shall have an effective remedy for the legal protection ... to ensure that the competent authorities remedies protection, when provided" [6].

Procedural safeguards in criminal proceedings are derived from socio-economic, political, moral and ideological and legal ways and means to ensure the proper execution of the tasks of criminal procedure, protection and the effective enjoyment of the rights and duties of the subjects of the criminal proceedings and, where appropriate, - effective protection against possible violations [6].

As the U.A.Tuhtasheva, procedural guarantees play an important role in ensuring the legality and validity of the criminal proceedings, and they are defined by procedural law means creating conditions for the implementation of the criminal process tasks, fair justice [7].

Questions of procedural guarantees in criminal proceedings of particular importance tons in connection with the preparation of proposals for the introduction in the criminal trial of a simplified procedure of pre-trial and trial proceedings in cases of crimes that do not pose a great danger to the public. Introduction of the institute a simplified procedure for proceedings in any way should not weaken procedural guarantees of individual rights in criminal proceedings. On the contrary, the guarantee should be strengthened. Ensuring individual rights covering all forms favored participants in the criminal process in the implementation of rights, including: information about the person possessing rights and their interpretation; creating the necessary conditions for the full realization of the rights; protection of the rights of the violations; protection of the rights; remedy [7].

This is a fairly complex issue. The difficulty lies in the fact that the introduction of summary procedure involves establishing a balance between this production and the provision of guarantees of human rights and justice guarantees the ruling of a lawful, reasonable and fair judgment. Ensuring procedural guarantees involves not only their



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consolidation in the law and in respect for their neprekoslovnoe in law enforcement.

In the states of Western Europe, mainly the simplified (reduced) order proceedings. This institution, as a rule, does not apply at the stage of preliminary investigation and the request for the proceedings before the court in a simplified procedure may be made by the end of the preliminary investigation. For example, in Italy at the end of the preliminary investigation, the defendant agreed with the prosecutor seeks abbreviated proceedings before the Court at the stage of the preliminary hearing, which takes place mainly in the written materials of the preliminary investigation.

Since, in accordance with the program of comprehensive measures to further reform the judicial system, strengthening guarantees protection of the rights and freedoms of citizens, approved by the Decree of the President of the Republic of Uzbekistan performing duties Sh.Mirziyeva on October 21, 2016 will be entered work to prepare proposals for the introduction of a simplified procedure and at the stage of pre-trial proceedings is necessary to pay special attention to the establishment of effective procedural safeguards to ensure the rights of individuals and the interests of justice both at the pre-trial and in court proceedings. This question is multi-faceted. Therefore, we focus on the basic procedural safeguards that should be set when implementing institute a simplified procedure of investigation and consideration of criminal cases.

1. When declaring party decision to bring him to participate in a criminal case as an accused to him in the presence of counsel shall be explained in detail the right to submit an application for the conduct of pre-trial and trial proceedings in a simplified manner, and should be explained to the criminal law and criminal procedure the effects of the application of such an application.

2. Given the fact that the pre-trial and trial proceedings under the simplified procedure can be performed only in cases of crimes that do not pose great danger to society, the accused shall be entitled to explain his reconciliation with the victim, as well as the content of article 57<sup>1</sup> of the Criminal Code. This is due to the fact that the law allows for exemption from criminal liability in connection with reconciliation. This question is of particular importance in connection with the preparation of proposals for the expansion of the institute of exemption from criminal liability in connection with reconciliation of the parties. The need to clarify the content of the accused of the Criminal Code article 57 due to the fact that the criminal legal consequence of the simplified procedure for consideration of cases and active repentance guilty for crimes that do not pose great danger to society, almost the same. Clarification of the accused of his right to declare the request for the conduct of pre-trial and trial

proceedings in a simplified manner, as well as the content of Article 57<sup>1</sup> and 66<sup>1</sup> of the Criminal Code allows you to more fully realize the dispositive beginning of the criminal process, representing the accused the right to choose the legal proceedings on the case.

3. If the accused during the preliminary investigation has not filed a motion for the conduct of the case by summary procedure, his right to seek a ruling sentencing without trial in a criminal case should be clarified at the end of the preliminary investigation.

4. When introducing a simplified procedure for the institute pre-trial proceedings and procedural safeguards to protect the rights of the victim should be provided. To this end, the Criminal Procedure Code is necessary to fix the rate, providing the investigator's duty to inform the victim about petitions submitted by the accused of the conduct of the proceedings by way of summary judgment, as well as criminal law and criminal procedural consequences meet such a request. In case of disagreement the victim's preliminary investigation continues in the normal way.

The establishment of such an order, on the one hand, ensure the protection of rights and interests of the victim, but on the other hand, will expand the elements of restorative justice in the criminal process.

5. As a rule, any crime harms not only the rights and interests of a particular person, it hurts, and the interests of society and the state. In addition, taking into account that the supervision over the observance of legality in criminal matters entrusted to the public prosecutor should be established that the investigator at the petition of the accused about the conduct of the case in a simplified procedure must receive the consent of the prosecutor.

6. The Criminal Procedure Code should provide that the petition for conduct of business under the simplified procedure, the investigator must ensure that:

accused understands the nature and consequences of the application of the claimed them;

The application was declared voluntarily and after consultation with defense counsel;

victim expresses consent to the conduct of affairs in a simplified manner, and understands criminal law and criminal procedural implications of doing business in that order.

7. It is necessary to establish a procedure according to which the defendant may file a petition for the conduct of proceedings at any time, preliminary investigation and in court, but before the trial.

8. In order to ensure the implementation of all the procedural safeguards to protect the rights and interests of the person at the court hearing the judge should clarify the following questions:

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clear whether the charge brought against the defendant;

whether he agrees with the prosecution;

Does your application for a verdict without trial;

stated whether this request voluntarily and after consultation with defense counsel;

whether he is aware of the consequences of a verdict without trial.

The judge must find out from the victim of its attitude towards the defendant's application for a verdict in a simplified manner and whether it harm caused by the crime reimbursed. If the victim for whatever reason, does not participate in the court

hearing, the judge will have to figure out these issues from the criminal case.

9. Provision should be made that if the defendant refused the application for the conduct of proceedings in a simplified manner, the matter shall be referred to the general procedure.

### Conclusion

The matter can be discussed in a general way, if it insists the prosecutor or the victim, or the court of its own motion so decides.

In our opinion, the above and other procedural safeguards ensure the legality, validity and fairness of the sentence imposed by summary procedure.

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