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LEGAL NATURE OF THE COURT'S ACTIVITY
AT THE STAGE OF EXECUTION OF THE SENTENCE

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The article deals with the analysis of the characteristics which determine the court's activity at the stage of executing the sentence. The author investigates different points of view about the legal nature of the court's activity at the stage of execution of the sentence.

According to the criminal proceeding rules criminal proceeding includes stages. One of the main stage is the stage of executing the court sentence. Court and other participant of criminal proceeding turn the sentence to execution and decide the issues which emerge during the executing the sentence and after this. High-quality execution of the sentence upgrades its effectiveness and contributes to the forming of citizens' beliefs in the inevitability of punishment.

The science of criminal proceeding hasn't developed a unified approach of determination the stages of execution of the sentence borders, as well as the nature of the legal court's activity at the stage of execution of the sentence.

There are various points of view about legal nature of the court's activity at the stage of execution of the sentence in legal juridical. The main question: «Is court's activity justice?»

According to the first approach the court's activity at the stage of execution of the sentence is corrective kind of activity. This is because justice has already been done by the court's verdict. The questions about legality and validity of verdict is not raised at the stage of its execution, but only the process of its execution is adjusted [1].

According to the second approach the activity of the court at the stage of execution of the sentence cannot be recognized as justice, because justice is the activity of the court, which consists of the consideration of a legal conflict. In other words, it is the resolution of the case on the merits [2, p. 33–35]. The legal facts that give rise to legal proceeding at the stage of execution of the sentence are not criminal events (legal conflict), but circumstances which arise after the sentence enter into legal force in connection with its execution.

According to the third approach the activity of the court at any stage of criminal proceeding must be considered to be justice. It is because this activity closely linked with the implementation of constitutional principles, it is carried out by an independent and impartial court, it is aimed at establishing truth and justice [3, p. 55–57; 4; 5, p. 10; 6].

D. Yanin calls justice at the stage of execution of the sentence as the consideration and taking of a court's decision on a group of issues which have a material nature. They connect with the correction of the sentence [7].

E. Gaponov points to the presence of most signs of legal proceedings for consideration and resolution of issues related to the execution of the sentence, thus refers this activity to one of the forms of justice [8].

R. Yurchenko also speaks about the administration of justice at the execution stage [9].

In order to determine which of the activities carried out during the execution of the sentence is justice, let's define what justice is.

M. Strogovich identified four features that distinguish justice from other types of the state activity. In particular, the features of justice in criminal proceedings include:

- a. administration of justice only by the court;
- b. the existence of goals achieved by the court in the administration of justice;
- c. the administration of justice only through the consideration of criminal cases in court sessions and the application of penalties established by law to persons guilty of committing a crime, or the acquittal of innocent persons;
- d. the trial and resolution of criminal cases are carried out by the court in certain procedural forms established by law, in a certain legal and procedural order [10].

Comparison of these features and norms of Belarusian criminal proceeding legislation let us come to the conclusion that the activity in the stage of execution of the sentence, finally, is aimed at making a final decision by the court.

We believe that justice cannot be considered completed if the verdict issued by the court is not executed.

Achieving the goals of justice is not limited by exposing and convicting the accused. The activity carried out at the stage of execution of the sentence is characterized by a strictly established procedural form – a court session. Issues related to the execution of the sentence are resolved in the court session.

The execution stage is the final main stage of the criminal proceeding. The stage includes timely and correct application of the sentence to execution, resolution of procedural issues arising in the course of its execution, judicial control and prosecutor's supervision over the observance of the legislation at the stage of executing the sentence [11].

We can't state that by the time of execution of the sentence, the tasks of criminal proceeding had already been completed. Execution of a sentence is the activity of the court, as well as other bodies and institutions, individual officials in applying the sentence to execution, bringing the sentence to execution and actual execution of the sentence. The court cannot act as an independent participant in the execution of the sentence. The court is an active participant of establishing factual circumstances when deciding issues related to the execution of the sentence.

The content of the adversarial principle is also specific because of the active role of the court. At the stage of execution of the sentence, there are subject-personal relations both between the court and the bodies that execute the sentence and between the person serving the sentence and the body that organizes and controls the execution of the sentence [9].

So we come to the conclusion that the activity of the court, carried out at the stage of execution the sentence, is inherent in the signs of justice, but this activity cannot be called pure justice.

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