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On Application of Legislation in Consideration of Criminal Cases in a Court of First Instance (General Manner of Proceedings)

The right to a fair trial, based on provisions of the Constitution of the Russian Federation (Articles 2, 17–19, 45–54, 118, 120, 123) and of acts of international law (Article 14 of the International Covenant on Civil and Political Rights of 16 December 1966, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950), is realised in a court of first instance in the course of a public hearing of a criminal case within a reasonable time by an independent, impartial and competent court, with regard to the principles of presumption of innocence, ensuring the defendant's right to defence, adversary nature of proceedings and equality of the parties, to all the other principles of criminal judicial procedure and the norms of criminal procedure legislation.

The consideration of a criminal case in a court of first instance in strict correspondence with the manner stipulated in law, meeting the criteria of a fair trial serves as a secure guarantee of protection of rights and lawful interests of persons and organisations injured by crimes and of protection of the person from unlawful and unsubstantiated indictment, conviction, limitation of her/his rights and freedoms.

In order to ensure the correct and uniform court application of legislation in consideration of criminal cases in a court of first instance in the general manner of proceedings, as well as with regard to issues raised by the courts, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 "On the Supreme Court of the Russian Federation", hereby rules to provide the courts with the following explanations:

1. The attention of the courts is pointed to the fact that the consideration of a criminal case in a court of first instance has special significance in the criminal judicial procedure, as on this stage the issue of guilt of the defendant is resolved, and an acquitting or convicting sentence may be adopted. In accordance with Articles 15 and 244 of the Criminal Procedure Code of the Russian Federation (hereinafter – CrPC RF), stipulating that trials are based on the principles of adversary nature of proceedings and equality of the parties, the court considering a case in the general manner of proceedings is obliged to create the necessary conditions for the parties to realise their rights (in particular the right to present evidence, based on which the court adopts a sentence or the final decision in the case), as well as to perform their procedural duties.

2. On the preparatory stage of the court session the presiding judge must clarify the data regarding the identity of the defendant.

If there are no documents that would allow to establish the identity of the defendant in the materials of the case, or if the court doubts the reliability of personal data of the defendant contained in the case (e.g. regarding her/his first name, family name, patronymic, date or place of birth), the court suggests it to the state accuser to present the necessary documents in order to clear the obstacles for the trial.

If the identity of the defendant is established on the preparatory stage of the court session, this does not exempt the court from the duty (stipulated in Article 73 of the CrPC RF) to ascertain during judicial investigation the circumstances that characterise the personality of the defendant and have significance for the adoption of the sentence or of another final court decision.

3. The courts should take into account that in accordance with Part 1 of Article 11 and Part 2 of Article 243 of the CrPC RF, on the preparatory stage of the court

session the presiding judge clarifies to all the trial participants their rights, duties and the manner of their realisation, informs them of the rules of the court session, stipulated in Article 257 of the CrPC RF, and explains to them the liability for disturbing the established order in the court session, stipulated in Article 258 of the CrPC RF.

Herewith, the defendant is informed about her/his rights referred to in Article 47 of the CrPC RF and also about her/his other rights during the trial, in particular about the right to participate in judicial pleadings and the right of the last plea (Articles 292, 293 of the CrPC RF).

4. If the injured person, civil plaintiff, civil defendant, their representatives participate in the court session, the presiding judge explains to them their rights, duties and liability during the trial, stipulated, correspondingly, in Articles 42, 44, 45, 54 and 55 of the CrPC RF. Where there are grounds stipulated in Article 76 of the Criminal Code of the Russian Federation, the right of the injured person to motion for termination of the criminal case due to reconciliation with the defendant is explained to her/him.

On the preparatory stage of the court session, the court clarifies to the injured person her/his right to file a civil claim and the possibility to do so until the end of the judicial investigation, if the injured person was not informed of this right during the preliminary investigation.

5. Motions regarding the summoning of new witnesses, experts, specialists, motions for request to present material evidence and documents or for exclusion of evidence obtained in violation of criminal procedural law, as well as motions regarding the composition of trial participants and the progress of the case (motions to recognise one as an injured person, civil plaintiff, to postpone or suspend the trial, to terminate the case, etc.), received before the beginning of consideration of the case or filed on the preparatory stage of the court session, are resolved directly after they are filed and discussed.

If the court lacks sufficient data necessary to resolve the motions on this stage of the trial, the judge may suggest it to the parties to present additional materials in substantiation of the filed motions and may render assistance in requesting such materials, as well as take other measures allowing to adopt a lawful and substantiated decision stipulated in Part 2 of Article 271 of the CrPC RF.

6. In regard of the issues referred to in Part 2 of Article 256 of the CrPC RF, the court adopts a ruling or decree in the deliberations room, in the form of a separate procedural document signed by the whole composition of the court. Other issues may be resolved by the court at its discretion both in the deliberations room or in the courtroom, with the adopted ruling or decree entered into the minutes of the court session. In any case, the decision of the court must be a reasoned one and must be announced in the court session.

7. The attention of the courts is pointed to the fact that in accordance with provisions of Part 1 of Article 273 of the CrPC RF, judicial investigation begins with the state accuser stating the charges brought against the defendant. By implication of law, the state accuser presents not the whole contents of the indictment (indictment act), but only the description of the crime with indication of the time, place, manner of its perpetration, other facts significant for the criminal case and the statement of offence with reference to the item, part, article of the Criminal Code of the Russian Federation that stipulates liability for that crime.

If several defendants are accused in the case of committing one and the same crime (crimes), the state accuser has the right not to repeat the facts of the crime (crimes) when stating the charges against each of the defendants.

8. By virtue of requirements of Article 240 of the CrPC RF, during judicial investigation the evidence presented by the parties is directly examined by hearing, during examination, the testimony of the defendant, the injured person, of the witnesses, of the expert's and specialist's conclusion and testimony, by reading out the minutes of investigative actions and other documents, by performing other judicial actions. The testimony of the injured person and of the witnesses may be heard through examination with the use of videoconferencing systems in the manner stipulated in Article 278^1 of the CrPC RF.

It is only possible to examine the testimony of the defendant, injured person, witnesses earlier stated during the preliminary investigation or in court, in particular during confrontation, by reading out that testimony in a court session, if there are grounds indicated in Articles 276 and 281 of the CrPC RF; the list of those grounds is exhaustive.

9. In accordance with the principles of presumption of innocence, adversary nature of proceedings and equality of the parties, stipulated in Articles 14 and 15 of the CrPC RF, and their specification given in Articles 244, 274, 275, 277, 278 of the

CrPC RF, the prosecution is the first to present evidence to the court; evidence presented by the defence is examined after the evidence of the prosecution; the parties themselves choose the order of examination of pieces of evidence presented by them; during examination of the injured person and of witnesses for the prosecution, the state accuser and other trial participants on the side of the prosecution are the first to ask questions; during examination of witnesses for the defence, the first ones to ask questions are the defence lawyer and other trial participants on the side of the defence.

The defendant and the injured person may realise their right to testify at any moment of the court examination, stipulated in Part 3 of Article 274 and Part 2 of Article 277 of the CrPC RF, with permission of the presiding judge.

Based on the norms regulating the manner of examination of the defendants, injured persons and witness, a motion to read out the testimony earlier given by one of those persons during preliminary investigation or in court is resolved by the court after the corresponding person has been examined by all participants on the sides of the prosecution and defence. If the court satisfies that motion, then, after the testimony is read out, the parties must be given an opportunity to ask additional questions in the same order as during initial examination.

10. If an injured person or a witness, who is a spouse or another close relative of the defendant, refuses to testify, or if the defendant refuses to testify, the court may only read out the testimony earlier given by her/him and playback the audio, video recordings or film materials attached to the minutes of an interrogation or confrontation, if before the interrogation (confrontation) the injured person, witness, defendant was informed about the right to refuse to testify against him-/herself, his/her spouse and other close relatives; if he/she was warned that his/her testimony may be used as evidence in a criminal case, in particular in the event of later retraction of testimony; if the defendant's testimony was received in the presence of a defence lawyer (Part 2 of Article 11, Item 3 of Part 2 of Article 42, Item 1 of Part 4 of Article 56; Item 2 of Part 4 of Article 46, Item 3 of Part 4 of Article 47, Item 1 of Part 2 of Article 75 of the CrPC RF).

The court may decide to read out the testimony of the defendant, injured person or witness and to playback the materials attached to the minutes of interrogation (confrontation) due to significant inconsistency between the earlier given testimony and the testimony received in the court session. The court may do so upon the motion of a party.

11. The attention of the courts is pointed to the need to take exhaustive measures to ensure the participation in the court session of an injured person or witness over the age of eighteen, who fails to appear before the court. If such measures do not result in her/his appearance before the court, the court may decide to read out earlier given testimony and playback the recorded materials of that testimony, attached to the minutes of interrogation (confrontation), with the consent of the parties. Where Part 2 of Article 281 of the CrPC RF applies, the consent of the parties is not required to read out the testimony in the event of non-appearance.

Based on provisions of Parts 2^1, 6 of Article 281 of the CrPC RF and paragraph 3.d of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 in their interrelation, it is possible to read out the testimony of an injured person or witness over the age of eighteen, who failed to appear before the court, to playback the recorded materials of that testimony and to read out the testimony of an underage injured person or witness without the consent of one of the parties, if the accused (defendant) had the opportunity to challenge the testimony of the person testifying against her/him during the pre-trial stages of proceedings, using legal means.

12. By implication of Part 6 of Article 281 and Part 5 of Article 191 of the CrPC RF, the court does not summon an underage injured person, witness for examination in the court session and reads out her/his testimony, earlier given during the preliminary investigation, if that testimony was received with the use of video recording or filming, the materials of which are stored with the criminal case.

Where video recording or filming was not conducted during interrogation, and a party objects to reading out of that testimony and motions to summon the underage injured person, witness for examination in the court session, the court discusses the motion and adopts a reasoned decision.

Herewith, the court should take into account the provisions of the Convention on the Rights of the Child of 20 November 1989 and of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007, which stipulate that the well-being and interests of the child are the fundamental values. Based on these requirements the court may refuse to satisfy the aforementioned motion, in particular if there are reasons for concern about the mental health and psychological state of the underage person. When

referring to these grounds, the court must be in possession of the corresponding medical documents, a conclusion of an expert or specialist (doctor, psychologist).

If the court finds it impossible to examine the underage person, it adopts the decision to read out its testimony, given during preliminary investigation without the use of video recording or filming.

13. When considering a motion of a party to recognise a piece of evidence as inadmissible in accordance with Item 3 of Part 2 of Article 75 of the CrPC RF, the court must find out, how exactly the requirements of criminal procedural law were violated. In particular, a piece of evidence is found inadmissible if there were significant violations of the manner of its collection and preservation, stipulated in criminal procedure legislation, and also if its collection and preservation were performed by an unauthorised person or body, or as a result of actions that are not stipulated in procedural norms.

The courts should note that the rules, stipulated in Part 4 of Article 235 of the CrPC RF for preliminary hearings (in accordance with which, when the defence files a motion to recognise a piece of evidence inadmissible on the grounds that it was acquired in violation of criminal procedural law, the burden of refuting the arguments of the defence lies on the state accuser, and in other situations the burden of proof lies on the party that files the motion), also apply to the trial.

14. It is clarified to the courts that if the materials of the case contain a court ruling, issued during pre-trial proceedings in the manner stipulated in Article 165 of the CrPC RF, permitting to conduct an investigative action or regarding the lawfulness of an investigative action conducted without prior permission of the court (Part 5 of Article 165 of the CrPC RF), this does not exempt the state accuser from the duty to refute the arguments of the defence regarding the inadmissibility of evidence acquired during such an investigative action, if these arguments are put forward in the court session, and does not exempt the court from the duty to inspect the circumstances, in which that action was conducted, and to adopt a reasoned decision in regard of the motion filed by the defence.

15. If the court doubts the substantiation of the expert conclusion or there are inconsistencies in the conclusions of the expert (experts), which cannot be resolved by examining the expert (experts) in court, or if the rights of trial participants were violated during appointment and conduction of the expert examination, which influenced or could influence the conclusions of the experts, the court, upon the

motion of the parties or upon its own initiative, appoints a repeated expert examination, entrusting it to a different expert, in accordance with Part 2 of Article 207, Parts 3 and 4 of Article 283 of the CrPC RF. If the expert conclusion is not clear or full enough, as well as if new questions regarding the earlier examined facts of the case arise, the court may appoint an additional expert examination, entrusting it to the same or to a different expert.

If necessary, the expert who gave a conclusion during preliminary investigation may be examined in a court session in order to make that conclusion more precise or clear. If there are grounds for conducting an additional or repeated expert examination, it is not allowed to simply examine the expert in court instead.

16. Based on provisions of Article 58 and Part 3 of Article 80 of the CrPC RF, a specialist may be drawn to participation in a trial in order to assist the parties and the court in inspecting the items and documents, using the technical equipment, to formulate questions for the expert and to clarify the issues within the specialist's professional competence. In regard of the questions asked, a specialist may both state her/his opinion orally (which is recorded in the minutes of the court session) and in the form of a conclusion (which is attached to the materials of the case). Herewith, a conclusion of a specialist cannot substitute for an expert conclusion, if such is required in the case.

If it follows from the oral explanations or from the conclusion of the specialist that there are grounds for appointment of an additional or repeated expert examination, the court, upon the motion of a party or upon its own initiative, should discuss the issue of appointing such an examination.

17. If necessary, a specialist that participated in an investigative action or presented a conclusion attached to the case as a piece of evidence may be examined in the court session about the circumstances in which the investigative action was conducted, in regard of the issues within her/his professional competence, and also in order to clarify the opinion stated by her/him on those issues. Such an examination is conducted in accordance with the rules of witness examination, and the specialist is informed about her/his rights and liability, stipulated in Article 58 of the CrPC RF.

By implication of Part 4 of Article 271, Part 1 of Article 58 and Part 4 of Article 80 of the CrPC RF in their interrelation, the court may not refuse to satisfy a motion for the examination of a person earlier drawn to participation in the investigation or

court consideration of the case as a specialist and appearing in the court session upon the initiative of any of the parties.

18. The attention of the courts is pointed to the fact that in accordance with Part 2^1 of Article 58 of the CrPC RF the court may not refuse to satisfy the motion of the defence to draw a specialist to participation in the trial in order to clarify issues within her/his professional competence, unless there are grounds for recusal stipulated in Article 71 of the CrPC RF. Taking into account the provisions of criminal procedural law regarding the equality of the parties, the court also may not refuse to satisfy such a motion of the prosecution.

19. If significant violations of law, referred to in Items 1–6 of Part 1 of Article 237 of the CrPC RF, committed during pre-trial proceedings in the criminal case are discovered in the course of the trial, and these violations preclude the court from adopting a sentence or another final decision, and it is not possible for the court to rectify them, then the court, upon the motion of a party or upon its own initiative, returns the case to the prosecutor on condition that such rectification will not involve the supplement of insufficient inquiry or preliminary investigation. If facts referred to in Part 1^2 of Article 237 of the CrPC RF are discovered, the court may only return the criminal case to the prosecutor upon the motion of a party.

20. In accordance with Parts 7 and 8 of Article 246 of the CrPC RF, the full or partial renunciation of the indictment by the state accuser during the trial, as well as change of the indictment towards mitigation, predetermine that the court will adopt a decision in accordance with the position of the state accuser. Herewith, the law requires that the state accuser presents to the court the reasons for the full or partial renunciation of indictment, as well as for the change of the indictment towards mitigation, with reference to the grounds stipulated in law, and that the court adopts a decision only after examining, in an adversary procedure, the materials of the case significant for that purpose and after hearing the opinions of the participants of the court session on the sides of the prosecution and defence as to whether the position of the state accuser is substantiated.

21. Taking into account the requirements of Part 2 of Article 27 of the CrPC RF (that it is not allowed to terminate the criminal case or criminal prosecution on non-rehabilitating grounds, if the defendant objects against this), the court, if there are grounds for such termination, must explain to the defendant the legal consequences of adoption of a court decision on termination of the criminal case, in particular the possibility of confiscation of the defendant’s property recognised

as material evidence, the possibility of civil claims for restitution of damages caused by the crime, before learning the opinion of the defendant regarding such termination.

22. The courts should take into account that the minutes of the court session must be drawn in full accordance with the requirements of Article 259 of the CrPC RF. If the parties present remarks to the minutes of the court session, the presiding judge must take measures for their timely consideration.

If a party presents its remarks to the minutes after the expiration of the three-day term, stipulated in Part 1 of Article 260 of the CrPC RF, and motions to restore that term because it was missed for a good reason, the presiding judge should resolve this issue in the manner stipulated in Article 130 of the CrPC RF, based on the assessment of arguments stated by the party.

23. Taking into account that in accordance with Part 4 of Article 29 of the CrPC RF the discovery of circumstances contributing to the perpetration of the crime, violation of rights and freedoms of citizens for the purpose of their future prevention is an important part of the trial, the courts, in consideration of every criminal case, should take the necessary measures to meet this requirement of the law and should adopt special rulings (decrees), where there are sufficient grounds for this.

24. In view of adoption of this ruling:

- Ruling of the Plenary Session of the Supreme Court of the USSR No. 2 of 18 March 1963 "On Strict Compliance with the Laws in Court Consideration of Criminal Cases" (as amended by Rulings of the Plenary Session of the Supreme Court of the USSR No. 15 of 3 December 1976, No. 7 of 26 April 1984 and No. 10 of 18 April 1986) is not subject to application;
- the following Rulings of the Plenary Session of the Supreme Court of the of the Russian Federation are abrogated:

  No. 5 of 17 September 1975 "On Compliance of Courts of the Russian Federation with Procedural Legislation in Court Consideration of Criminal Cases" (as amended by Rulings of the Plenary Session No. 7 of 20 December 1976, No. 10 of 20 December 1983, No. 7 of 27 August 1985, No. 10 of 24 December 1985, No. 11 of 21 December 1993, No. 7 of 6 February 2007 and No. 3 of 9 February 2012);

No. 4 of 29 August 1989 “On Compliance of Courts of the Russian Federation with Procedural Legislation in Consideration of Criminal Cases in First Instance” (as amended by Rulings of the Plenary Session No. 11 of 21 December 1993, No. 10 of 25 October 1996 and No. 7 of 6 February 2007).

Chief Justice of the Supreme Court of
the Russian Federation V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation V.V. Momotov