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## A Study of Procedural Offenses in Modern Legal Science

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### Abstract

The law strengthens social relations and creates mutual trust, as the primary cornerstone for the development of human talents. Without law, there is no society and no progress. It is obvious that problems and conflicts arise in social life due to conflict of interests. In order to solve and prevent the reoccurrence of these problems and to determine the powers and rights of each member of the society, human beings established laws. The necessity of rule of law and legalism has always been considered since the beginning of human life. Throughout history, people have tried to establish law and rule it in order to create order in society or other purposes. However, human experience has shown that throughout history, human laws have not been very successful in creating a law-abiding society that will ensure the all-round happiness of mankind, and the executors of these laws are also required to protect the privacy of the law and act on it they have not been successful. The purpose of the study is to identify the elements and signs of a procedural offense body on the basis of the general concept of "offence elements", focusing on the most controversial aspects of its concept. In the process of research, the authors used the formal-legal method of scientific knowledge, the dialectical method, as well as the logical methods of analysis and synthesis, deduction and induction, the ascent from the concrete to the abstract. The Authors analyze such elements of a procedural offense body as an object, an objective aspect, a subject and a subjective aspect. Particular attention is paid to the characteristics of the subject, their classification, as well as the forms of guilt of procedural offenses. As the study result, conclusions are drawn about a procedural offense concept and its body; about characteristics of an object and its classification, as well as about the varieties of procedural offense subjects.

**Keywords:** Law, Modern Legal Science; offense; procedural offense; the subjects of procedural offenses; the objects of procedural offenses; set of facts

### Introduction

Procedural offenses are a relatively new phenomenon in modern legal science and their presence is due to both the development of social relations and the reform of the current legislation, the result of which is a relative isolation of new institutions of legal responsibility, which include procedural responsibility. As you know, there is no liability without an offense, and the latter acts as its formal basis. Meanwhile, the category "a procedural offense body" is not sufficiently developed yet in legal science. To establish that an act is a procedural offense, it is necessary to qualify it. For these purposes, a theoretical construction of "an offense body" was developed, which allows a law enforcement officer, through the thought process, having established all the characteristics of the committed act, compare them with the abstract signs and elements of the offense and, if they match, conclude that the act is an offense. At the same time, an offense body allows us to consider its characteristics and specify the features more fully. At the same time, it must be borne in mind that the concept of an offense body does not replace the concept of "offense", but only specifies it. An offense is a fact of reality, and an offense body is a theoretical model, originating in Roman law, and further developed by the German school of criminal law. In the future, the category of an offense body became a kind of theoretical construction for the analysis of a wrongful act of any kind. And if the concepts of an offense body, an administrative offense and a civil tort have been developed in sufficient detail by other legal sciences, then such a statement is not applicable to a procedural offense body.

### Procedural Legal Offense

There are different points of view in the scientific literature regarding the definition of an offense body. A.F. Cherdantsev believes that "an offense body is the ideal structure of an offense, showing what parts and elements it consists of, and is formed" [1, p. 306]. A.B. Vengerov notes that "an offense body is understood as the presence of objective and subjective aspects, the subject and object of an offense. Moreover, only the totality of these elements

allows us to speak about the presence or absence of a specific offense" [2, p. 310]. An offense body is also defined as "a theoretical construct that characterizes an act as an offense from four points (object, objective aspects, subject and subjective aspect) and performs a service role in relation to an offense necessary for the law enforcement process" [3, p. 7].

Despite some differences in an offense definition, the opinions of scientists agree on its elements, therefore it is generally accepted that its structure includes an object, an objective aspect, a subject and a subjective aspect. Let's consider these elements of a body in relation to some procedural offense.

An offense object is public relations, which are regulated by the rule of law, as well as various benefits, interests, protected by the measures of legal responsibility. According to the traditional classification of the objects of an offense, a common, generic, specific and direct object is distinguished. A set of social relations acts as a common object of offenses. A generic object is a separate group of social relations in a certain area of public life. Only a part of the social relations included in the generic object and representing certain aspects of social life belongs to an offense specific object. And, finally, a direct object is the specific social relation that is being violated.

A similar approach can be applied during a procedural offense object determination by highlighting the social relations that make up a common, generic, specific and direct object. And already at this stage, one may encounter difficulties during determination of the appropriate groups of social relations. If the objects of offenses that are the grounds for the legal liability of substantive legal institutions are quite easily determined based on the names of sections or chapters of a legislative act, then such a clear systematization is absent in the case of procedural offenses. A.Yu. Anufriev believes that general and special objects can be established according to the formulated tasks of legal proceedings [4, p. 170]. However, the tasks of various types of legal proceedings have certain differences related to their specifics. So, I.V. Pogodina and Z.V. Popova consider a common object of procedural offenses as "the procedure for legal proceedings and prosecution for committing other offenses, mandatory for all participants in the process" [5, p. 120]. But the indication of other offenses suggests that, for example, the procedure of bringing to responsibility by jurisdictional authorities for tax offenses is included in the general object. It seems that the totality of procedural legal relations is the common object of procedural offenses. Procedural legal relations in our understanding are formed exclusively in the process of legal proceedings during the investigation, consideration and resolution of various categories of cases.

The generic object of procedural offenses are procedural legal relations in the field of criminal, civil or administrative proceedings. Species objects are procedural legal relations that arise within the framework of individual procedural institutions.

### **Procedural Offenses in Court**

These include procedural legal relations arising from the application of preventive measures, procedural legal relations for the consideration of cases in court, procedural legal relations arising from the application of coercive measures, etc. The direct object is a specific procedural legal relationship, for example, a legal relationship to maintain order in a court session, a legal relationship to demand evidence, a legal relationship to fulfill obligations of a security nature.

The specificity of a procedural offense object lies in the fact that it represents only procedural legal relations. The separation of a part of legal relations from the system of social relations subject to encroachment during legal proceedings is a sufficient reason for recognizing a procedural offense independence as the basis for procedural responsibility emergence.

The objective aspect of a procedural offense is expressed in an act (action or inaction) during the commission of which a violation of procedural responsibility norm requirements takes place. The objective aspect characterizes the external manifestations of a procedural offense. Procedural offenses are committed in the form of inaction and are expressed in the failure to fulfill the procedural duty assigned to a subject. Legislation contains far fewer prohibitions, non-compliance with which occurs in the form of action. In most cases, obligations and prohibitions are formulated in the law clearly and understandably, however, the use of such evaluative categories as "disrespectful reason", "contempt of court" gives a law enforcer wide opportunities for his own discretion. This may lead to the fact that the assessment during an act qualification on the part of the authorized and obligated subjects will be directly opposite. The absence of clear criteria for recognizing, for example, a disrespectful reason for not appearing at a court session or non-provision of evidence, does not contribute to the stability of procedural legal relations. At the same time, in the presence of such an imperfection of legal technique, the subject must strive to fulfill the obligation assigned to him or give full and comprehensive information about the reasons that prevented this, so that the court does not have the slightest doubt that an illegal behavior was not carried out.

Almost all procedural offenses are developed with a formal body, that is, to recognize an act as unlawful, an action or inaction itself as sufficient, the onset of consequences and a causal relationship as not a mandatory sign of the subjective aspect. Often a subject, committing a procedural offense, neglects or is indifferent to the performance of his duties, violates the formal requirements of public law [6, p. 18], which is detrimental to the rule of law. However, there are procedural offenses with a material body. In particular, the Part 2 of the Art. 111 of the RF Arbitration Procedure Code provides for bringing to procedural responsibility for the abuse of procedural rights or failure to fulfill procedural obligations with certain consequences: disruption of a court session, delaying a trial, obstruction of a case hearing and the adoption of a legal and reasonable judicial act.

The circumstances of time and place are obligatory for the objective aspect of some procedural offenses. In particular, a violation of the established order in a court session may occur only in a courtroom and only during its conduct.

### **Procedural Offense in Russian Law**

Numerous discussions arise in the scientific community regarding the definition of procedural offense subject body. Under Russian law, a subject of an offense is a sane individual who has reached the age of bringing to a certain type of responsibility. In certain branches of law, for example, in administrative, civil law, legal entities may also be held liable. In order to hold a person liable, he must have legal personality, which includes three elements: legal capacity, capacity and the capacity to be held liable in tort.

The legislator has not set an age for the subjects of procedural offenses. For each type of legal proceedings, they determine the composition of the persons participating in a case: the parties, a victim, a witness, an expert, the witness, etc. Almost each of these persons can be the subject of a procedural offense, therefore, age should be determined, firstly, by taking into account the status of a participant in a procedural legal relationship, secondly, by taking into account the peculiarities of legal proceedings, and thirdly, by taking into account the provisions of substantive law. Therefore, the minimum age for procedural liability should be 14 years, from the moment of which a person can have a certain labor status, the procedural status of a suspect or an accused, as well as make transactions and bear property liability for them. Starting from this age a person can become an independent participant in the process, be endowed with procedural duties, and be held procedurally liable in case of their violation.

Of course, in addition to age, one cannot ignore the sanity factor. If a violator of procedural responsibility norms is not aware of his behavior or cannot manage it due to various mental disorders, then he should not be recognized as a subject of a procedural offense, and it is quite difficult to imagine his participation in the trial.

There are certain peculiarities of bringing the persons present at the court session (relatives, journalists) to procedural liability, who, by virtue of their presence in the courtroom, are entrusted with the obligation to observe order and comply with the orders of the presiding judge. The openness of the judicial process leads to the fact that there may be the subjects whose identity, age and state of health are unknown at the meeting. A minor or an insane person present in a courtroom may disrupt the process, for which he will be held procedurally liable, although it is not known whether he realizes that the measures of state coercion are being applied to him. If a court does not have information about a person's age or insanity, we fully assume that he will be recognized as a delinquent and taken out of the hall. However, the penalty imposed on an insane person for contempt of court should be canceled subsequently with presentation of the relevant medical documents.

Another feature of a procedural offense subject body is the prosecution of a group of subjects, including an impersonal one. At large trials, where a large number of citizens are present, especially when considering high-profile cases, emotional statements, chants, insulting shouts can impede the normal conduct of the process. In this situation, to ensure order and safety of the process participant, and present persons, the court may decide to remove a whole group of subjects from the courtroom immediately, even if the established order was violated by one person only. Obviously, in this case, a person who did not commit the act can be brought to procedural responsibility. But even for the court, the offenders will remain impersonal, since only the number of people removed from the hall will be recorded in the protocol. Thus, the subject of a procedural offense can be not only individual, but also collective.

Some authors divide the subjects of procedural offenses into leading ones, bringing to responsibility, and interested, involved [7, p. 87]. It seems that there is no need and expediency in such a classification, since there is only one subject that has the right to bring to procedural responsibility - the court. In such a case, it is necessary to consider whether the court can commit a procedural offense.

According to one of the points of view expressed in the scientific literature, the court does not belong to the subjects of procedural legal relations. T.S. Taranova believes that the subjects are either interested persons, or not interested, but not performing procedural duties or abusing procedural rights [8, p. 348]. The same position is held by M.L. Galperin, arguing that the court cannot be held accountable to itself [9, p. 108].

Of course, it is impossible to deny that the court may violate procedural norms. The court, as a body administering justice, has procedural rights, and also obligations. In particular, the court is obliged to notify the parties of the court session time and place (the Article 153 of the Russian Federation Civil Procedure Code, hereinafter referred to as the RF CCP), then the attendance of the process participants is checked, during which the court receives information about the appearance, notification of those who did not appear and the availability of information about the reasons for their absence (the Article 161 of the RF CCP). If such information is not available or the court recognizes the reasons for the absence as disrespectful, then the court has the right to consider the case without the presence of a participant in the process (the Article 167 of the RF CCP). However, a person could be notified improperly, for example, if he did not receive a court notice or was not familiarized with it due to circumstances beyond his control. That is, the court improperly fulfilled its obligation to notify the participant in the process, which is an unconditional basis for the annulment of its decision by the court of appeal (part 4 of the article 330 of the Code of the RF CCP). The same reason is the violation of the rules on the secrecy of the meeting of judges by the court. There are the examples when a court decision was canceled not even because someone else was present in the deliberation room, but because the door of this room was not closed completely.

## **Violation of Procedural Law Norms**

There is a clear violation of procedural law norms, but is this a procedural offense, and what adverse consequences does the court suffer in connection with its commission? Russian legislation provides for a mechanism protecting the rights and legitimate interests of participants in legal proceedings, as well as the public interests or the interests of an indefinite circle of persons if the court has issued an illegal or unreasonable judicial act. In the process of considering complaints or submissions in a court of appeal, cassation or supervisory instance, the validity of the arguments about the violations committed by the courts is checked, and if violations that affected the case outcome are identified, a decision is made to cancel the judicial acts. But cancellation is not a measure of state coercion, it can be considered as a measure to protect violated rights and legitimate interests. As the result of a judicial act review and cancellation issued with violation of procedural norms, the court does not suffer any adverse consequences, except for reputational ones that are outside the scope of legal responsibility; it does not have new duties even if the case is sent for review, since in this case the court must fulfill the previous duties qualitatively to consider the case.

If we proceed from the opposite and assume that the court is the subject of a procedural offense, then when considering the adoption of judicial acts with violation of procedural norms from the point of view of legal responsibility theory, it may initially seem that it is a procedural offense. In particular, when issuing an illegal judicial act, the court has an obligation to suffer adverse consequences, and an authorized body has an obligation to apply measures of state coercion to the offender. There is a legal relationship of procedural responsibility, the implementation of which is still in a static state. Implementation may not take place if a judicial act is not appealed or protested and the higher court does not recognize this as justified.

When implementing a state-compulsory form of procedural responsibility, a decision of a competent subject is necessary, the adoption of which characterizes the dynamics of procedural responsibility. The decision must give an assessment of the deed and the specific adverse consequences that the lower court must endure. I.V. Stasiuk does not believe that the court can be held responsible for the procedural violations that it committed, since "it must suffer adverse consequences, and the legislation does not contain special measures that can be considered as adverse consequences if the court fails to fulfill its duties and violates the rules of procedural law" [10, p. 21]. It can also be assumed that the lower court is condemned in the decision of a higher court, condemned by the state, that is, the punitive function of procedural responsibility is being implemented.

## **Results and Discussion**

For all the apparent harmony of these conclusions, it should be borne in mind that in this case, when exercising procedural responsibility, no decision is made on any legal restrictions. There is no narrowing or restriction concerning the legal status of a lower court. And in most cases, the adoption of an illegal judicial act is based on a judicial error, a delusion of the court regarding the correctness of certain procedural norm application, and there must be a sign of guilt in order to recognize an act as a procedural offense.

There is another point of view on attributing the court to the subjects of procedural responsibility. So, some authors, noting that the subjects of procedural responsibility are state bodies, they include the court as well in its body [11, p. 611]. V.I. Akhanov, criticizing the position by D.A. Lipinsky and E.V. Chuklova that the subjects of procedural offenses are only individuals who are the participants in the process [12, p. 103], also refers to the subjects of state bodies and officials, in respect of which the sanctions of nullity are mainly applied in the form of the adopted act force deprivation [12, p. 190]. V.I. Akhanov prefers to remain silent about the adverse consequences of this subject, and its legal status narrowing, obviously not understanding the difference between legal liability and protection measures.

It seems to us that the subjects of procedural offenses may include individuals and organizations that are the participants in legal proceedings, as well as other persons to whom procedural duties are imposed in connection with their entry into procedural legal relations.

The subjective aspect of procedural offenses is characterized by the presence of guilt, however, for the qualification of an act for most offenses, the violation itself is important, and not the form of guilt with which it was committed. The burden of proving its absence rests with the person who committed the offense. If the court establishes the guilt of the offender, the forms of his guilt comprehensively, this may lead to an unreasonable delay in the trial. Therefore, guilt is based on the assumption of guilt, which the offender can refute.

In some cases, the law directly indicates guilt when bringing to procedural responsibility. For example, a measure of procedural liability in the form of a judicial fine is applied (the Article 57 of the RF CPC) to guilty officials and citizens not participating in the case, who did not provide the required evidence for unexcused reasons or did not notify the court about the refusal reasons. A similar measure is provided for a person who is guilty of the loss of a writ of execution or a court order transferred to him for execution (the Article 431 of the RF CPC).

The formal body of the majority of procedural offenses indicates that they are committed intentionally. I.V. Pogodin and Z.V. Popov mention careless forms of guilt, namely negligence, "when a person does not comply with legal requirements due to their ignorance" [5, p. 124]. But in this case, it is more appropriate to speak of a subjective error, and not of negligence. The commission of a procedural offense through negligence may take place if a person does not foresee the possibility of harmful consequences, although he should have and could have done this (for example, when committing an offense under the Part 2 of the Article 111 of the RF APC). A subjective error will

also occur if a person did not provide the required evidence for a reason that seemed to him valid, but was recognized by the court as disrespectful. In this case, the guilt of a person is determined by the discretion of the court and his own ideas about the validity of the reasons, and not by the mental attitude of the subject to the committed act. Such elements of the subjective aspect as the goal, motive, emotional state of the subject is not mandatory and do not affect the qualification of procedural offenses.

## Conclusion

1. The concept of a procedural offense should be based on a "narrow" definition of the legal process, since its definition, on the basis of all procedural rules of law, infinitely blurs the scope of this phenomenon and makes it almost indistinguishable from the offenses in substantive law. In this case the very need for the existence of "procedural offense" and "procedural responsibility" concepts becomes unnecessary.
2. The composition of a procedural offense is characterized by a classical four-element structure, but each of the elements has its own characteristics, which in turn also makes it possible to single out procedural offenses into a relatively independent category.
3. The object of a procedural offense is various types of procedural legal relations. Namely, legal relations, since procedural relations can exist exclusively in the form of legal ones. The objective aspect is expressed in an action or inaction that violates the procedural legal order. The subjective aspect is characterized only by intent, careless procedural offenses are not provided for by the current legislation.
4. The subjects of procedural offenses include the individuals and organizations that are the participants in legal proceedings, as well as other persons to whom procedural duties are imposed in connection with their entry into procedural legal relations. The mandatory elements are the state of sanity and reaching the age of 14 years to include individuals participating in legal proceedings in the composition of the subjects. Since this age that a person can become an independent participant in the process, be endowed with procedural duties, and be held procedurally liable in case of their violation. The subjects of procedural offenses are also public authorities, organizations regardless of the form of ownership, officials, and state or municipal employees.

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