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Theory and Practice of Mixing Procedural Models in the Trial Chamber of the International Criminal Court

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ABSTRACT

INTRODUCTION. In the context of the active development of information technologies and their integration into the main models of judicial proceedings, the functions and role of the court in considering a criminal case on its merits have become a highly relevant topic of modern science. On one hand, many scientists have focused on strengthening the adversarial nature of legal proceedings, ensuring a balance of power between the parties, and building mechanisms to guarantee the right to judicial protection. However, legal proceedings that do not pursue any normatively fixed goals lead to excessive formalism, as the adversarial system remains the only proven method for establishing the circumstances of a case. This approach does not fully align with the principles of justice and fairness in the final verdict. The International Criminal Court (ICC) embodies a scientific approach to solving the problem of combining various forms of legal proceedings and ensuring a balance of power between the parties, partly by assigning an active role to the court and aiming to achieve truth in the process. The ICC's criminal process results from scientific modeling that considers identified doctrinal trends. The high degree of commonality in the approaches of leading lawyers within the Rome Statute of the ICC suggests their universality. This article explores the theoretical and practical aspects of combining process models in the ICC Trial Chamber activities.

MATERIALS AND METHODS. The methodological basis of this article comprises general scientific and special methods for understanding legal phenomena and processes in the field of international criminal procedure. These include the method of system-structural analysis, the formal logical method, the method for synthesizing sociolegal phenomena, and historical description.

RESULTS. This article confirms the relevance of addressing the functions and role of the court in considering a criminal case and its merits in modern criminal procedure research. Using the ICC Trial Chamber's regulatory and organizational peculiarities, it substantiates that the adversarial model of the criminal process does not preclude assigning an active role to the court in examining the facts to be proved. It also supports setting the goal of achieving material truth, which is essential for completing a complete, comprehensive, and objective study of the case materials. Furthermore, there are three levels in the structure of the ICC Trial Chamber's functions and powers, each of which is embodied in law enforcement practice to facilitate a special and flexible combination of the adversarial and investigative principles of legal proceedings.

DISCUSSION AND CONCLUSION. This article proves that a court's active role in criminal proceedings does not conflict with the adversarial nature of proceedings. An analysis of the provisions of the Rome Statute of the ICC, the Rules of Procedure and Evidence, and the jurisprudence of international tribunals highlights the advantages and disadvantages of the ICC Trial Chamber.

Keywords: procedural model; Trial Chamber; International Criminal Court; investigation core; adversarial core; controversy; truth; jurisprudence.

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Теория и практика сочетания моделей процесса в деятельности Судебной палаты Международного уголовного суда

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АННОТАЦИЯ

Введение. В условиях активного развития информационных технологий и их интегрирования в основные модели судопроизводства вопрос о функциях и роли суда при рассмотрении уголовного дела по существу вновь становится одним из наиболее актуальных для современной науки. С одной стороны, интерес многих ученых направлен на усиление состязательного характера судопроизводства и обеспечение, насколько это возможно, баланса сил между сторонами, а также построение механизмов по реализации гарантий права на судебную защиту. С другой стороны, судопроизводство, не преследующее какой-либо закрепленной нормативно цели, ведет к излишнему формализму, поскольку единственным апробированным способом установления обстоятельств дела остается состязательность, которая не вполне соотносится с категориями правосудности и справедливости приговора как итогового решения суда «по правде». Международный уголовный суд (далее — МУС) — это воплощение научного подхода к решению проблемы сочетания различных форм судопроизводства, обеспечения баланса сил сторон, в том числе посредством закрепления за судом активной роли и постановки цели достижения истины в процессе. При этом уголовный процесс МУС — результат специального научного моделирования, учитывающего выявленные доктринальные тенденции, а степень общности подходов ведущих юристов в структуре Римского статута МУС настолько высока, что можно говорить об их универсальности. Данная статья посвящена теоретическим и практическим аспектам сочетания моделей процесса в деятельности Судебной палаты МУС.

Материалы и методы. Методологическую основу исследования составили общенаучные и специальные методы познания правовых явлений и процессов в сфере международного уголовного процесса: метод системно-структурного анализа; формально-логический метод; метод синтеза социально-правовых явлений; метод исторического описания.

Результаты исследования. В результате проведенного исследования подтверждена актуальность решения вопроса о функциях и роли суда при рассмотрении уголовного дела по существу в современной науке уголовного процесса. На примере особенностей регламентации и организации деятельности Судебной палаты МУС обоснован тезис о том, что состязательная модель уголовного процесса не исключает возможность закрепления за судом активной роли при исследовании подлежащих доказыванию обстоятельств, а также постановки цели достижения материальной истины, обусловленной решением задач по полному, всестороннему и объективному исследованию материалов дела. Кроме того, выделены три уровня в структуре функций и полномочий Судебной палаты МУС, каждый из которых в правоприменительной практике воплощается как условие особого и гибкого сочетания состязательного и следственного начал судопроизводства.

Обсуждение и заключение. Обосновано, что выполнение судом активной роли при производстве по уголовному делу не вступает в противоречие с состязательным характером судопроизводства в целом; исходя из анализа положений Римского статута МУС, Правил процедуры и доказывания, судебной практики международных трибуналов, отмечены преимущества и недостатки в деятельности Судебной палаты МУС.

Ключевые слова: модель процесса; Судебная палата; Международный уголовный суд; следственное начало; состязательное начало; состязательность; истина; судебная практика.

Как цитировать

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INTRODUCTION

The increasing involvement of modern technologies in the main systems of legal proceedings raises questions about the development and transformation of the Russian form of criminal procedure as one of the most relevant in modern science. Considering the fairness of the formulation of this question under conditions where, at the sub-legislative level, the subjects of proof are required to conduct a comprehensive and objective investigation of the circumstances of a criminal case, and the legislator proceeds based on fairness and motivation in case decisions. Many researchers, to find an answer to it, turn to models of the process that balance adversarial and investigative principles, at least in the theoretical context. In this regard, the model of the process outlined in the Rome Statute of the International Criminal Court (ICC) is especially noteworthy.

The ICC is an international organization whose effectiveness largely depends on the success of organizational and managerial decisions made in cooperation, primarily, with law enforcement agencies and the criminal justice system of specific states involved in the conflict, as well as third states or jurisdictions with significant resources for obtaining immediate information and/or evidence on the case [1; 2; 3]. This position of the ICC within the system of relations in the international community, particularly in combating crime, predetermined the need for a theoretical construction of international criminal proceedings that would enable unimpeded interaction with the national legal system of any state [4].

The degree of generalization of approaches by leading lawyers, as representatives of diverse legal systems within the structure of the Rome Statute of the ICC, is so high that it enables us to state the universality of the system of procedural provisions it includes [5, pp. 96–116]. At the international level, such consensus leads to achieving the greatest efficiency in law enforcement activities [6, pp. 281–288]. This feature of the ICC's activities is particularly noticeable when analyzing the provisions of the Rome Statute concerning the Trial Chamber [7; 8; 9].

STUDY

As a unique instrument for reframing various legal traditions [10], the Rome Statute of the ICC demonstrates the possibility of achieving harmony in constructing a mixed model of legal proceedings in the doctrinal aspect, even though the practical aspect of this problem leaves many questions [11]. According to the preamble of Recommendation No. R (92) 17 of 19 October 1992 by the Committee of Ministers of the Council of Europe, an analysis of international legal

requirements reveals that justice presupposes at minimum: a fair consideration and timely decision within legally established limits; the court's duty to take all measures required by law for accurate case resolution; to identify circumstances that both prove and exculpate the guilt of the suspect and accused; to provide them a correct legal assessment; and to ensure the restoration of the rights of individuals whose rights were illegally or unreasonably violated during criminal proceedings [12, p. 26].

For these reasons, analyzing the universal nature of the trial phase in criminal proceedings at the ICC is of academic interest. Given its unique status and role in the trial phase of criminal proceedings, we highlight some of the most relevant aspects of the ICC Trial Chamber's activities, which demonstrate a combination of procedural models in its activities.

ICC Trial Chamber: theoretical aspects

The Rome Statute of the ICC defines the powers and functions of the ICC Trial Chamber. Their foundations are enshrined in Article 64 of the Statute. For example, the ICC Trial Chamber ensures that the trial is fair, expeditious, and conducted with full respect for the rights of the accused, with due respect for the protection of victims and witnesses. In particular, after scheduling a case for hearing, the ICC Trial Chamber, in coordination with the relevant parties, establishes the procedures to be followed in the consideration of a particular case to facilitate the fair and expeditious conduct of the trial. The Chamber determines the language of the proceedings and provides for the disclosure of previously undisclosed documents or information prior to the commencement of the trial, ensuring adequate preparation for the trial.

However, Article 64 of the Rome Statute of the ICC does not exhaustively define the powers of the ICC Trial Chamber. These powers may also be outlined in other provisions of the Rome Statute of the ICC and in the Rules of Procedure and Evidence, which were developed, among other things, by taking into account the influence of the ICC's predecessors [13; 14]. Thus, the functions of the ICC Trial Chamber related to confirming guilt, imposing sentences, and compensating victims for damages are regulated by other articles of the Rome Statute. Moreover, according to Article 69 of the Rome Statute and Rule 63 of the Rules of Procedure and Evidence, the ICC Trial Chamber is authorized to freely evaluate all presented evidence to determine its relevance and admissibility. In this process, not only the materials collected by the defense team but also those by the prosecution are subject to assessment.

Moreover, following Article 69(3) of the Rome Statute of the ICC, the ICC Trial Chamber has the authority to require the presentation of all the evidence necessary to establish the truth. This underscores the special role of the trial in *achieving the truth and ensuring a fair verdict* [15, p. 1213]. Together, these provisions offer additional guarantees to the defense [16, p. 299].

An analysis of the Rome Statute of the ICC and the Rules of Procedure and Evidence to determine the functions and powers of the ICC Trial Chamber enables us to highlight the presence of a specific structure comprising three levels:

I. Resolution of “preliminary” issues, either independently or by referring such issues to a judge of the ICC Pre-Trial Chamber.

II. Preparation for the trial, namely determination of the procedures that will be applied when considering the case on its merits, establishment of the language and taking measures to ensure confidentiality of information and protection for trial participants if necessary, and setting a date for the hearing.

III. Consideration of the case on its merits, namely ensuring the quality of justice administration with fairness, impartiality, respect for the rights of the accused, victims, and witnesses, and achieving the truth through fast, safe, and effective legal proceedings.

When examining this structure, attention should be paid to the unique combination of procedural models—specifically, the investigative and adversarial principles — in the activities of the ICC Trial Chamber.

For example, in the course of discharging its functions, the ICC Trial Chamber is obliged to take measures to protect victims. Therefore, the requirement of full respect for the rights of the accused during the consideration of the case at the ICC cannot always be interpreted literally. For security purposes, the names of victims and witnesses cannot be disclosed to the accused during ICC proceedings, even if the accused possesses information suggesting defamation. A possible way out in this situation to maintain balance would be for the accused to inform the ICC Trial Chamber of any relevant information regarding potential defamation. Alternatively, the ICC could provide the accused with information about witnesses and victims immediately before the trial, as was practiced in the International Tribunal for Rwanda [15, p. 1204; 17].

In addition, after the trial date has been set, the ICC Trial Chamber may hold administrative sessions on issues related to the subsequent consideration of the case’s merits and may confer with the parties to support a fair and expeditious resolution of the case. It is noteworthy in this regard that the

parties include not only the ICC Prosecutor and the accused but also victims and their representatives, representatives of a given state, and other interested persons, such as third states.

Under Article 64(3) of the Rome Statute of the ICC, the subject of such a session may include the determination of the hearing language, the need for an interpreter for one of the parties, the disclosure of certain information or evidence that has not yet been provided to the defense so that the latter has the opportunity to prepare for the hearing, the calling of additional witnesses, and clarification of the position of victims and/or their representatives as to whether they wish to participate in the interrogation of experts or witnesses. Such requirements respond to Article 14(3) of the International Covenant on Civil and Political Rights and Article 6(3)(b) of the European Convention on Human Rights and Fundamental Freedoms [15, pp. 1206–1210].

At the same time, despite the trial in the ICC being open, there are *exceptions* to this rule. The parties have the right to request that certain circumstances (e.g., the protection of confidential or sensitive information, or of victims or witnesses) require closed court proceedings in whole or in part. Such a request shall be resolved by the ICC Trial Chamber based on the facts, evidence, and objections presented by the relevant parties. *The adversarial principle is manifested here in the fact that the parties are given an additional opportunity to convey their position to the court once again.*

The provision of evidence to the defense team is related to other provisions of the Rome Statute of the ICC, particularly Article 93. The latter, however, is constructed quite abstractly, making it difficult to state with complete confidence what information can be presented to the defense. According to Article 64(2) of the Rome Statute of the ICC, it is evident that the provision of information about victims or witnesses to the defense is limited by the requirement to ensure the safety of all participants in criminal proceedings. Thus, a state may petition the ICC to take measures to ensure the safety of its citizens, in accordance with Article 68(6) of the Rome Statute of the ICC. Moreover, the ICC Trial Chamber will be limited in its ability to decide on the disclosure of evidence in cases covered under Article 54(3)(e) of the Rome Statute of the ICC.

Ensuring the safety of confidential information is also within the powers of the ICC Trial Chamber when considering a case on its merits and when preparing a case for its consideration, based on the provisions of Article 64(6)(c) of the Rome Statute of the ICC. However, this is a blanket provision since specific measures for preserving information

confidentially are additionally provided in Articles 54(3)(e), 68(6), 93(8)(b), and 98(8)(c) of the Rome Statute of the ICC. Nevertheless, the issue of preserving certain information may be resolved, if necessary, in the context of an *ex parte* or *in a camera* hearing. Such a procedure may be required, for example, when deciding on the issue of maintaining the confidentiality of the source of information provided by a particular state.

Under Article 64(6)(d) of the Rome Statute of the ICC, the Trial Chamber may order the admission of additional evidence relevant to the case both before and during the trial.¹ This power is crucial for achieving the goal of truth in ICC proceedings. This provision of the Rome Statute of the ICC aligns with Rule 98 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia and *demonstrates the influence of the continental order of proceedings* on the process structure of ICC Trial Chamber activities.

The requirement of full respect for the rights of the accused during the consideration of the case at the ICC, as stated above, cannot be taken literally. Thus, to ensure security, the ICC Trial Chamber has the right to *order* that the names of victims and witnesses *not be disclosed* to the accused, even if the accused has information suggesting that these persons, for example, are defaming them. At the same time, the rights of victims and witnesses must be balanced with the need to administer fair justice and respect the legal rights of the defendant. In this regard, the ICC Trial Chamber may choose a form of evidence presentation by the participants that it deems acceptable within the specific trial. For example, witnesses or victims may give their testimony *in camera* or by electronic means.

According to Article 64(6)(f) of the Rome Statute of the ICC, the ICC Trial Chamber may also issue other necessary orders in the exercise of its powers and functions concerning a particular proceeding. This provision allows for a broad interpretation of the Trial Chamber's role in ICC proceedings. It is a blanket nature, referring to the provisions of Parts 2, 3, 6, and 9 of the Rome Statute of the ICC.

Although certain issues, including those concerning sensitive or confidential information, such as rape, require a closed hearing for their determination in ICC proceedings, the ICC Trial Chamber is ***required to publicly state the reasons*** for its decision to consider the matter *in camera*. Before making the relevant decision, following Article 68(2) of the Rome Statute of the ICC, the ICC Trial Chamber ascertains the opinion of the victim or witness, including the possibility

of using alternative means to provide such an opinion, by analogy with the regulation established in Article 64(6)(c) of the Rome Statute of the ICC.

It should also be noted that the charges are read to the defendant in the ICC by the court, not the prosecutor. This approach is based on the fact that the judicial body of the ICC, represented by the Pre-Trial Chamber, has approved the charges in a specific case. Therefore, the Trial Chamber of the ICC has the authority to read the charges independently, ***without affecting the requirement of impartiality*** when making the final judicial decision on the case.

In this case, before the start of the trial, the ICC Prosecutor has the right, with the permission of the Pre-Trial Chamber, to change the charges and notify the accused of the same. A change in charges to the detriment of the accused is possible only by initiating a new procedure for confirming charges under Article 61 of the Rome Statute of the ICC. After the start of the trial, a change in charges to the detriment of the defendant is generally not allowed. In this case, a *reduction of charges is possible only with the permission of the ICC Trial Chamber*, emphasizing the active role of the court in the proceedings.

After *reading the charges aloud*, the ICC Trial Chamber ensures that the defendant understands the charges against them. Subsequently, the focus of the ICC proceedings shifts somewhat toward Anglo-Saxon legal traditions as the *guilty plea* procedure is initiated [18, p. 793]. The only difference is that ***in the ICC, this procedure does not transform*** into agreement with the charges brought but into ***the defendant's admission of guilt in the act***.

This procedure is permeated with both the adversarial and investigative principles of criminal proceedings since it has *become a compromise* of the Anglo-Saxon (the so-called "*guilty plea procedure*") and continental (in German law, the so-called "*Anerkennung der Fakten*," which in English can be interpreted as "*admission of the facts*") approaches. This is why, in the Rome Statute of the ICC, this procedure is called "*admission of guilt*," indicating a combination of process models.

Thus, the activities of the ICC Trial Chamber are conditioned by the need to maintain a balance between the parties and the adversarial nature of the proceedings. However, the conditioning of the activities by these requirements does not turn the ICC Trial Chamber into a passive observer. Taking into account the doctrinal principles involved in constructing the process model in the Rome Statute of the ICC, it can be stated that the activities of the ICC Trial Chamber organically combine both the adversarial and investigative principles, though only to the extent permissible for administering fair, effective, prompt, impartial, and adversarial justice in

¹ This refers to the period during which the ICC Trial Chamber has been constituted but has not yet begun to consider the case on its merits.

principle. Let us now consider the practical aspect of the issue at hand.

ICC Trial Chamber: practical aspects

The discretionary nature of the ICC Trial Chamber's powers to refer a so-called preliminary question to a judge of the ICC Pre-Trial Chamber for resolution does not mean that the question will be considered *a priori* on an unconditional basis. The referral of a "preliminary" question for resolution solely by a specific judge of the Pre-Trial Division, according to the Rules of Procedure and Evidence, does not bind the judge. The judge has the right to initiate the consideration of this question in a panel of judges due to the complexity of the question or the specifics of the proceedings in a particular case. However, in practice, there was a case where the referral of an issue to another judge of the Pre-Trial Chamber, due to the secondment of the judge who had previously handled the case, was refused, as the ICC considered such a decision counterproductive. Therefore, the referral of a "preliminary" issue for resolution is initially intended for a *specific judge*.²

The ICC Trial Chamber may, within the adversarial procedure, either combine cases for joint consideration of a single case on its merits or separate them. For this purpose, the ICC Trial Chamber sends notices to all interested parties and permits them to submit their position in writing. In legal literature, the practice of resolving such issues is primarily described as being associated with the activities of the International Criminal Tribunal for the former Yugoslavia (hereinafter referred to as the ICTY). For example, in the proceedings of the *Delalic et al.* case, the ICTY ruled that separate consideration of the criminal case against the accused, despite a motion from one of them, would lead to an unreasonable delay in the process as a whole and would require multiple calls of witnesses and victims, affecting the effectiveness and fairness of justice.³ Even the existence of a conflict of interest between the accused, when one of them has evidence of the guilt of the other, will most likely not exert an effective influence on the separate consideration of their cases on the merits.⁴

In principle, the ICC adheres to the same line.⁵ In general, an analysis of international law enforcement practice on this issue enables one to state that the criteria developed by it for determining separate or joint consideration of cases correspond to national practices in the field of criminal proceedings.

The ICC Trial Chamber is responsible for conducting the subsequent proceedings on the merits of the case, and, in accordance with Article 64(6)(a) of the Rome Statute, the ICC is thereby empowered to exercise any function of the Pre-Trial Chamber specified in Article 61(11) of the Rome Statute. At the same time, the latter *sets the boundaries of the competence* of the ICC Trial Chamber, as it associates the definition of the scope of its powers *only with a specific proceeding, that is, a particular case*.

Article 64(6)(b) of the Rome Statute of the ICC again raises the question of the effectiveness of the ICC's functionality as a whole, which depends on the level and quality of its cooperation with a particular state. A witness may not express their desire to attend the ICC to participate in the proceedings. Likewise, a state party to the Rome Statute of the ICC or a state invited to cooperate *ad hoc* is not obliged to present ICC witnesses by using coercive force [19, p. 251; 20, p. 616]. In this case, the ICC Trial Chamber is only authorized to establish cooperation with specific states. However, this article does not limit the ICC Trial Chamber in presenting witness testimony, which can be transmitted to the ICC in writing or presented, for example, via video conferencing.⁶

When the accused admits their guilt, which is possible only before the start of the ICC trial on the merits of the case, the ICC Trial Chamber determines whether the accused understands the nature and consequences of such an admission and whether this intention was voluntary. This obligation of the ICC Trial Chamber is a guarantee of the fairness of the proceedings and the protection of the rights of the accused.⁷ Moreover, only the accused can admit guilt in committing international crimes [21, p. 1226].

For the defendant to understand the nature and consequences of entering a guilty plea, they are informed by the ICC Trial Chamber of the essence of the charges against

² Prosecutor v. Lubanga. ICC Trial Chamber Decision on whether two judges alone may hold a hearing – and – Recommendations to the Presidency on whether an alternate judge should be assigned for the trial. 22 May 2008. ICC-01/04-01/06-1349.

³ Delalic et al. Trial Chamber Judgement. 25 September 1996. No. IT-96-21-T.

⁴ Prosecutor v. Barayagwiza. Decision on the request of the defence for severance and separate trial. 26 September 2000. No. IT-97-19-I.

⁵ Prosecutor v. Katanga and Ngudjolo. Decision on the Joinder of the Cases against Germain Katanga and Mathieu Ngudjolo Chui. 10 March 2008. ICC-01/04-01/07-257.

⁶ Prosecutor v. William Samoei Ruto and Joshua Arap Sang. Judgment on the appeals of William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V (A) of 17 April 2014 entitled 'Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation'. 9 October 2014. ICC-01/09-01/11-1598.

⁷ Prosecutor v. Momir Nikolic. ICTY Trial Chamber I Sentencing Judgement. 2 December 2003. No. IT-02-60/1-S. para 49.

them and the elements thereof and the rights guaranteed by the ICC Rome Statute that they will lose. Thus, under Article 77 of the ICC Rome Statute, the defendant is informed that, if convicted, they may be sentenced to imprisonment for up to 30 years, or, in the case of extremely grievous crimes, life imprisonment may be imposed, regardless of the parties' positions on the matter.

Typically, the defendant has the right to a public and full trial, the right to remain silent,⁸ the right to appear at the trial to be able to express their position on the case,⁹ the right to examine witnesses and present evidence,¹⁰ and the right to request that the case be appointed for consideration on the merits and that the issue of punishment be resolved in separate proceedings, since in the latter case it is possible to present additional evidence that may mitigate the sentence of the convicted person under Article 76(2) of the Rome Statute of the ICC. In the event of an *admission of guilt* at the beginning of the trial, the defendant will be deprived of each of the rights listed above.

It is noteworthy that the deprivation of the defendant of these rights under Article 67(1)(h) of the Rome Statute of the ICC does not limit their ability to make oral or written statements in their defense without taking an oath.¹¹ This means that neither the accused nor the defendant will be held liable for giving false testimony, although, under Article 70(1) of the Rome Statute of the ICC, such behavior is considered an offense against the administration of justice. The latter does not apply to the accused or the defendant because *obtaining their position on the case is more important than whether they are telling the truth*.

⁸ This provision is based directly on the provisions of Article 14(3) of the International Covenant on Civil and Political Rights of 1966; however, it develops the latter significantly, since it provides that the silence of the accused and their refusal to cooperate with the prosecutor cannot and should not be regarded as a circumstance worsening the position of the person. Prosecutor v. Delalić. ICTY Appeals Chamber Judgement, 20 February 2001, No. IT-96-21-A. para. 783; Prosecutor v. Plavšić, ICTY Trial Chamber Sentencing Judgement, 27 February, 2003, No. IT-00-39&40/1. para. 64.

⁹ Holding a hearing in the absence of one or both parties is most likely possible. For example, Article 72(7) of the Rome Statute of the ICC establishes that the so-called *ex parte* hearing is possible to ensure national security and protect victims of crime from potential harm.

¹⁰ In his dissenting opinion in the Tadić case, Judge Vohrah indicated that such a fundamental provision aims to provide the defense with opportunities for high-quality trial preparation, equal to those available to the prosecution, and in particular the prosecutor. In this way, a balance is maintained between the parties and, thereby, the adversarial nature of the proceedings is ensured. Prosecutor v. Tadić. ICTY Trial Chamber Separate Opinion of Judge Vohrah on Prosecution Motion for Production of Defence Witness statements, 27 November, 1996, No. IT-94-1-T.

¹¹ This provision of the Rome Statute of the ICC is an innovation in the field of international standards of human rights and freedoms in criminal proceedings. Although the latter is common in the criminal procedure systems of the continental legal tradition, no international tribunal preceding the ICC contained such rules.

If the defendant in any way violates the conditions established by the *admission of guilt* procedure, the requirements of awareness of the steps taken by them earlier are not met. The latter concerns such a circumstance where, for example, the defendant, despite the prohibition, when presenting their position on the case, tries to refer to their unsatisfactory mental or physical condition to cast doubt on the possibility of a sentence being imposed on them. In such a case, the Trial Chamber determines whether the proceedings on the case should continue in the usual manner.

In addition to all of the above regarding the admission of guilt procedure, Article 65(1)(b) of the Rome Statute of the ICC requires that the latter be made only after consultation with the defense attorney. This requirement ensures that the accused cannot be influenced in any way when making the relevant decision [21, p. 1228]. However, the admission of guilt does not automatically entail the conviction of a particular person, as the Trial Chamber of the ICC, under Article 65(1)(c) of the Rome Statute, must *verify whether the guilt of the defendant is confirmed by the evidence collected in the case*, and only then will it return a verdict of guilty.

That is why, at the beginning of this paper, attention was drawn to the *combination of the Anglo-Saxon and continental approaches*. In essence, at this stage of the proceedings in the ICC, it concerns a certain choice about the further form of proceedings in the case. However, the active role of the court in the proceedings and the requirement to arrive at the truth when considering a case in the ICC essentially necessitate *interpreting any doubts* about the defendant's awareness of the steps taken in their favor, i.e., *in favor of the usual procedure* for criminal proceedings, with full observance of the Rules of Procedure and Evidence and providing the defendant with the maximum set of rights and procedural guarantees.

CONCLUSION

In criminal proceedings, both adversarial and investigative procedures play crucial roles. These procedures cannot exist in isolation, as the process itself embodies the norms of substantive law in practice. Hence, finding a balance between them is essential. The desire to uncover the most suitable model of judicial proceedings has led researchers to search for a system that harmoniously reflects the traditions of the principal contemporary legal systems. On the one hand, it is necessary to strengthen adversarial proceedings, especially at the pre-trial stage of criminal proceedings, particularly in the context of the active development and implementation of information technology

in legal proceedings. On the other hand, the absolutization of adversarial proceedings can cause excessive formalism, which undermines justice.

The relevance of addressing the functions and role of the court in considering a criminal case on the merits is confirmed in modern jurisprudence of criminal proceedings. In this regard, the process model outlined in the Rome Statute of the ICC is of particular interest because it is the result of specialized scientific modeling. Using the example of the specifics of the regulation and organization of the Trial Chamber's activities, the thesis substantiates that the adversarial model of criminal proceedings does not exclude the possibility of assigning an active role to the court in the study of circumstances subject to proof and in setting the goal of achieving material truth, conditioned by solving

the problems of a complete, comprehensive, and objective analysis of the case materials.

This combination is most clearly evident in the analysis of the ICC Trial Chamber's activities. Thus, we can indicate the presence of three levels in the structure of the functions and powers of the ICC Trial Chamber. At the same time, each of these levels in law enforcement practice represents a condition for a special and flexible combination of the adversarial and investigative principles of legal proceedings, with each contributing to the full implementation of the other.

Legal proceedings in the ICC are certainly not free from shortcomings, as confirmed by the analyzed judicial practice. Nevertheless, the theoretical model of ICC legal proceedings remains the most extensive in terms of combining adversarial and investigative principles.

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