

Kuanaliyeva G.A.,
Yerezhepkyzy R.

**Ensuring the rights of the
personality in criminal
proceedings**

Ensuring the rights of the personality is especially actual in the sphere of criminal trial, as in this sphere of imperious activity of government bodies, essential restrictions and even constitutional violations cases, the right of the personality arise and are shown. Here application of various measures of criminal procedure coercion, including measures of restraint which significantly limit the rights and legitimate interests of the personality, involved in the sphere of criminal justice possibly.

Key words: personality, rights and freedoms of the person, concept, legal policy.

Куаналиева Г.А.,
Ережепқызы Р.

**Қылмыстық процестегі
жеке тұлғаның құқықтарын
қамтамасыз ету**

Жеке тұлғаның құқықтарын қамтамасыз ету қылмыстық процесс саласындағы күрмеуі қалың өзекті мәселелердің бірі болып табылады. Мемлекеттік билік органдарының осы саласында жеке тұлғаның құқықтарын шектеу, тіпті конституциялық құқықтарының бұзылуы да орын алып жатады. Қылмыстық-процессуалдық мәжбүрлеу шараларын қолдану, оның ішінде бұлтартпау шараларын қолдану жеке тұлғаның құқықтары мен заңды мүдделерін айтарлықтай шектейді.

Түйін сөздер: жеке тұлға, адам құқықтары мен бостандықтары, тұжырымдама, құқықтық саясат.

Куаналиева Г.А.,
Ережепқызы Р.

**Обеспечение прав личности
в уголовном процессе**

Обеспечение прав личности особо актуально в сфере уголовного процесса, так как именно в этой сфере властной деятельности государственных органов возникают и проявляются существенные ограничения и даже нарушения конституционного права личности. Здесь возможно применение различных мер уголовно-процессуального принуждения, в том числе мер пресечения, которые существенно ограничивают права и законные интересы личности, вовлеченном в сферу уголовной юстиции.

Ключевые слова: личность, права и свободы человека, концепция, правовая политика.

**ENSURING THE RIGHTS
OF THE PERSONALITY
IN CRIMINAL
PROCEEDINGS**

In modern science the personality is considered in various aspects – philosophical, sociological, psychological, ethical and legal. In philosophy the opinion on the personality as about identity of the person, and not biological and social prevails. Social identity, i.e. set characteristic for the person of social qualities, his social originality do the person by the personality.

In psychology by the personality mean a kernel integrating the beginning, connecting together various psychological processes of the individual and giving to his behavior necessary sequence and stability. Thus, the personality is the specific person realizing the place and a role in society, engaged in conscious activity and possessing specific features [2, with. 53].

In psychology it is also considered to be, what not any person – the personality, though any identity of people. The personality appears from the moment of understanding by the person of the «I» and in the development passes a way from «a minimum of the personality» till the social maturity [2, with. 227].

Some scientists believe that the legal understanding of the personality has to be based on her philosophical and psychological concept. So, considering the personality as the subject of the rights and freedoms, V.A. Kuchinsky claims: «The person are born, the personality become. In order to become a personality, person must pass the corresponding stages of natural and social development not only to reach a certain level of physical and intellectual development, but also to get necessary social experience in the process of communication with other people [3, with. 27]. The conclusion in a word is that, for example, children and the insane can't be considered as persons [4, with. 42-43].

In our opinion, it's impossible to agree with this position. People usually participate in legal relations, who possess the mind and strong-willed qualities. However the absence at possible participants of legal communication of such qualities owing to age or psychological features doesn't give any grounds to deny behind them personal (in legal way of the word) properties in general as they don't lose right ability under no circumstances. It's necessary to recognize the correct point of view of V.S. Shadrin that in legal aspect the personality is any person [5, with. 5-6]. About it the analysis of use of the term «personality» in various branches of the

right, including in constitutional, criminal, criminal procedure in which it is applied in the broadest sense as a synonym of a concept «person» testifies also.

The constitution of the Republic of Kazakhstan of August 30, 1995 says: «Dignity of the person inviolably. Nobody has to be exposed to tortures, violence, another cruel appeal humiliating human dignity or punishment» (article 17) [6, with. 42-43].

It is impossible no critically to transfer to jurisprudence psychological, philosophical, sociological concepts of the personality though it is impossible to dispense without using of categories of these sciences. The people possessing reason and willful qualities usually participate in legal relations.

The criminal procedure law for designation participating and production on criminal case of citizens usually uses the term «face». On literal sense the word «face» concerns to the personality though the phrase «legal entities» which are meant as the various organizations, establishments, the enterprises is widely known also. Without pressing in the detailed analysis of these concepts, at once we will agree with opinion that «face» and «person» is the same (except for legal entities).

In the theory of criminal trial participating persons in legal proceedings are called differently – «participants of criminal trial», «subjects of criminal trial», «participants of criminal procedure activity», «participants of the criminal procedure relations». For justification of legitimacy of this or that name various arguments taking into account procedural position of persons, their roles in criminal trial, interest in outcome of the case, etc. are used. The point of view about opportunity to unite all provided names under one general concept – «participants of criminal trial» as, participating in criminal trial is represented to the most acceptable and justified, the person can't but be the subject of the criminal procedure rights and duties, always makes criminal procedure actions or takes in them part, enters the criminal procedure relations. Speech can go only about features of participation.

Participants of criminal legal proceedings (individuals), certainly, are persons and in its legal aspect. All of them are allocated with the criminal procedure rights and duties which have to be guaranteed. However the concept «ensuring rights of the personality» extends only for a certain category of participants of criminal legal proceedings.

Any citizen participating in criminal trial, irrespective of its procedural situation, is a personality – the person possessing a constitutional law for recognition and protection of his dignity from the state. As the possession with dignity

predetermines the attitude towards the participant of criminal trial as to the personality, it is obviously necessary to specify what it is meant.

The realization of the fact by man usually contacts with the concept «dignity» that possesses moral and intellectual qualities significant for him. At the same time dignity is understood also as a set of objective qualities of the person, determining his reputation in society, including a rationality, moral installations, level of knowledge, a worthy way of life etc.

That is in concept of dignity the objective and subjective moments, in the set forming a whole differ.

The objective moment is characterized by the following aspects: 1) human dignity, value of the person independent from qualities and features at all; 2) personal advantage as the value of the specific individual in possession to them positive spiritual and physical qualities; 3) the advantage connected with belonging to a certain social community, to a group – the dignity of the scientist, national advantage, dignity of the woman, etc. The subjective moment of advantage is expressed in understanding by the individual of the value as person in general, as specific personality, as representative of a certain social group. Following to idea of human dignity conducts to recognition of the person by the supreme value that now and received the fixing in the Constitution of the Republic of Kazakhstan.

The person can't be deprived of the advantage which he has. Therefore not absolutely precisely to speak about advantage derogation, about protection of advantage. Object of encroachment is not the advantage, but feeling of advantage. Infringement of feeling of personal advantage – an action of open disrespect for the person, being expressed in the active actions directed to the address of the victim and ignoring value of the personality. The attitude of the state towards the personality, its advantage, interests, the rights is essential for criminal trial. It is that, on the one hand, character and the content of criminal trial depends on position of the personality in the state. With another – creation of criminal trial has deep impact on the rights and position of the personality in the state. Obviously therefore that criminal trial has high political value. Position of the personality in criminal trial is reasonably considered as a touchstone of humanity of an existing political regime.

Speaking about ensuring the rights of the personality, we mean ensuring its interests, i.e. the requirements realized by the personality causing statement of problems of its activity. Interests of

the personality in criminal process can have public or private character. Public interest expresses the relation of the individual to interest of society as a whole, induces to work so, instead of differently, for the sake of the benefit of all society. Private interest in criminal process reflects need of the individual for protection against invasion into its private life of other people and public authorities [7, with. 16-17]. Private interest causes need of the relation to certain participants of criminal legal proceedings as individual and certain personality. Not only scientists, but also lawyers—practicians paid attention on not faultlessness of all creation of criminal legal proceedings and the general condition of the law-enforcement practice which is easily changing depending on a position of public authorities and law-enforcement departments. Similar it is possible because all criminal procedure system is focused on satisfaction of state and political interest. In its basis the prevailing public beginning lies.

Really, an embodiment of the public interests represented by the state in criminal trial, the principle of publicity. It expresses responsibility of the government law enforcement agencies for safety of society and their duty to react to everyone crime cases initiation of criminal cases, acceptance of all measures provided by the law to establishment and punishment of the guilty.

The ratio of the public and private beginning in interests of various participants of criminal legal proceedings is inadequate. The investigator, the prosecutor, the judge and other participants of criminal legal proceedings allocated with state powers of authority in the procedural activity, always have to be guided by interests of society and the state which are determined by tasks and purpose of criminal legal proceedings. Even in case of ensuring the rights and legitimate interests of participants of criminal legal proceedings the specified officials carry out before them public tasks, instead of become carriers of private interests in criminal trial. They can't pursue achievement of private interest as in case of detection of their personal, direct or indirect interest in outcome of the case they are subject to branch (chapter 11 of the Criminal Procedure Code of RK). Carrying out criminal legal proceedings, officials of government bodies use not the personal rights, and powers of society and the states delegated by it for investigation of crimes and administration of justice. Therefore, their activity is provided not with procedural means of protection and protection of the rights of the personality, and procedural guarantees of justice. According to V.M. Kornukov, the category «personality» in criminal

trial is applied to designation of the citizen involved in criminal procedure activity, irrespective of his procedural situation [8, with. 47]. In our opinion, this statement can't be considered absolutely true. In it it is correctly noted that the term «personality», to be exact, «interests of the personality», in criminal trial is inapplicable to officials of bodies of criminal legal proceedings. But to extend it to all other participants of criminal legal proceedings being individuals, also would be unreasonable. In our opinion, private interest also is absent at the citizens involved in criminal legal proceedings owing to professional qualities, official position, and also the persons participating in criminal procedural activity owing to a public obligation. It, first of all, participants of criminal legal proceedings and other persons representing in it interests of society (jurors), and also rendering assistance in production on criminal case (the expert, the teacher, the translator). Through its activities they contribute to the realization of the public interest, so their rights and duties provided the procedural safeguards of justice. Specially addressed the issue in question in relation to the witness. The performance of his legal duty to assist the justice does not exclude cases where the witness is interested in the outcome of the case. Therefore, the rights and legitimate interests are protected, not only guarantees justice, but also the procedural means to ensure the rights of individuals in criminal proceedings. So, for example, protecting the private interest of the witness from the invasion of his privacy, part 3 of Article 82 of the CPC RK gives him the right not to testify against himself, his relatives and his wife. A separate group of participants in criminal proceedings, persons who have a criminal case, his legal interest. The accused, a suspect, victim, civil plaintiff and civil defendant always have in the criminal case his private interest, which is caused by certain personality traits that result from the commission of the offense under investigation, determining their procedural status. They make these participants essential subjects of the criminal process. Social interest in relation to their self-interest as defined lines of possible behaviors that participants in criminal proceedings may be taken in whole or in part. But even fully coincide with the public interest, personal interest is not absorbed by them. It only shows that the interests of the individual in this case are social in nature. And the rights and obligations of such participant provided not only by special procedural means and methods, but also guarantees of justice. Among the participants in the criminal proceedings are also individuals who represent and protect the

interests of other participants of the proceeding. It defender of suspect and the accused, their legal representative, and a representative of the victim, civil plaintiff and civil defendant. Despite the fact that the criminal-procedural activity defender aims to promote the interests of his clients, in criminal justice he pursues interests of society. To criminal-procedural activities of defender inherent a public interests. The word «public» – derived from Latin, it means «national». In the literature it is treated as «social, not private»(9, with. 629). It is advisable to use the term in relation to the activities of the defender in this sense. About the public nature of the defense suggests the following. Firstly, the need to implement the activity in question is due to public demand to protect innocent citizens from the use of state enforcement of criminal and criminal-procedural nature. Secondly, the defense attorney does not appear as an individual person, but as a member of the organization which accept the performance of the very important role in the law enforcement mechanism – providing qualified legal assistance to citizens (paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan). He is required to act within the law of the profession in which the requirements are presented to him much higher than to ordinary citizens. Thirdly, an implicit admission of the public of the defender's legal status shows: the prohibition to refuse to accept a lawyer to protect themselves, the possibility of the suspect and the accused legal aid at the expense of the state. Consequently, the duty of the defense to carry out their activities in accordance with the requirements of the client is limited to the scope of public interest expressed in the law. In contrast from the defender to the representative is relevant presumption of legitimacy of interest of the participant of criminal proceedings. His procedural position must fully and in all cases correspond to the position, electing a person whose interests he represents.

Violation of the procedural rights of the defender and at the same time leads to the violation of the rights of defense of the suspect and the accused, which he must provide competent legal assistance. Consequently, the rights and obligations of the defender (representative), as well as the rights of other participants of the criminal proceedings are subject to the rights of the individual in criminal proceedings.

In addition, the Concept of Legal Policy of the Republic of Kazakhstan, define improvement of criminal procedure in the coming years in the following areas:

- Legislative regulation of pre-investigation, defining its limits;
- Creating conditions for increased use of preventive measures alternative to arrest, including security;
- The gradual introduction of new institutions of restorative justice based on reconciliation of the parties, and reimbursement of damages;
- The possibility of expanding the categories of criminal cases in which the prosecution and the prosecution in the trial can take place in private and private-public order;
- The gradual expansion of categories of criminal cases before the court by jury;
- Further improvement of mechanisms for providing quality legal assistance in criminal matters, not only for defendants and suspects, and victims, witnesses.

Each of the parties participating in the investigation (citizen of the Republic of Kazakhstan, as well as a foreigner or a stateless person) is a person, whose a dignity and inalienable rights are owned by birth. State laws may impose restrictions on the rights of the sole purpose of recognition and respect for the rights of others and of meeting the just requirements of morality and public order in a democratic society. Ensuring the rights of participants in the investigation, under the Constitution of Kazakhstan, shall meet the conception of the man, his life, rights and freedoms as the highest value and in accordance with international principles and norms (standards) in the field of human rights. Kazakhstan's integration into the world community, chairmanship in the OSCE (2010) requires careful study of international standards of human rights, consideration of the rights of participants in criminal proceedings in foreign countries. Human rights and freedoms – these are universal legal values, which are characterized by the establishment of common international legal standards for the protection of individual rights. Contemporary international law has recognized and, therefore, is binding on all states for defining the fundamental rights and freedoms of the individual who is in the area of criminal procedure relations.

Литература

- 1 Психология и педагогика в правоохранительной деятельности органов внутренних дел: учебное пособие / под редакцией И.Д. Мариновской. – М.: Щит-М., 1997. – 287 с.
- 2 Платонов К.К. Структура и развитие личности. – М., 1986. – 410 с.
- 3 Кучинский В.А. Личность, свобода, право. – М., 1978. – 225 с.
- 4 Матузов Н.И. Личность. Права. Демократия. – Саратов, 1972. – 289 с.
- 5 Шадрин В.С. Обеспечение прав личности при расследовании преступлений. – Волгоград, 1997. – 311 с.
- 6 Конституция Республики Казахстан. – Конституция принята на республиканском референдуме 30 августа 1995 года. – Алматы: Издательство «ЮРИСТ», 2007. – 41 с.
- 7 Душенбиев Т.А. Интересы в уголовном судопроизводстве (по материалам Кыргызской Республики и Российской Федерации): Автореферат диссертации кандидата юридических наук: 12.00.09. – М., 1999. – 25 с.
- 8 Корнуков В.М. Конституционные основы положения личности в уголовном судопроизводстве. – Саратов, 1987. – 267 с.
- 9 Ожегов С.И. Словарь русского языка. – М., 1990. – 1450 с.

References

- 1 Psihologija i pedagogika v pravoohranitel'noj dejatel'nosti organov vnutrennih del: Uchebnoe posobie / Pod redakciej I.D. Marinovskoj. – M.: Shhit-M., 1997. – 287 s.
- 2 Platonov K.K. Struktura i razvitie lichnosti. – M., 1986. – 410 s.
- 3 Kuchinskij V.A. Lichnost', svoboda, pravo. – M., 1978. – 225 s.
- 4 Matuzov N.I. Lichnost'. Prava. Demokratija. – Saratov, 1972. – 289 s.
- 5 Shadrin V.S. Obespechenie prav lichnosti pri rassledovanii prestuplenij. – Volgograd, 1997. – 311 s.
- 6 Konstitucija Respubliki Kazahstan. – Konstitucija prinjata na respublikanskom referendumе 30 avgusta 1995 goda. – Almaty: Izdatel'stvo «JuRIST», 2007. – 41 s.
- 7 Dushenbiev T.A. Interesy v ugovolnom sudoproizvodstve (po materialam Kyrgyzskoj Respubliki i Rossijskoj Federacii): Avtoreferat dissertacii kandidata juridicheskikh nauk: 12.00.09. – M., 1999. – 25 s.
- 8 Kornukov V.M. Konstitucionnye osnovy polozhenija lichnosti v ugovolnom sudoproizvodstve. – Saratov, 1987. – 267 s.
- 9 Ozhegov S.I. Slovar' russkogo jazyka. – M., 1990. – 1450 s.