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GUARANTEES OF THE LEGALITY AND VALIDITY OF THE LIMITATION OF PERSONAL IMMUNITY

The article gives a theoretical analysis of measures of state coercion, observance of the principle of inviolability of the person when applying measures of criminal procedural coercion. The purpose of this study is to examine issues directly related to the mechanism for implementing measures of criminal procedural coercion in criminal proceedings; actualize the problem in question and the need for its further resolution by legal means; strengthening of procedural guarantees of the principle of inviolability of the person in the Criminal Procedure Code of the Republic of Kazakhstan, etc. Achievement of the set goal is facilitated by the following tasks: identification of the category of the inviolability of the individual as a human right in a democratic state; the ratio of international legal norms and legislation of the Republic of Kazakhstan regulating the right to inviolability of the person; analysis of the norms of the Constitution of the Republic of Kazakhstan on the human right to personal freedom as the basis of the principle of inviolability of the person; legal assessment of the inviolability of the individual as a category of criminal procedural science, the principle of criminal procedural legislation; determination of types of guarantees for the realization of the inviolability of the person when applying measures of procedural coercion. The logical, formal, legal, analytical, as well as functional method, which reveals the qualitative characteristics of the research subject, allows to determine the essence of the institution under study, the possibility of the regulatory impact of the constitutional and sectoral legislation on the state of law and order in the Republic of Kazakhstan is used to study the questions posed. As a result of research the system of theoretical positions in the field of guarantees and realization of the principle of inviolability of the individual, which is called to provide the basis of democratic transformations in the Republic of Kazakhstan, is grounded. Guarantees of the implementation of these rights by citizens, which can give the state, are, in the opinion of the author, first of all, in a reliable and developed legislative framework that meets the realities of life.

Key words: coercive measures, measures of criminal procedural coercion, the principle of inviolability of the person, detention, arrest, guarantees of the implementation of the principle of inviolability of the person.

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Жеке басқа қол сұқпаушылықты шектеудің заңдылығы мен негізділігінің кепілдіктері

Мақалада мемлекеттік мәжбүрлеу шараларына, қылмыстық-процестік мәжбүрлеу шараларын қолдануда жеке басқа қол сұғылмаушылық қағидасының сақталуына теоретикалық талдау берілген. Бұл зерттеудің мақсаты қылмыстық процесте қылмыстық-процестік мәжбүрлеу шараларының жүзеге асырылу механизмімен тікелей байланысты мәселелерді қарастыру; қарастырылып отырған мәселені және оны құқықтық құралдармен ары қарай шешуді өзектеу; Қазақстан Республикасы қылмыстық-процестік кодексінде жеке басқа қолсұғылмаушылық

қағидасының процестік кепілдіктерін күшейту және т.б. Қойылған мақсаттарға жетуге мына міндеттер септігін тигізеді: демократиялық мемлекетте адамның құқығы ретінде оның жеке басқа қолсұғылмаушылық категориясын тұжырымдау. Жеке басқа қолсұғылмаушылыққа құқықты реттеуші халықаралық құқықтық нормалар мен ҚР-дың заңдарының арақатынасын анықтау; қылмыстық-процессуалдық ғылымның категориясы, қылмыстық-процессуалдық заңның принципі ретінде жеке басқа қолсұғылмаушылыққа құқықтық баға беру; процессуалдық мәжбүрлеу шараларын қолдану барысында жеке басқа қолсұғылмаушылықтың жүзеге асырылуының кепілдіктерінің түсінігін және түрлерін анықтау. Қойылған мәселелерді зерттеуде логикалық, формалды-құқықтық; аналитикалық; зерттеудің пәнінің сапалы сипаттамасын ашушы, зерттелуші институттың мәнін анықтауға, Қазақстан Республикасында заңдылық және құқықтық тәртіп жағдайына конституциялық және салалық заңдардың жүйелі әсер етуіне мүмкіндік беретін функционалды әдіс қолданылады. Зерттеудің нәтижесінде Қазақстан Республикасында демократиялық қайта құрулардың негізін қамтамасыз етуге шақырылған жеке басқа қолсұғылмаушылық қағидасының кепілдіктері және жүзеге асырылуы саласында теориялық ережелер жүйесі негізделген. Аталған құқықтардың азаматтармен мемлекет беретін жүзеге асырылу кепілдіктері, автордың пікірінше, ең алдымен, сенімді және дамыған, өмір талаптарына сай келетін заң шығарушы базистен көрінеді.

Түйін сөздер: мәжбүрлеу шаралары, қылмыстық-процессуалдық мәжбүрлеу шаралары, жеке басқа қол сұғылмаушылық қағидасы, ұстау, қамауға алу, жеке басқа қол сұғылмаушылық қағидасының жүзеге асырылу кепілдігі.

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Гарантии законности и обоснованности ограничения неприкосновенности личности

В статье дан теоретический анализ мер государственного принуждения, соблюдения при применении мер уголовно-процессуального принуждения принципа неприкосновенности личности. Цель настоящего исследования заключается в изучении вопросов, непосредственно связанных с механизмом реализации мер уголовно-процессуального принуждения в уголовном процессе; актуализировать рассматриваемую проблему и необходимость ее дальнейшего разрешения правовыми средствами; усиление процессуальных гарантий принципа неприкосновенности личности в уголовно-процессуальном кодексе Республики Казахстан и т.п. Достижению поставленной цели способствует постановка следующих задач: выявление категории неприкосновенности личности как права человека в демократическом государстве; соотношение международных правовых норм и законодательства Республики Казахстан, регулирующих право на неприкосновенность личности; анализ норм Конституции Республики Казахстан о праве человека на личную свободу как основы принципа неприкосновенности личности; правовая оценка неприкосновенности личности как категории уголовно-процессуальной науки, принципа уголовно-процессуального законодательства; определение видов гарантий реализации неприкосновенности личности при применении мер процессуального принуждения. При исследовании поставленных вопросов используются логический, формально-правовой, аналитический, а также функциональный методы, выявляющие качественные характеристики предмета исследования, позволяющие определить суть исследуемого института, возможность регулятивного воздействия конституционного и отраслевого законодательства на состояние законности и правопорядка в Республике Казахстан. В результате исследования обоснована система теоретических положений в области гарантий и реализации принципа неприкосновенности личности, который призван обеспечить основу демократических преобразований в Республике Казахстан. Гарантии осуществления данных прав гражданами, которые может дать государство, заключаются, по мнению автора, прежде всего, в надежном и развитом, отвечающем реалиям жизни, законодательном базисе.

Ключевые слова: меры принуждения, меры уголовно-процессуального принуждения, принцип неприкосновенности личности, задержание, арест, гарантии реализации принципа неприкосновенности личности.

Introduction

In the framework of the study of problems, the implementation of human and citizen's rights and freedoms is carried out numerous studies, they relate to many spheres of human life. This includes political rights (freedom of speech, the right to form public associations, political parties, participation in the management of the affairs of the state, change residence, etc.) and social (the right to education, labor, social security: benefits, pensions and other payments) and personal (the right to life, a name, a healthy environment, the right to privacy, dignity, property rights, etc., cultural (the right to work, etc.).

A study of the institution of human and civil rights and freedoms is supplemented by a sphere of criminal procedure, characterized by application of state coercion measures to an individual, in which the latter's freedoms are subject to significant restrictions. A red thread that shares the legality and social validity of the application of such measures and arbitrariness, in which constitutional rights and freedoms of an individual are violated, are constitutional and criminal procedural guarantees of observance of the rights and legitimate interests of the individual.

One of such guarantees is the principle of inviolability of the person in criminal proceedings. Along with other principles of the criminal process, the principle of inviolability of the individual establishes the priority and inviolability of the rights and freedoms of man and citizen in the Republic of Kazakhstan. Speaking as one of the main guarantors of rights and freedoms, the realization of the principle of personal inviolability is also backed by numerous procedural guarantees, among which the main place is occupied by the legality of the production of arrest, detention and other measures of criminal procedural coercion.

Main part

State coercion, in particular, and criminal procedural coercion are in themselves a «certain antipode» of individual freedom. It is necessary to try to establish more exactly what is procedural coercion?

It is difficult not to agree with the thesis that coercion in criminal proceedings takes place only when certain procedural means are directed at limiting the rights and freedoms provided for by law.

The existing Code of Criminal Procedure of the Republic of Kazakhstan includes the following:

1) detention of a suspect (section 4, chapter 17 of the Code of Criminal Procedure of the Republic of Kazakhstan);

2) delivery (Article 129 of the Code of Criminal Procedure of the Republic of Kazakhstan);

2) personal search of the detainee (Article 132 of the Code of Criminal Procedure of the Republic of Kazakhstan);

3) preventive measures (Chapter 18 of the Code of Criminal Procedure);

4) other measures of procedural coercion (Chapter 19 of the Criminal Procedure Code of the Republic of Kazakhstan).

The definition of coercive measures is the most controversial. Yu. D. Livshits distinguishes:

1) preventive measures;

2) measures for the detection and seizure of evidence;

3) measures ensuring order in the court session;

4) others (Livshits Yu.D. 1958, S. 6).

3. F. Kovriga divides the measures of procedural coercion into two large groups:

1) means of restraint (preventive measures);

2) means of security (search, seizure, placement of the accused or suspect in a medical institution, seizure arrest of property) (Kovriga ZF 1975, p.29-30).

AA Filyuschenko notes that «the coercion used to induce the subject to fulfill the procedural duty lying on it goes far beyond the specific means of criminal procedural law, encompassing both legal and social impacts, as a psychic threat, and (if it is lacking) physical coercion, both procedural and substantive means of law enforcement «(Filyuschenko AA 1974, p.108).

Let us turn to the doctrine of Petrukhin IL, in our opinion, which is the most informative. In particular, the author points out that «to determine the prevalence of procedural coercion, the extent to which it is applied, it is not enough to list the investigative and judicial actions declared compulsory. Socio-psychological and sociological studies are needed, which will show the extent to which it is necessary to resort to coercion against citizens of the participants in the criminal process». The quoted author conducts a classification according to the degree of expression of state coercion in them:

1) at the request of the participants in the process (examination and examination of the victims);

2) on the initiative of the state authorities, but, as a rule, with the full approval of the participants in the process (for example, inspection of the scene, exhumation of the corpse);

3) Regardless of the initiative, they may be approximately equally likely to be both compulsory and voluntary (placing the accused in medical institutions, obtaining samples for comparative research);

4) exclusively compulsory (detention, imprisonment, removal from office, seizure of property, drive);

5) in relation to persons who are unable to express their attitude to the measures applied, but it is assumed that they will take these measures if they learn about them, as a compulsory restriction of personal freedom (seizure of postal and telegraph correspondence).

At the same time, the author proposes to distinguish between concepts:

«Coercion in criminal proceedings», covering all types of influence on the subject of the process, as a result of which he is forced to perform a procedural duty against his will, including the mental impact on the subject of the threat of possible sanctions not only procedural but also criminal;

«Criminal procedural coercion», includes only those means of influence on the participants in the proceedings, which the criminal procedural law and its state bodies (proving, prevention, etc.) have (Petrukhin IL, 1985, p. 6).

Thus, the authors consider coercive measures in a broad and narrower sense, which is reduced only to the procedural norms of the law.

In a sense, many authors, mostly of the Soviet period, point to the «voluntary coercion» that takes place, which, by coercion, as such, is no longer due to the fact that the subject of the criminal procedural obligation performs procedural procedures independently and voluntarily. A vivid example here is the notch. The psychological factor is based on this teaching. For example, I.I. Loganov in this connection noted that «... depending on the system of psychological motives, the same activity can be experienced as freedom or necessity» (Loganov IM 1980, 103).

Petrukhin IL, agreeing with the above opinion, also distinguishes «an action corresponding to the desires and interests of the obligated subject, and the coercive measure», proceeding from the subjective and volitional characteristics of the subject (Petrukhin IL, 1985, p.6).

German lawyers are also debating on this issue. Thus, Professor K. Amlunga believes that all procedural actions that violate the sphere of human rights, regardless of whether or not direct violence is used in the performance of those actions, should be called an invasion of human rights (Amelung K.

1987, S. 757). Professor F.Ch. Schroder argues that the term invasion of human rights is not procedural, does not indicate the procedural functions of compulsory action, therefore, the measure of procedural coercion in criminal proceedings is the more appropriate term (Schroder F.Ch. 1985, P.1028). According to E. Latauskienė and S. Matulene, attention should be paid to the fact that officials of pre-trial investigation, performing certain procedural actions of coercion, did not forget the requirements of the law on protection of human rights. The use of any coercive measures in the criminal process always means a certain restriction of human rights (E. Latauskienė, S. Matulene, 2005).

Kornukov V.M. polemicizing with these statements, writes that the voluntary submission to the criminal procedural norms of coercion does not eliminate coercion itself ... «(Kornukov, VM 1978, p. 50) and with this opinion, we will agree, since the measure of coercion is not dependent on subjective factors, nor can anyone be limited in their rights by their own consent. Such a restriction, as is known, has no legal force. If the restriction is legally established, then it can not cease to be due to the mental (subjective) criterion of the person to which it was applied. Here we see the ideological attitudes that were inherent in «Soviet law», in many cases, reliant on «socialist consciousness», «socialist conscience», etc. To date, the right, having become the single yardstick of justice, has declared equal conditions for the use of rights for all subjects of rights and law enforcement activities, and the psychological factor, in its functional characteristics, although taken into account in many legal theories (for example, in material criminal law, of the crime), but it plays a purely facultative character. Moreover, this concerns criminal procedural law, where the process itself is aimed at exposing and punishing those guilty, which can only be achieved by using the power of state coercion (drive, search, interrogation, etc.).

In order to fully determine the status of a person, the «sufficiency» of that freedom, which is mentioned in the Constitution and other international acts, «certain limits» are necessary for which personal freedom remains inviolable even under conditions when it is involved in criminal proceedings and undergo restrictions of compulsory order. Such «limits» are outlined by legal, and, above all, by constitutional guarantees for the realization of individual rights and freedoms. In the norms of the criminal procedural law, the guarantees are specified in relation to the specifics of the criminal process and the measures of procedural coercion.

The most concise content of these opposing principles (coercion, freedom of the individual, guarantees of rights and freedoms) we find in the norm of the Basic Law of the country. In Part 1 of Art. 16 it is established: everyone has the right to personal freedom. In the content of personal freedom, the legislator invests «an inalienable and absolute right arising from the natural nature of man himself». Personal freedom is «the highest social value and principle that serves as a criterion of human progress», the link of the rights and freedoms of the individual «(Constitution of the Republic of Kazakhstan, 1995).

The right to individual freedom is enshrined in many international legal instruments. According to the Covenant on Civil and Political Rights (Article 9 of the Law of the Republic of Kazakhstan on the ratification of the International Covenant on Civil and Political Rights, 2005) «Everyone has the right to freedom and personal inviolability ... No one shall be deprived of his liberty except on such grounds and in accordance with such procedure, which are established by law».

The Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms (Article 5 of the Convention of the Council of Heads of State of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms) states that «No one shall be deprived of his liberty except in the following cases and in accordance with the procedure, established by national legislation:

- a) the lawful detention of a person after his conviction by a competent court;
- b) the lawful arrest or detention of a person;
- c) the lawful detention of a minor with a view to referring the case to an investigation, ordering a punishment or to a court.

Each arrested person at the time of arrest is informed, in a language understandable to him, the reasons for his arrest. Everyone who is deprived of his liberty by arrest or detention, in accordance with national law, has the right to have his case heard by the court on the lawfulness of his arrest or detention. All persons deprived of their liberty have the right to humane treatment and respect for the inherent dignity of the human person. Persons who have been subjected to unlawful arrest or detention are entitled to compensation for the damage caused in accordance with national legislation».

The Covenant on Civil and Political Rights also states that «Every person arrested or detained on a criminal charge is promptly brought before a judge or other official who is legally entitled to

exercise judicial power and is entitled to a trial within a reasonable time term or to be released. The detention of persons awaiting trial should not be a general rule, but release may be subject to guarantees of appearance at court, appearance at trial at any other stage and, if necessary, appearance for the enforcement of the sentence. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court so that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Everyone who has been the victim of unlawful arrest or detention shall be entitled to compensation with enforceable power».

The acute problem of limiting the freedom of an individual becomes when he becomes a participant in criminal proceedings and falls under the constraints stipulated by the rules of procedural coercion. Therefore, it is here that the legislator creates a number of firm guarantees that contribute to the fact that an individual who has fallen into the sphere of criminal proceedings, despite the fact that his status is limited by the rules of procedural law, is given the same «necessary» and «inviolable» freedom. For example, in the Constitution of the Republic of Kazakhstan, the inviolability of the person is protected by legal guarantees in the application of arrest and detention.

Constitutional guarantees of the inviolability of individual freedom when applying measures of state coercion, applied in the criminal process in the Republic of Kazakhstan, in accordance with Art. 16 are:

- the sanction of the judge (for arrest and detention);
- the right to judicial review (the sanction of a judge);
- the period of detention, equal to 72 hours (without the sanction of the judge);
- the right to a lawyer (counsel) from the moment, respectively, of arrest, arrest or charge.

To date, the protection of the individual in the criminal process, the inviolability of her constitutional and procedural freedoms is a problem of state importance, elevated to the level of observance of constitutional legality in the Republic of Kazakhstan. Thus, in particular, in the Address of the Constitutional Council of the Republic of Kazakhstan of June 09, 2017 No. 09-2 / 5 «On the state of constitutional legality in the Republic of Kazakhstan» it is stated that «legislative activity in the new conditions, as before, must be based on the supremacy rights, the most important components of which are legality, legal certainty, exclusion of arbitrari-

ness, access to justice, respect for human and civil rights and freedoms, non-discrimination, justice and equality of all before the law. «(Message of the Constitutional Council of the Republic of Kazakhstan of 09 June 2017 No. 09-2 / 5) On the state of constitutional legality in the Republic of Kazakhstan «).

Based on common social, moral, psychological, etc. we can also talk about restrictions on the freedoms of those subjects who are participants in the criminal process, to which, in accordance with the norms of the criminal procedural law, coercive measures have not been applied. So, for example, the investigator, attracting, according to Art. 197 of the Criminal Procedure Code of the Republic of Kazakhstan to participate in the investigative actions of persons provided for by law, is obliged to explain to them the rights and obligations, as well as the procedure for the production of the investigative action. Here, citizens fall into bodies that have state power and, in the event of the investigator failing to perform his procedural duties, become «victims» of official arbitrariness. In this case, we mentioned the rights of suspects, defendants, who are correlated with the numerous duties of investigation and inquiry bodies, the scope and content of which predetermines the guarantee of the rights and freedoms of these persons. So, for example, in accordance with Part 3 of Art. 14 of the Code of Criminal Procedure of Kazakhstan, every detainee is immediately informed of the grounds for detention, as well as the commission of an act provided for in the criminal law, he is suspected. So, for example, in accordance with Part 3 of Art. 14 of the Code of Criminal Procedure of the Republic of Kazakhstan, every detainee is immediately informed of the grounds for the detention of prisoners.

Thus, we are talking about legal guarantees by means of which the norms of legislation based on the principles that, in turn, are the core for all branch legislation of the Republic of Kazakhstan are implemented. Therefore, actualizing the problem of human rights and freedoms in criminal proceedings, the legislator has built a strict system of fundamental provisions, characterized by certainty and assurance of their observance. These provisions are guiding and define a democratic, humane, corresponding to the socio-economic conditions of the development of society; construction of criminal process. Речь идет, конечно же, о принципах уголовного процесса, среди которых принцип неприкосновенности личности занял свою твердую позицию.

Under the right of inviolability of personality, according to I.N. The short should be understood as

«guaranteed by the state personal security and freedom of a citizen, like any person in general, consisting in preventing, punishing and punishing infringements on life, health, bodily integrity and sexual freedom (physical integrity of the person); honor, dignity, moral freedom (moral inviolability); psyche (mental integrity); individual freedom of a person, expressed in the ability to afford him the opportunity to have himself at his discretion to determine the place of stay (personal security) « (Korotkii NN 1977, p.15).

The principle of inviolability of the person is the fundamental beginning of the construction of the whole criminal process; this means that a person who has fallen into the sphere of a criminal process is already initially endowed with criminal procedural norms – guarantees of inviolability. This principle is a priority in relation to other norms of the Code of Criminal Procedure; and in relation to other principles of the criminal process is in close interconnection and forms the basis of the criminal procedure legislation of the Republic of Kazakhstan.

In this regard, I would like to give as an example the opinion of our compatriot Shumenova RT, who asserts that «... the whole system of criminal procedural law acts as procedural guarantees» (Shumenova RT 2001, p.119]. According to this statement, I would like to note that this is again a generalizing category, since there are norms that determine the order of ordinary procedural actions. If we consider the problem deeper, then this statement is true, but it is necessary to come to it by analyzing the norms and the system of legislation. Let's start with the norms of the Constitution. In Art. 16 of the Constitution establishes the basic guarantee of the inviolability of the person. In accordance with the same article, inviolability acts as the right of the individual; but placing it in the section of rights and freedoms of a person and a citizen in the basic law of the state raises him to the rank of constitutional guarantees.

The Code of Criminal Procedure raises the inviolability of the individual to the principle, and through other norms of the Code of Criminal Procedure, other normative legal acts detailing and specifying various aspects of the basic principles, this principle must be realized. The implementation of the principle of inviolability of the individual, established in the Criminal Procedure Code, is thus guaranteed by the Constitution of the Republic of Kazakhstan.

In her work, Shumenova R.T. focuses on guarantees of the principles of the criminal process and determines their structure (hierarchy, in particular):

1) fixing in the Constitution of the Republic of Kazakhstan the main provisions that set the legal basis for the implementation of the principles;

2) detailing in the criminal procedural legislation provisions defining the procedure for implementing the principles of criminal justice at all its stages;

3) procedural criminal-legal institutions;

4) criminal procedure norms.

The procedural guarantee of the implementation of the principles, in the opinion of the author in question, is also «the typical property of the method of criminal procedural regulation, the special procedural procedure for initiating, investigating and resolving criminal cases, ensuring the compliance of the participants in the criminal process with the tasks of criminal proceedings» (Shumenova RT 2001, P.119).

Analyzing the criminal procedure relations Kokorev L.D. and Lukashovich VD rightly noted that «in criminal proceedings, some subjective rights of the individual are a guarantee of other subjective rights». Thus, for example, the right of the investigator to appeal against the actions of the head of the inquiry body, in fact, acts as a guarantee for the realization of the right of the suspect, accused of inviolability, etc. (Kokorev LD, Lukashovich VZ 1977, p.74).

These authors refer to the procedural guarantees and principles of criminal justice. In this matter, we consider it necessary to understand, since Shumenova R.T. writes that principles and guarantees have completely different meanings. Principles and guarantees are really different legal categories. Guarantees are means of support; and the principles are the basic, guiding legal framework. However, in some cases, the principles do act as guarantors. So, for example, the principle of legality acts as a guarantor of the implementation and observance of the rights and legitimate interests of citizens.

Enumerating the guarantees of the principles of the criminal process, various authors give different lists.

Petrukhin IL in the work «Judicial guarantees of the rights of the individual in the criminal process» identifies three aspects:

1) control of the court for the legality of arrests and arrests.

2) the institution of admissibility of evidence as a way of protecting the rights of the individual.

3) the permissible limits of the restriction of the fundamental rights and freedoms of the individual (Petrukhin IL 1992, p. 60).

Under the legal guarantees of the legality and validity of the restriction of human rights, in the ap-

plication of procedural coercion measures to them, it is necessary to understand the set of conditions, means and methods established by the norms of international, constitutional, criminal procedure legislation and other laws, as well as the procedural activity carried out on their basis, providing a person with protection of his physical, moral and mental integrity, individual freedom and personal safety from arbitrary to in the course of criminal proceedings (Melnikov V.Yu. 2011, p.105).

Akhpanov AN the system of guarantees of the rights and legitimate interests of the individual in the field of procedural coercion designates as the aggregate of the following elements:

a) normative settlement of the principles and general conditions for the application of criminal procedural coercion (procedural rules protecting the rights and freedoms of persons interested in the course of the case from their arbitrary restriction); rights and obligations of participants in the process (or their procedural status) in the field of coercion: the procedure (procedure) of application of certain measures of procedural coercion fixed in the norms of the criminal procedural law;

b) the motivation for decisions on the application of coercive measures, manifested in the requirement of objectification – the expression in the procedural decision of those arguments and considerations, by virtue of which such a value was justified by evidence, is recognized to be applicable to this law;

c) the right to judicial protection of their rights and freedoms, obtaining qualified legal assistance; the right to appeal, including judicial, related to the measures of procedural coercion of decisions and actions of persons conducting criminal proceedings in an accessible, unnecessarily uncomplicated and operational form; the duty of criminal investigative bodies and courts to explain the rights to the participants in the process and provide real conditions for their implementation;

d) the system of departmental procedural control, prosecution and judicial supervision of the activities of the bodies of preliminary investigation and inquiry into the application of criminal procedure;

д) measures of responsibility of officials and bodies conducting criminal prosecution for unlawful and unreasonable use of procedural and coercive measures, groundless restriction and violation of citizens' rights and freedoms (criminal – legal norms of the Criminal Code providing for sanctions for unlawful detention, arrest, civil – legal, disciplinary – on the basis of representations, disciplinary proceedings of the prosecutor, private court

orders, criminal procedural – return to additional races investigation of criminal cases, cancellation or change of unlawful and unjustified decisions related to measures, procedural coercion, etc.) (Akhpanov AN 1997, p.15).

Proceeding from the proposed classifications, we will propose our own, according to which the guarantees of inviolability of the person in the criminal trial are:

- 1) legality;
- 2) the procedure for the production of procedural actions regulated by law;
- 3) appeal against actions and decisions of criminal prosecution authorities;
- 4) prosecutor's supervision of pre-trial investigation;
- 5) responsibility of officials for violation of the rights and legitimate interests of the individual, etc.

Taking into account the specifics of the institutes of criminal proceedings, these guarantees can be modified, supplemented, etc. So, for example, in the process of arrest and arrest as additional guarantees, it is the responsibility of the bodies of inquiry to notify the family of the relatives of the detainee arrested.

Thus, defining the system of guarantees as the most important link in the Kazakhstani criminal process and their role in realizing the rights and legitimate interests of citizens involved in criminal proceedings, we can assert that legal guarantees are the most important legal instrument for the implementation of norms and principles of law. The basic guarantees are established in the Constitution of the Republic of Kazakhstan. The absence of such legal guarantees gives the legislation only a declarative nature, the implementation of which has very deplorable consequences.

Conclusion

Corrections of legal reforms have also proved that the practice of law enforcement and the formality of law should interact and correlate most intimately. The rule of law only then has a complete

and logically correct appearance when it is backed by a guarantee of realization – the primary cause of its life activity.

When it comes to the inviolability of individual freedom, then, as was said above, we fall into the field of influence of the state legal mechanism using the methods of state coercion, among which the special place is occupied by measures of criminal procedural coercion. In the criminal process, personal freedom is limited due to the fact that the person acquires the status of a suspect accused of committing the most dangerous type of offense – a crime and therefore undergoes state criminal procedural coercion measures. Forced measures that restrict the freedom of the individual in criminal proceedings are necessary; their application is connected with the investigation of crimes and the preservation of the accused, suspects of such a legal regime, which provides the investigation with an objective and full-fledged conduct of cases in order to disclose the committed crime. The criminal procedural measures established by law, which restrict the rights and freedoms of the individual, in particular the right to freedom, are socially justified. The state assumes responsibility for the rule of law in society, therefore it through legal instruments establishes a system, apparatus and regimes (in this case in the criminal process) in which state enforcement is applied and implemented. We will even confidently assert that coercion in the criminal and criminal procedural and criminal – executive spheres will never be obsolete even under any system and political regime. The question, apparently, depends on the embodiment of democratic postulates, which, in the first place, put the interests of the individual. Therefore, now, at the time of the construction of the rule of law, the most important issues for us are:

- whether democratic rights and personal freedoms will be reliably protected and inviolable when applying procedural coercive measures;
- what legal means the legislator uses for this;
- whether the norms of laws are implemented in the practice of law enforcement, etc.

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