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APPEALING PROCEDURAL ACTIONS AND DECISIONS OF BODIES CONDUCTING CRIMINAL PROSECUTION AS A GUARANTEE OF SECURING THE RIGHTS OF PARTICIPANTS IN CRIMINAL PROCEEDINGS

The article examines the legal nature of the principle of freedom to appeal procedural actions and decisions as the fundamental and guiding principle of the whole criminal process of the Republic of Kazakhstan. The subject of the study are: the system of legislative and other normative legal acts of the current legislation of the Republic of Kazakhstan; regulated by them a circle of homogeneous social relations on the implementation of the principle of freedom to appeal procedural actions and decisions in criminal proceedings; the practice of applying the above legislation, on the basis of which study proposals are being developed to improve legislation, as well as studies of law enforcement practice on the issues under consideration in the Republic of Kazakhstan. The methodological basis of the scientific article was the political, legal, philosophical, legal and other scientific justifications for the principles and procedures for carrying out the constitutional basis for the legal regulation of the citizens' right to personal freedom, as well as for the principle of freedom of appeal of procedural actions and decisions in the criminal process. For this, general scientific and private scientific methods of studying state and legal phenomena were applied. The scientific novelty lies in the fact that the author, using the imperial scientific material, justifies the approaches of adequate provision in the criminal procedural code of the Republic of Kazakhstan to the protection of citizens who fall into the sphere of the criminal process from encroachments on their legitimate rights and freedoms on the part of criminal prosecution authorities. The need for further improvement of the legislation defining the legal regime of the institution of appeal with the aim of creating a system of procedural guarantees for the rights, freedoms and legitimate interests of the individual in criminal proceedings is being updated. The issues on the need to provide detainees with the right to appeal the legality and validity of the detention are considered.

Key words: criminal process, principle of freedom of appeal of procedural actions and decisions, court, prosecutor's office, detention, detention.

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Қылмыстық құдалауда жүзеге асырушы органдардың процестік әрекеттері мен шешімдеріне шағым жасау қылмыстық сот өндірісі қатысушыларының құқықтарын қамтамасыз етудің кепілдігі ретінде

Мақалада Қазақстан Республикасы қылмыстық іс жүргізудің негізін қалаушы және басқарушы негіз ретінде процестік әрекеттер мен шешімдерге шағым жасау бостандығы қағидасының құқықтық табиғаты қарастырылады. Зерттеудің пәні болып ҚР-дың қазіргі заңдардың, халықаралық құқықтың жалпыға танылған принциптері мен нормаларының және өзге де нормативтік құқықтық актілерінің жүйесі; олармен реттелетін қылмыстық процесте Процестік әрекеттер мен шешімдерге шағым жасау бостандығы қағидасының жүзеге асырылуы мәселелері бойынша біркелкі қоғамдық қатынастардың шеңбері; осы заңдарды қолдану практикасы және

соларды зерттеу негізінде заңдарды жетілдіруге байланысты ұсыныстар жасау. Әдістемелік негізі болып азаматтардың жеке бостандыққа құқығының құқықтық реттелуінің конституциялық негіздерінің жүзеге асырылу тәртіптерінің және принциптерінің, сондай-ақ қылмыстық процесте процестік әрекеттер мен шешімдерге шағым жасау бостандығы қағидасының жүзеге асырылуының саяси-құқықтық, философиялық, құқықтық және өзге де ғылыми негіздері табылады. Бұл үшін мемлекеттік және құқықтық көріністерді зерттеудің жалпы ғылыми және жеке ғылыми әдістері қолданылды. Ғылыми жаңалығы – автор империкалық ғылыми материалдарды қолдана отырып, ҚР-дың Қылмыстық істер жүргізу кодексінде қылмыстық процесс аясына түскен азаматтардың заңды құқықтары мен бостандықтарын қылмыстық қудалау органдары тарапынан қол сұғушылықтан қорғаудың барабар қамтамасыз етілуінің жолдарын негіздейді. Қылмыстық процесте тұлғаның құқықтарының, бостандықтары мен заңды мүдделерінің процестік кепілдіктерінің жүйесін қалыптастыру мақсатында шағым жасау институтының құқықтық режимин реттеуші заңнаманың ары қарайғы жетілдірілу қажеттілігі өзектеледі. Ұсталған адамға ұстаудың заңдылығы мен негізділігіне шағым жасау құқығын беру қажеттілігі ұсынылады.

Түйін сөздер: қылмыстық процесс, процестік әрекеттер мен шешімдерге шағым жасау бостандығы қағидасы, сот, прокуратура, күзетпен ұстау, ұстап алу.

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Обжалование процессуальных действий и решений органов, осуществляющих уголовное преследование, как гарантия обеспечения прав участников уголовного судопроизводства

В статье рассматривается правовая природа принципа свободы обжалования процессуальных действий и решений как основополагающего и руководящего начала всего уголовного процесса Республики Казахстан. Предметом исследования являются: система законодательных и иных нормативных правовых актов действующего законодательства Республики Казахстан; регулируемый ими круг однородных общественных отношений по вопросам реализации принципа свободы обжалования процессуальных действий и решений в уголовном процессе; практика применения названного законодательства, на основе изучения которой разрабатываются предложения по совершенствованию законодательства, также исследования практики правоприменения по рассматриваемым вопросам в Республике Казахстан. Методологической основой научной статьи послужили политико-правовые, философские, правовые и другие научные обоснования принципов и порядка проведения конституционных основ правового регулирования права граждан на личную свободу, а также реализации принципа свободы обжалования процессуальных действий и решений в уголовном процессе. Для этого применялись общенаучные и частнонаучные методы изучения государственных и правовых явлений. Научная новизна заключается в том, что автор, используя эмперический научный материал обосновывает подходы адекватного обеспечения в уголовно-процессуальном кодексе Республики Казахстан защиты граждан, попавших в сферу уголовного процесса от посягательств на их законные права и свободы со стороны органов уголовного преследования. Актуализируется необходимость дальнейшего совершенствования законодательства, определяющего правовой режим института обжалования с целью создания системы процессуальных гарантий прав, свобод и законных интересов личности в уголовном процессе. С позиции принципа неприкосновенности личности в уголовном процессе, важным представляется, по мнению автора, решение вопроса о том, будет ли возмещен вред лицам, не подлежащим реабилитации.

Ключевые слова: уголовный процесс, принцип свободы обжалования процессуальных действий и решений, суд, прокуратура, содержание под стражей, задержание.

Introduction

Analysis of the principles, ideas, norms of the law of the Republic of Kazakhstan shows that they create the space necessary for the formation of civil society, to ensure the rights and freedoms of man and citizen, to establish the rule of law, to implement political and legal responsibility of citizens, state bodies, officials persons, for the coordinated activity of all branches of state power.

The democratic construction of a criminal process that ensures the observance of the rights and legitimate interests of citizens in criminal proceedings is based on the principles enshrined in the Constitu-

tion and the criminal procedure law. An analysis of the criminal procedural principles shows that most of them (competitiveness, legality, inviolability of the individual, equality of human and citizen rights before the law and the court, etc.) are guaranteed by the Basic Law of the country and such principles are general legal, which is an expression of nature and essence of a democratic rule of law. These principles recognize a person, his rights and freedoms as the highest value and property of the state. They must act within the framework of an integral system of the criminal process, at all its stages. However, some principles do not have a direct constitutional-legal consolidation as a separate rule, but are derived from the content of other provisions of the Constitution of the Republic of Kazakhstan. Thus, the principle of freedom of appeal against procedural actions and decisions is conditioned by the constitutional legal principle, such as the right to judicial protection of one's rights and freedoms (Article 13 of the Constitution of the Republic of Kazakhstan, 1995).

The principle of judicial review is established in Art. Art. 31 of the Criminal Procedure Code, according to which «the actions and decisions of the court and the criminal investigative body may be appealed in accordance with the procedure established by the Criminal Procedure Code of the Republic of Kazakhstan». Every convict, acquitted has the right to review the verdict by a higher court in accordance with the procedure established by the Criminal Procedure Code of the Republic of Kazakhstan. It is not allowed to appeal to the person who filed the complaint, or in whose interests it was filed (Criminal Procedure Code of the Republic of Kazakhstan, 2014).

Main part

In cases of procedural errors, incomplete with violation of the principles of thoroughness and objectivity of the investigation of case materials, inviolability of the person, lawfulness, production, the institution of appeal is the most important guarantee of observance of the rights and legitimate interests of the person in criminal proceedings. Thus, according to part 1, article 100 of the Criminal Procedure Code of the Republic of Kazakhstan, decisions and actions of the person conducting the pre-trial investigation, the prosecutor, the court or the judge can be appealed in the procedure established by the criminal procedural code by the parties to the proceedings, as well as by individuals and legal entities, if the ongoing proceedings affect their interests. Complaints are submitted to that state body or to an official who is authorized by law to review complaints and take decisions on this criminal case.

The Office of the Procurator of the Republic of Kazakhstan plays a special role in the implementation of the institution of appeal. In accordance with Art. 105 of the Code of Criminal Procedure of the Republic of Kazakhstan, the prosecutor supervising the execution of laws during the pre-trial investigation is lodged with complaints about actions (inaction) and decisions of the head of the investigation department, the head of the inquiry body. The prosecutor may also be appealed by the instructions of the head of the inquiry body, if they restrict the investigator's independence, set forth in part 6 of Art. 63 of the Code of Criminal Procedure.

As a general rule, the prosecutor, the head of the investigative department, the head of the inquiry body must review the complaint and notify the person who filed the complaint about the decision taken within seven days from the moment it was received. Complaints about violations of the law during detention, recognition of suspects, qualifications of the suspect's act, removal from office are subject to review within three days of receipt. In exceptional cases, when it is necessary to demand additional materials or take other measures to verify the complaint, it is allowed to examine the complaint within a period of up to fifteen days, with notification of the person who filed the complaint (Part 2, Article 105 of the Criminal Procedural Code of the Republic of Kazakhstan). As a result of consideration of the complaint, a decision may be made to fully or partially satisfy the complaint with the cancellation or change of the appealed decision or on the refusal to satisfy the complaint. При этом не может быть изменено ранее вынесенное решение, если это повлечет ухудшение положения лица, подавшего жалобу, или лица, в интересах которого она была подана. The person who lodged the complaint must be notified of the decision taken on the complaint and the further procedure for appealing. Refusal to satisfy the complaint must be motivated (Part 3, Article 105 of the Criminal Procedure Code of the Republic of Kazakhstan).

Complaints and statements of the suspect, the accused, addressed to the prosecutor by the investigator or the person conducting the inquiry, are immediately transmitted (articles 101, 102, 104 of the Code of Criminal Procedure of the Republic of Kazakhstan).

Most often in law enforcement practice the complaint is submitted to the prosecutor and in this case the prosecutor is obliged to promptly verify the legality and validity of the detention (in the law, the

operability is understood to be a term equal to six hours). The results of the check are reported to the person who filed the complaint, and, in case of refusal to release him from the ITT, the motives of the decision are stated. Supervision of the legality of detention also includes checking the compliance of the investigating body with the terms of detention, interrogation of the suspect; the duty to explain to him procedural rights and to provide the opportunity to use the statutory rights.

The legal basis for the activities of the prosecutor's office in the criminal process is the norms of Section 1, Art. 83 of the Constitution, which establishes that «the prosecutor's office, on behalf of the state, exercises supreme supervision ... with the lawfulness of inquiry and investigation ... takes measures to identify and eliminate any violations of the law, and also challenges laws and other legal acts that are contrary to the Constitution and the laws of the Republic. The Prosecutor's Office represents the interests of the state in court, and also in cases, in the manner and within the limits established by law, carries out criminal prosecution «.

The Order of the General Prosecutor of the Republic of Kazakhstan of March 30, 2015 (Instruction on the organization of supervision over the legality of the pre-trial stage of criminal proceedings) is quite justifiable, in order to improve the quality of prosecutor's supervision over the legality of the pre-trial stage of the criminal process, broadened the prosecutor's duties in supervising. One of the actions aimed at strengthening the prosecutor's supervision is defined – for each court decision that has entered into legal force on the satisfaction of the complaint under Article 106 of the Code of Criminal Procedure for actions (inaction) and the decision of the prosecutor's office on the supervision of the legality of the pre-trial stage of criminal proceedings, a special message to the Department is sent within 24 hours with the introduction of a copy of the said decision (paragraph 1 35).

Particular attention is paid to the Verification of the facts of suspension and termination of proceedings in the case, during which a measure of restraint – detention was applied to the suspect or accused. In addition, it is the duty of the prosecutor to participate, to participate in himself, or to entrust his deputy, at the exit of the investigative and operational group of law enforcement agencies to the site of the incident for particularly serious crimes and incidents that caused great public outcry.

Undoubtedly, the amendments and additions made to the legislative acts and activities of the prosecution bodies are aimed at the realization of the legitimate rights and freedoms of citizens, guaranteeing their constitutional interests, strengthening the prosecutor's supervision over the legality of the implementation of criminal proceedings and the effectiveness of acts of the prosecutor's response.

For today in the country there are Rules registration of appeals of individuals and legal entities in the bodies and institutions of the Prosecutor's Office of the Republic of Kazakhstan, approved by Order No. 147 of the General Prosecutor of the Republic of Kazakhstan dated December 18, 2015, in order to improve the work with citizens' appeals in the bodies and institutions of the Prosecutor's Office of the Republic of Kazakhstan, in accordance with cl. 4 tbsp. 11 of the Law of the Republic of Kazakhstan «Procuracy» (Law of the Republic of Kazakhstan No. 81-VI of June 30, 2017 «On the Prosecutor's Office»).

A joint order of the General Prosecutor of the Republic of Kazakhstan dated September 2, 2016 No. 145, the Minister of Internal Affairs of the Republic of Kazakhstan of November 3, 2016 No. 1023, the Minister of Finance of the Republic of Kazakhstan dated November 30, 2016 No. 628 and the Minister of Finance of the Republic of Kazakhstan, was issued to strictly record all applications, communications and complaints. Chairman of the Agency of the Republic of Kazakhstan for Civil Service and Anti-Corruption Affairs of November 15, 2016 No. 54 «On Registration of Applications for Criminal Offenses in the Internal Affairs Bodies, Anti-Corruption Service and Economic Service political investigations received by the electronic portal of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan «.

The law also determines the procedure for appealing against the actions of the prosecutor.

For example, if the suspect was detained by a police official on the written instructions of the prosecutor, the prosecutor who gave the order for the detention is responsible for properly assessing the grounds for the detention, but the person conducting the inquiry has the right not to suspend the prosecutor's instructions on detention , appeal his instruction to a higher prosecutor.

The order of detention of detainees on suspicion of a criminal offense is established in Art. 134 of the Code of Criminal Procedure, according to which detainees on suspicion of a criminal offense are held in temporary detention facilities (IVS).

Those detained on suspicion of committing a criminal offense, servicemen and persons serving

a sentence of imprisonment, may also be held respectively in guardhouses and in institutions of the penitentiary system that carry out punishment in the form of imprisonment.

In cases stipulated by paragraph 9) of part two and part three of article 61 of the Code of Criminal Procedure, detainees on suspicion of committing a criminal offense are kept in specially adapted premises determined by the head of the inquiry body. In the conditions of the state of emergency, detainees suspected of committing a criminal offense may be held in rooms adapted for these purposes, as determined by the commandant of the area. The procedure and conditions for the detention of persons detained on suspicion of a criminal offense, the guarantee of their rights and legitimate interests, as well as the definition of the rights and duties of employees in places of detention are regulated by the Law of the Republic of Kazakhstan of March 30, 1999, No. 353-1 «On the procedure and the conditions of detention of persons in special institutions that provide temporary isolation from society. « The law regulates the rights and duties of suspects; legal status of IVS; the regime of detention of suspects in a crime, etc.

In Art. 4 of the Law establishes a list of principles of detention, including the principles of legality, the presumption of innocence, the equality of citizens before the law, humanism, respect for the honor and dignity of the individual. Legislative establishment of these principles is a guarantee of observance of human rights and freedoms, the principle of freedom to appeal procedural actions and decisions. The Law says that the norms of international law are priorities for this sphere of legal relations in particular in matters of the protection of the dignity of the individual. The law also states that «detention should not be accompanied by actions aimed at causing physical or moral suffering to suspects and accused persons in committing ....»

The status of detainees held in custody is determined by the block of their rights and duties, as well as the internal regulations (Article 15 of the Law), which creates a special restrictive regime. This includes the regulation of the production of a personal search; fingerprinting, photographing, and also inspection of things detained; The removal of objects, substances and foodstuffs that are prohibited for storage and use; acquisition by suspects and accused of food, as well as necessities and other industrial goods and other.

Among the rights established in the Law as a whole, an additional guarantee of the inviolability of the person in custody is the right to: personal security in places of detention; meetings with the defender; meetings with relatives and other persons participating in the case as defenders; keep documents and records related to the criminal case or concerning the issues of exercising their rights and legitimate interests, except for those documents and records that can be used for unlawful purposes or that contain information constituting a state secret or other secret protected by law; to submit proposals, statements, including to the court, on the lawfulness and validity of their detention in custody and violation of their legal rights and interests, etc.

In accordance with Art. 18 of the Law «On the procedure and conditions of detention of persons in special institutions providing temporary isolation from society» in the event of a threat to the life and health of the suspect or the threat of a crime against the identity of other suspects and accused, staff of places of detention must immediately take measures to ensure personal security of a suspect or accused, against whom a similar threat arose. At the same time, it is also necessary to be guided by the norms of the Law of the Republic of Kazakhstan of July 5, 2000 N 72-II «On state protection of persons participating in criminal proceedings».

Violation of the right of a detainee held in custody for inviolability is mediated by the possibility of sending complaints and proposals to the prosecutor, to the court, to public associations, and so on. At the same time, the Law establishes measures of responsibility of officials for prosecution in any form for such appeals.

The specifics of the detainees' detention, which determines the conditions for separate placement in the cells, in our view, also serves as a guarantee of the inviolability of the person, it is conducted taking into account the personality characteristics, the psychological compatibility of the suspects and the accused. Separate placement of minors from adults, for example, undoubtedly serves as a protection of the right of inviolability of minors.

Among other guarantees for the implementation of the principle of freedom to appeal procedural actions and decisions in the criminal process, one can call the short-term detention.

In the normative resolution of the Constitutional Council of the Republic of Kazakhstan dated April 13, 2012 No. 2 «On the official interpretation of the Constitution of the Republic of Kazakhstan on the calculation of constitutional terms» it is stated that the constitutional provision «without the sanction of the court, a person may be detained for not more than seventy-two hours» means that no later than the time specified, a court decision on the application

of arrest and detention, as well as other measures provided for by law, or The detainee is subject to release. At the same time, the Constitutional Council notes that the legislator can also set a time limit for making the corresponding decision within seventy-two hours. The beginning of the period of detention is the hour to the minute when the restriction of the liberty of the detained person, including freedom of movement – forced confinement in a certain place, forced delivery to the inquiry and investigation bodies (seizure, closure in the premises, coercion to go somewhere or stay in place etc.), as well as any other actions that significantly restrict personal freedom of a person, became real, regardless of giving the detainee any procedural status or performing other formal procedures. The end of this period is the expiration of seventy-two hours, counted continuously from the time of actual detention.

The criminal investigative body has no right to keep the detainee in the suspect's position for more than seventy-two hours (part 5, article 128 of the Criminal Procedure Code of the Republic of Kazakhstan). If within forty-eight hours, and for minors – within twenty-four hours from the moment of actual detention, the chief of the detention facility did not receive a court order authorizing the detention of the suspect, the head of the place of detention of the detainee, except for the cases provided for in paragraphs 1) – 6) of the fourth part of Article 131 of the Code of Criminal Procedure, immediately releases him by his decision and notifies the person in charge of the case and the prosecutor about this. If the requirements of part two of this article are not fulfilled, the head of the administration of the place of detention of the detainee is liable, established by law. When releasing a detainee, a person is issued a certificate stating the identity of the detainee, the grounds, place and time of detention, delivery, grounds and time of release.

Thus, a person detained on suspicion of committing a criminal offense is subject to release on the decision of the person conducting the pretrial investigation or the prosecutor if:

1) there are no grounds for applying to the detainee a preventive measure in the form of detention or punishment in the form of arrest or deportation outside the Republic of Kazakhstan;

2) the detention was carried out with a significant violation of the requirements of Article 131 of the Criminal Procedure Code of the Republic of Kazakhstan;

3) there were no legal grounds for detention.

In accordance with Part 1 of Art. 128 of the Code of Criminal Procedure of the Republic of Kazakhstan when detaining a person on suspicion of committing a criminal offense, the official of the criminal investigative body orally declares to the person on suspicion of committing a criminal offense that he is detained, explains to him the right to invite a defender, the right to remain silent and that what he said can be used against him in court. In the period specified in part one of Article 129 of the Criminal Procedure Code of the Republic of Kazakhstan, the official of the body of inquiry, the investigator, the investigator shall draw up a record of detention. In the record of detention the following information is indicated:

1) last name, first name, middle name (if any) of the suspect;

2) by whom the suspect was detained, grounds, motives, place of detention, the time of actual detention and delivery (indicating the hour and minute);

3) information on clarifying the rights of the suspect;

4) the results of a personal search;

5) information on the state of health of the detainee;

6) the time and place of the protocol (Part 2, Article 131 of the Criminal Procedure Code of the Republic of Kazakhstan).

In a democratic state, restriction of freedom in the form of detention, in all these cases, is allowed, as already noted, on the basis of the law and only by a judicial decision. The strict requirement of observance of the law in procedural detention is perhaps the most important guarantee of the implementation of the principle of inviolability of the person in procedural detention. Guarantees against illegal restriction of personal liberty are regulated in detail by the norms of international, constitutional, administrative, criminal procedure and criminal law.

In addition, the real guarantee of protection of rights and interests of citizens' freedoms is the implementation of rehabilitation measures and the resolution of the issue of compensation for harm caused by unlawful actions of the criminal investigative bodies and the court.

Proceeding from the norms of the Code of Criminal Procedure (Articles 37-39) and Civil Code (922, 923), it follows that harm is compensated only to persons with respect to whom rehabilitation is possible. However, from the perspective of the principle of inviolability of the person in the criminal process, it seems important, in our opinion, to decide whether harm to persons who are not subject to rehabilitation will be compensated. Af-

ter all, lawfully detained suspects in committing a criminal offense and legally arrested have the right to inviolability of the person. And if to them, with the correct application of the norms of the Code of Criminal Procedure, violence dangerous for life and health, degrading honor and dignity was allowed? Here, it is important for law enforcement officers authorized to conduct criminal proceedings to know that according to the Resolution of the Plenum of the Supreme Court of the Republic of Kazakhstan of July 9, 1999, No. 7 «On the practice of applying legislation to compensate for harm caused by illegal actions of bodies conducting criminal proceedings» (para. 5) and «in accordance with Part 2 of Art. 13 and part 8 of Art. 14 CCP detainees, suspects, accused, defendants and convicts also have the right to compensation for the harm caused to them and in those cases when they were subjected to violence or cruel treatment during the proceedings in the case when the decisions or actions of the bodies conducting criminal proceedings were humiliated their honor and dignity, or when, without the need for the case under investigation, personal information was collected, disclosed or disseminated, which the person considered necessary to be kept secret, as well as when the person deprived of liberty with kept in conditions dangerous to life and health». The norm of art. 38 of the Code of Criminal Procedure, therefore, needs to be amended and supplemented in accordance with the Resolution of the Plenum of the Armed Forces of the Republic of Kazakhstan.

Compensation for moral harm is one of the means of protecting non-material goods and personal non-property rights. In the Normative Decree of the Supreme Court of the Republic of Kazakhstan of November 27, 2015 No. «On the application by courts of legislation on compensation for moral harm,» it is explained that «the inviolability of the person should be attributed to personal non-property rights and benefits, violation, deprivation or diminution of which may result in causing the victim moral harm ... «.

According to Kazakhstan legislation, moral damage caused in criminal proceedings is compensated. Thus, in accordance with the normative resolution of the Supreme Court of the Republic of Kazakhstan No.7 and in accordance with Cl. 922, items 1 and 2 of Art. 923, paragraph 3 of Art. 951 of the Civil Code, regardless of the fault of the inflictor due to the state treasury (funds of the republican or local budgets), compensation for moral damage in monetary terms caused to a citizen as a result of:

– illegal bringing to criminal liability;

– publication by government bodies of acts that do not comply with legislative acts;

– unlawful use as a preventive measure of detention, home arrest, a written undertaking not to leave the place;

– unlawful imposition of an administrative penalty in the form of arrest;

– illegal placement in a psychiatric or other medical institution, etc.

In Art. 14, 15 of the Code of Criminal Procedure of the Republic of Kazakhstan fixed the norm on compensation for harm caused to a citizen through illegal actions of the body leading the criminal process. In Art. 44, 47 of the Code of Criminal Procedure of the Republic of Kazakhstan established that claims for compensation for moral harm are made in the civil procedure. In Resolution of the Plenum of the Supreme Court of the Republic of Kazakhstan of July 9, 1999, No. 7 «On the practice of applying legislation to compensate for harm caused by illegal actions of bodies leading criminal proceedings» establishes the procedure for compensation of moral harm. Thus, in particular, the Resolution states that «when the demand to eliminate the consequences of moral harm in the operative part of the resolution is satisfied, in accordance with Art. 44 of the Criminal Procedure Code of the Republic of Kazakhstan should specify which specific actions and by whom they should be committed in order to refute the previously disseminated information about this person in connection with illegal criminal prosecution. Where necessary, the text of the communication may be stated in the resolution, which is subject to publication in the press or dissemination by radio, television and other mass media «(paragraph 6).

Particular importance in domestic procedural science is given to judicial review. A person whose rights and freedoms are directly affected by the action (inaction) and the decision of the prosecutor, the investigating and investigating authorities, have the right to appeal to the court for refusing to admit an application for a criminal offense, as well as for breaking the law at the beginning of pre-trial investigation, interrupting the investigation, termination of the criminal case, compulsory placement in a medical organization for the production of forensic medical examination, the conduct of a search and (or) seizure, the commission of other actions (inaction) and the adoption of a decision Nij (p.1 Art. 106 CPC RK). Another aspect of this principle is the provision to every convicted person, the justified right to review the verdict by a higher court in accordance with the procedure

established by the Criminal Procedure Code of the Republic of Kazakhstan.

Currently, taking into account the tendencies of strengthening the protection of rights and freedoms of a citizen in the criminal process, the problems of judicial appeal are widely discussed in the context of issues of expanding judicial control over pre-trial proceedings. This is very important.

Conclusion

In part 2 of Art. 16 of the Constitution it is established that arrest and detention are allowed only in cases provided for by law and only with the sanction of the court, with the right of appeal being granted to the arrested person. In our opinion, the regulation of the institution of judicial review in the criminal process is fully consistent with Section 2, Art. 13 of the Constitution of the Republic, which establishes the right of everyone to judicial protection of their rights and freedoms. The discussion on the issue of judicial control in the Republic of Kazakhstan arises from the question of its relationship with the prosecutor's supervision.

However, the importance of the institution of judicial control is international practice; Such control is provided for in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the Anglo-American legal system, the police can directly apply to the judge-magistrate for receiving a warrant for arrest, search, telephone listening, etc.

Judicial oversight of the preliminary investigation exists not only in the countries of the Anglo-American legal system (Kamisar, Yale, 2015, p.645, William C. Bryson 1992, 132), but also in many others – France (Bobotov SV 1994 , C.146), Italy (Luigi Covatta 2017), Austria (Ilyutchenko NV 2015, p.178), Switzerland (Trefilov AA 2014, P.117). In the continental system of law, the prosecutor controls the appeal of the police to the court or authorizes the investigative actions (taking into account the subsequent judicial control over the legality of the sanctions and the issue of admissibility of the evidence obtained) (Kalinovsky KB 2000, P.28).

It does not contradict, in our opinion, this is the Kazakh national tradition. Judicial control, in fact, is connected with the intensification of the adversarial principle in the preliminary investigation, and this makes the criminal process more effective, providing more reliable protection of the rights of its participants. Thus, we believe that the gradual expansion of judicial control in the pre-trial stage of criminal proceedings is one of the most important manifestations of judicial power as a way of securing constitutional rights and freedoms of a person and a citizen.

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