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THE PRINCIPLE OF ENSURING THE SUSPECT, THE ACCUSED THE RIGHT TO DEFENSE AND ITS RELATION TO OTHER PRINCIPLES OF THE CRIMINAL PROCESS

The article discusses the principle of ensuring the suspect, accused the right to defense and its relation to other principles of the criminal process. Providing the defendant and the suspect the right to defense as a principle of justice and criminal procedure relies on constitutional and criminal justice rules.To date, the possibility of the participation of a lawyer in criminal proceedings has been markedly expanded.

The purpose of this article is to consider the principle of ensuring that the suspect, accused person has the right to defense with other principles in the criminal process. The ability to determine whether the lawyer has sufficient funds for the successful implementation of the defense function.

Ensuring that the suspect and the accused have the right to defense is organically derived from the presumption of innocence of the accused: the right to defense is required only for those who have not yet been convicted and only suspected and accused of committing a crime.

The obligation to ensure the realization of the right of the suspect and the accused to defense is assigned to the state authorities conducting criminal proceedings and responsible for its successful completion.

However, the principle of competition, which is fundamental and dominant in the current Criminal Procedure Code of the Republic of Kazakhstan, degrades, in our opinion, its own importance and interconnection between the principles of the presumption of innocence and ensuring the right to defense to the suspect and the accused.

With the adoption of the new Criminal Procedure Code of the Republic of Kazakhstan, the extreme support of the adversarial process in the criminal process, characterized by a refusal to establish the truth, a fairly passive role of the court in proving, actually placing the responsibility of proving on the parties", which could not but affect the very principle of ensuring the suspect and the accused protection.

This principle is depleted, as it is carried out, in essence, only at the formal-legal level of competition and therefore is narrowly pragmatic in nature, which inevitably affects the very quality of such protection.

The pre-trial investigation authorities are obliged to unswervingly comply with all the norms relating to ensuring the rights of the accused. Each of the violations of these norms ultimately leads to a violation of the principle of ensuring the defendant's right to a defense and interferes with the establishment of the truth in the case.

Key words: suspect, accused, defense, pretrial investigation, presumption of innocence, adversary.

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Күдіктіге, айыпталушыға қорғау құқығын қамтамасыз ету принципі және оның қылмыстық процестің басқа да принциптеріне қатысы

Мақалада күдіктіге, айыпталушыға қорғау құқығының қамтамасыз ету принципі және оның қылмыстық процестің басқа да принциптерімен қатысы қарастырылады. Күдіктіге, айыпталушыға қорғау құқығын қамтамасыз ету әділдік пен қылмыстық сот төрелігі принципі ретінде, конституциялық және қылмыстық-іс жүргізу нормаларына сүйенеді. Қазіргі уақытта қылмыстық іс бойынша адвокаттың қатысу мүмкіндігі айтарлықтай кеңейді.

Осы мақаланың мақсаты күдіктіге, айыпталушыға қылмыстық процестегі басқа да принциптермен қорғау құқығын қамтамасыз ету қағидатын қарау болып табылады. Қорғаныс функциясын табысты іске асыру үшін адвокаттың жеткілікті қаражат бар-жоғын анықтау мүмкіндігі.

Күдіктіге және айыпталушыға қорғау құқығын қамтамасыз ету айыпталушының кінәсіздігі презумпциясынан туындайды: қорғау құқығы әлі кінәлі деп танылмағандарға және қылмыс жасауда күдіктіге және айыпталушыға ғана талап етіледі.

Күдікті мен айыпталушының қорғау құқықты іске асыруды қамтамасыз ету міндеті қылмыстық іс жүргізуді жүзеге асыратын мемлекеттік органдарға жүктеледі және оны табысты аяқтауға жауапты болады. Дегенмен, Қазақстан Республикасының қазіргі Қылмыстық іс жүргізу кодексінде іргелі және басымдықты болатын бәсекелестік қағидаты, біздің ойымызша, кінәсіздік презумпциясы қағидаттары мен күдіктінің және айыпталушыны қорғау құқығын қамтамасыз етудің өз мәні мен өзара байланысын төмендетеді.

Қазақстан Республикасының жаңа Қылмыстық іс жүргізу кодексін қабылдаған кезде, қылмыстық процеске қарсы іс-қимыл үдерісін экстремалды қолдау, шындықты анықтаудан бас тарту, соттың дәлелдеудегі пассивті ролі, тараптардың дәлелдеу жауапкершілігін іс жүзінде орналастыру, күдіктіге және айыпталушыға қорғау құқығын қамтамасыз ету принципіне әсер етпеуі мүмкін еместігі. Бұл, мәні бойынша, бәсекелестіктің ресми-құқықтық деңгейінде ғана жүзеге асырылады, сондықтан табиғатта өте аз прагматикалық, бұл сөзсіз қорғаудың сапасына әсер етеді. Алдын ала тергеу органдары айыпталушылардың құқықтарын қамтамасыз етуге қатысты барлық нормаларды ұдайы орындауға міндетті.

Осы нормалардың бұзылуының әрқайсысы, сайып келгенде, жауапкердің қорғаныс құқығын қамтамасыз ету принципін бұзуға және іс бойынша шындықты орнатуға кедергі келтіреді.

Түйін сөздер: күдікті, айыпталушы, қорғаныс, алдын ала тергеу, кінәсіздік презумпциясы, қарсылас.

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Принцип обеспечения подозреваемого, обвиняемого права на защиту и его соотношение с другими принципами уголовного процесса

В статье рассматривается принцип обеспечения подозреваемого, обвиняемого права на защиту и его соотношение с другими принципами уголовного процесса. Обеспечение обвиняемому и подозреваемому права на защиту как принцип правосудия и уголовного судопроизводства опирается на конституционные и уголовно-процессуальные нормы. На сегодняшний день возможность участия адвоката в производстве по уголовному делу заметно расширены.

Целью данной статьи является рассмотрение принципа обеспечения подозреваемому, обвиняемому права на защиту с другими принципами в уголовном процессе. Возможность определить, достаточно ли средств у адвоката для успешного осуществления функции защиты.

Обеспечение подозреваемому и обвиняемому права на защиту органически вытекает из презумпции невиновности обвиняемого: право на защиту требуется как раз тому, кто пока еще не признан виновным, и только подозреваемому и обвиняемому в совершении преступления.

Обязанность обеспечить реализацию права подозреваемого и обвиняемого на защиту возлагается на государственные органы, ведущие уголовное судопроизводство и несущие ответственность за его успешное завершение. Однако принцип состязательности, который имеет основополагающее и доминирующее значение в действующем УПК РК, принижает, на наш взгляд, собственное значение и взаимосвязь принципов презумпции невиновности и обеспечение подозреваемому и обвиняемому права на защиту.

С принятием нового УПК РК официальную поддержку получила крайняя форма состязательности в уголовном процессе, характеризующаяся отказом от установления истины, достаточно пассивной ролью суда в доказывании, фактическим возложением обязанности доказывания на стороны», что не могло не отразиться на самом принципе обеспечения подозреваемому и обвиняемому права на защиту. Этот принцип обеднен, так как осуществляется, по существу, лишь на формально-юридическом уровне состязания и потому носит узко прагматический характер, что неизбежно сказывается на самом качестве такой защиты. Органы досудебного расследования обязаны неуклонно соблюдать все нормы, касающиеся обеспечения прав обвиняемого. Каждое из нарушений этих норм в конечном счете приводит к нарушению принципа обеспечения обвиняемому права на защиту и препятствует установлению истины по делу.

Ключевые слова: подозреваемый, обвиняемый, защита, досудебное расследование, презумпция невиновности, состязательность.

Introduction

The main content of the legal status of the individual in the Republic of Kazakhstan is its rights and obligations. The Constitution of the Republic of Kazakhstan provides its citizens with broad democratic rights and freedoms (https://online.zakon.kz/Document/?doc_id=1005029) in all areas of cultural, state, social and political life. However, the state is not limited to the consolidation of the rights and freedoms of citizens, and guarantees the observance and implementation of these rights, which is undoubtedly one of the most important features of the rule of law.

The principles are the basic legal provisions, elevated to the law guiding ideas that express the content, focus and most typical methods of criminal proceedings. The principles are imperious requirements addressed to the participants of the process, obliging them (or allowing them) to do so, and not otherwise. For the investigator, the Prosecutor and the court, the implementation of these requirements in a particular case is a legal obligation.

Principles, as a fundamental principle, have real significance if they function in interaction. As part of a single system, each of the principles characterizes certain aspects of the criminal process. Being in unity and relationship, they allow to understand the essence of the process as a whole. Apart from others, none of the principles can be implemented. For example, the principle of legality could not be implemented in the absence of the principles of transparency, the independence of judges and their subordination only to the law, etc.

The principles form the basis of the criminal process-the system of its most important and defining principles. What is the fundamental basis of the process-this is its essence. Justice, legality, the administration of justice only by the court, equality of citizens before the law and the court, the presumption of innocence, ensuring the suspect and the accused the right to defense, objectivity of the investigation of the circumstances of the case, the publicity of the trial – these are just some legal categories that reflect the fundamental properties of the criminal process, and its humanistic and democratic nature.

The principle of ensuring the right of the accused to a defence is part of a single system of democratic principles of criminal procedure and is closely linked to each of them. For example, the absence of an interpreter in the conduct of the case in a language that the accused does not know is a violation not only of the principle of the national language of the proceedings (article 30 of the CPC) (https://online.zakon.kz/Document/?doc_id=31575852), but also of the principle of ensuring the right to defence, since, without understanding what is happening in the pre-trial investigation, the suspect or accused cannot fully conduct his defense. Not knowing of the defendant and without hearing his explanations, the court is unable to comply with the principles of comprehensiveness, completeness and objectivity (Stetsovsky Yu.I., 1988: 114).

Main part

The effective protection of the rights of the accused meets the objectives of society and the state

concerned to ensure that every citizen exercises his or her rights to the maximum extent. The principle of the right to protection does not mean that citizens can defend their interests against the interests of the state. This principle should be seen as the ability of citizens to actively promote and resolve the tasks of criminal proceedings in the protection of their or their rights and interests.

The pre-trial investigation bodies are obliged to strictly observe all the rules concerning the rights of the accused. Each of the violations of these norms ultimately leads to a violation of the principle of ensuring the right of the accused to a defence and impedes the establishment of the truth in the case. For example, the law considers it mandatory that every defendant was their protector, because otherwise is tantamount to abandonment of any of the defendants or all of them without protection. However, practice shows that this principle is not always respected.

The principle of ensuring the right of the accused to a defence in criminal proceedings covers those provisions of the right that present the accused with the possibility of refuting the charge throughout the proceedings, protecting his rights and legitimate interests both personally and with the assistance of a defence counsel. These provisions also impose on the court, Prosecutor a and the investigator the obligation to ensure the exercise of the rights of the accused in order to solve the case correctly, to render a lawful and reasonable sentence and to achieve the tasks facing justice (Tynybekov S., 1997: p.105).

In the legal literature, the right of the accused to a defence is regarded as an independent principle of criminal procedure. Thus, D. Livshits defines the right to defense as a collective concept, which means the totality of all procedural rights granted to the accused by the criminal procedure law to protect against charges. Using the law granted him wide procedural law, the accused in the criminal process gets a real opportunity to challenge the charges against him, to refute it in whole or in part, by providing evidence and making arguments in its defense (Mamutov AM, Livshits Yu.D., 1989:56).

The right to protection includes:

1) the provision of procedural remedies to the accused against the charge;

2) the right to be assisted by counsel;

3) the obligation of the body of inquiry, the investigator, the Prosecutor and the court is to ensure that the accused is able to defend himself by means and means established by law against the charge against him. The organs of the investigation, the Prosecutor and the court have the duty to ensure the protection of personal and property rights of the accused.

The procedural literature has long defended the view that protection in the material sense and protection in the formal sense differed. The first means the presence of the accused procedural rights, which he personally conducts his own defence. The defence was formally understood to mean the right of the accused to have a defence counsel. This division has been fairly criticized.

Safeguarding the defendant's right to protection – a single principle (Alaukhanov E.O., 2009: p.26), and the dismemberment of it is artificial. The set of procedural rights by which the accused exercises his or her defence and the right to be assisted by a defence counsel is a single right. In criminal proceedings, a defender is a party who formulates demands before the court and makes proposals and statements in the interests of his client. Protecting the rights and legitimate interests of the suspect and the accused, the defender assists justice in establishing the truth of the case, contributes to the implementation of the tasks facing justice.

The right of the defendant to counsel is, therefore, an important procedural guarantee for the implementation of other rights of the suspect and the accused, and the understanding of this right as a formal protection incorrectly (Savitsky V.M., 1983:78).

The code of criminal procedure emphasizes that the suspect and the defendant has (previously – "the accused is provided") the right to defense. In turn, the body conducting the investigation, the court and the Prosecutor are obliged to ensure the possibility of a person brought to criminal responsibility to be protected by means and methods established by law. The content of this obligation includes the need to explain to the suspect, the accused and the defendant the right to engage in the case of a lawyer by concluding an agreement with legal advice or a law office, after which the head of the consultation or the owner of the AK is already obliged to provide for the protection of a lawyer. The investigator must allow the relatives or other close persons of the detainee or arrested person to conclude an agreement with the lawyer for the protection of the suspect or accused, but not to oblige legal advice to allocate a lawyer for each accused, unless, of course, the category of the case does not require the mandatory participation of a lawyer.

Accused (suspect) may make an application to the authority, the investigator, Prosecutor and to the head of legal advice or the Collegium of Advocates

about his release from the attorney's fees wholly or partly based on their financial situation.

The criminal procedure doctrine proceeds from the assumption that further improvement of the activities of law enforcement agencies is in direct connection with the effective implementation of the principle of ensuring the accused right to defence. This principle permeates the entire criminal process. The right to defence starts from the moment of detention of the suspect, as well as from the moment of his detention or the involvement of a particular person as an accused, as a natural reaction to the charge against which he is to be protected, and ends with the completion of criminal procedure and the relevant criminal procedural relations.

The purpose of granting the suspect and the accused the right to a defence is to prevent the unjustified bringing of a person to criminal responsibility and, especially, incorrect, illegal conviction. In other words, the principle of ensuring the right to defence of a suspect or accused person reinforces the adversarial nature of criminal process, helps to establish the truth and avoid mistakes both in the pre-trial investigation and in court.

The right of the accused to defence corresponds to the duty of the person conducting the inquiry, the investigator, the Prosecutor and the court to ensure that the accused is able to defend himself by means and means established by law. In the unity of the broad rights of the suspect, the accused and the obligations of these bodies and persons to guarantee the exercise of these rights, the principle of ensuring the accused right to a defence is manifested.

In the scientific literature it is noted that the concept of the principle of ensuring the accused is not similar to the concept of the right to a defence. "The principle of ensuring the right of the accused to a defence" is broader than the concept of "the right of the accused to a defence", since the principle of ensuring the right of the accused to a defence includes... in addition to the exercise by the accused (or his counsel) of the rights belonging to the accused, the activities of other participants in the process to exercise the rights and legitimate interests of the accused in order to properly resolve the case and render a lawful and reasonable sentence" (Ospanov G.D., 2000: 295).

The right to a defence does not belong to a single procedural stage. It is provided to each suspect, accused, and its provision is provided at all stages of the criminal process. The scope of procedural rights of the accused develops and changes with the movement of the criminal case. But the position of the accused as a subject of the process and the subject of his right to defense-proof of circumstances refuting the accusation, excluding or mitigating responsibility-remain unchanged at all stages. Minors and some other accused are granted broader procedural rights, however, the principle of ensuring the accused the right to defense cannot depend on the nature of the charges nor the person accused, nor from the credibility of the collected evidence against him. This right is enjoyed not only by the suspect and the accused, who is a citizen of the Republic of Kazakhstan, but also by foreigners and stateless persons.

The Constitution of Kazakhstan and other laws provide a broad formulation of this principle. They not only proclaim that a person suspected or accused of a crime or tried for its Commission has a right to a defence, but also emphasize that this right is ensured.

Such a broad understanding of the principle under consideration leads to the following conclusions:

First, the provision that the suspect, the accused, the defendant should be endowed with a set of such rights, the implementation of which would allow him to effectively protect their rights and legitimate interests. In this regard, he has a wide range of rights: to know what he is accused of, to give evidence and explanations, to get acquainted with the evidence, to submit petitions, to participate in the investigation of evidence, to appeal against the actions of the persons conducting the investigation of his case, as well as the decisions taken by these persons or the court, etc.

Secondly, the provision on the right of the accused to be assisted by a defence counsel. Under the current legislation, the suspect, the accused may invite himself (and in some cases – to have a designated) defender. This possibility arises from the moment the suspect is apprehended or the person charged is brought to justice. The law also provides a wide range of rights to the defender, who is most often a lawyer, to actively fight for the rights and legitimate interests of the defendant.

Third, the provision on imposing on persons conducting inquiries, investigators, prosecutors, judges the obligation to carry out actions aimed at supporting the protection of suspects, accused or defendants. The protection of the latter is not considered a personal matter. Under the procedural law, law enforcement officials are required to identify both incriminating and justifying the accused, as well as mitigating and aggravating circumstances; under the CPC, they are also obliged to explain to the suspect, accused or defendant his rights.

All these and many other rights and obligations, taken together, are designed to ensure the right to protection.

To ensure a suspect, accused person the right to protection opposed to possible manifestations of bias, one-sided, accusatory.

It should be recognized that for a certain part of the investigators, such principles of the process as ensuring the accused right to defense, the presumption of innocence, a comprehensive, complete and objective study of the circumstances of the case, act as some abstract ideas of procedural liberalism, more appropriate in scientific research or, in extreme cases, in the trial, rather than in the pre-trial investigation, since its main meaning is seen only in the disclosure of a criminal offense, the prosecution of the accused. Such a representation leads to the fact that the principles cease to be concrete and indisputable regulations, addressed to the investigator, and turn into something ephemeral, an optional, second in importance to the requirements, which determine the external form of the process: the details of procedural documents, the order of their registration, validity periods, etc. as a result, private rules of the investigation are classified as more significant than its guiding principles.

Underestimation of the principles of the process has various manifestations in practice. About them, in particular, can be judged by the results of a study investigating the errors due to which the investigator's conclusions about the existence of reasonable grounds for the proceedings in court were subsequently found to be unsubstantiated or illegal by the attorney supervising investigator (Soloviev A., Sheifer S., 1967: 13).

How do you explain that some of the principles of the criminal process do not receive the pre-trial stage of full implementation? It apparently needs to go about a whole range of reasons relating to the training of investigative personnel, and to ensure their genuine independence from external pressures and to the working conditions of investigators, not always favorable from the point of view of the ability to achieve the objectives of the investigation, and to the imperfection of the law, establishing guarantees for the effective implementation of the principles. But the most common reason seems to be the defects in the legal awareness of some investigators, the insufficient level of their legal culture.

In the system of legal values that make up the ideological part of the criminal procedural legal consciousness of a professional lawyer, the principles of the process should play a major role, organizing and consolidating the rest of the mass of legal ideas. Underestimation of principles and process (including requirements on ensuring the right to defence) constitutes a violation of the hierarchy of legal values, when the fore the legal requirements of the narrow, practical purpose.

This substitution of values reflects the insufficient General level of legal culture of the lawyer, a certain impoverishment of it. Apparently, this is due to the widespread among some investigators the idea of the burdensome principles and their inconsistency with the realities of life ("the law as a drawbar, where you turn, there and left", "defenders only interfere with the fight against crime, interfere with the investigation", etc.).

Such deformations of legal consciousness have their reasons. Among them can be called rooted in the distant past distrust of the legal profession and the defense in General, formed the idea of excessive complexity of criminal procedural regulation. Probably, the real contradiction between the provisions of the law and the practice of legal proceedings, as well as the penetration into the right consciousness of a professional lawyer of ordinary ideas, reducing the level of legal culture of the practical worker played a negative role.

How to ensure that the principles of the process, which Express its democratic essence, are consistently implemented at all stages, including pre-trial investigation?

The Constitution does not aim to regulate in detail the principles of the administration of justice, especially those principles that are specific to criminal proceedings. Therefore, sectoral legislation should take care of the regulation of specific principles, without which the interests of the individual and the effectiveness of the proceedings cannot be ensured (Matvienko E.A., 1973: 58).

We believe that the priority here should be given to the problems of improving the efficiency of the preliminary investigation stage, which essentially determines the fate of the criminal case and creates the prerequisites for a lawful and reasonable sentence (Basarov O., Lopushnoy AY., 1994: 77).

Along with the development of additional legal guarantees, an important role should be played by the proper organization of work on training and retraining of investigative personnel, aimed at the formation of a truly scientific criminal procedural legal consciousness of investigators, the development of their firm legal beliefs. In the educational process, it is necessary to constantly emphasize the connection of specific rules of investigation with the principles of the process, the inviolability of the principles. It is necessary to

assert in the minds of investigators that the guiding principles of the process is not interference with the investigation, high-performance guarantees the achievement of its objectives.

From this point of view, it is impossible to recognize the correct organization of training sessions for investigators, focused only on the study of specific problems of criminology and criminal procedure, but not affecting the guiding principles of the proceedings. Training of investigative personnel should be aimed at displacing from their legal consciousness ordinary, nihilistic ideas about the principles of the process, the achievement of a true legal culture. And most importantly, it is necessary to show the harmfulness of the views of practitioners that the expansion of the rights of the accused complicates the fight against crime, the investigation of cases and their trial. On the contrary, compliance with the principle of ensuring the right to protection creates a reliable guarantee of the objectivity of the process, increases the efficiency of law enforcement agencies.

The right to a defence is inextricably linked to the presumption of innocence, according to which the accused is presumed innocent until proven guilty and confirmed by a court judgement that has entered into legal force. This legal provision is contrary to the fact that the accused is previously considered guilty and treated as a criminal whose fate is predetermined, and if he considers himself innocent, he must prove it to those who expose him and judge (https://online.zakon.kz/Document/?doc_id=1005029).

Ensuring the right of the suspect and the accused to a defence follows organically from the presumption of innocence of the accused: the right to a defence is required for the one who has not yet been found guilty and only for the suspect and accused of committing a crime.

The obligation to ensure the exercise of the right of the suspect and the accused to a defence rests with the public authorities conducting criminal proceedings and responsible for its successful completion. However, the adversarial principle, which is fundamental and dominant in the current code of criminal procedure, belittles, in our opinion, its own importance and the relationship of the principles of presumption of innocence and ensuring the right of the suspect and the accused to defense.

With the adoption of the new code of criminal procedure, the official support was received by the extreme form of adversarial proceedings, characterized by the refusal to establish the truth, rather passive role of the court in proving, the actual imposition of the obligation of proof on the parties", which could not but affect the principle of ensuring the suspect and the accused the right to defense. This principle is impoverished, since it is essentially implemented only at the formal legal level of competition and is therefore narrowly pragmatic, which inevitably affects the very quality of such protection.

The adversarial principle in the code of criminal procedure clearly outlines the function of the prosecution and the function of protection of the procedural parties. The prosecution should, in fact, only accuse, expose the suspect and the accused, carry out their criminal prosecution, and the defense is called upon to defend against the charge, to prove its insolvency. The code of criminal procedure, designed not in favor of objective truth, the prosecution and the defense are not engaged in objective proof, but simply seek to refute each other's position.

In this spirit of competition on the new code of criminal procedure, the question is muted and the clarity of the difference between the presumption of innocence and the presumption of guilt.

It seems that with this procedural logic, the investigator, literally precisely understanding and carrying out the formal and adversarial provisions of the current code of criminal procedure, will not really provide the suspect or accused with the right to defense, since he will not seek to independently collect evidence in favor of the suspect or accused. Thus, it will shift the burden of proving the innocence of the suspect accused to the side of the defense, thereby violating the very right to defense, which is of practical importance.

How important are the rights of the individual in criminal proceedings without objective truth in case of excessive adversarial proceedings? In such a process, the defence of the accused is carried out and implemented to the extent that it is allowed by the prosecution and, conversely, the prosecution is able to realize its potential to the extent that the defence is able to do so. As a result, the rights of the individual are sacrificed to such an adversarial confrontation between the prosecution and the defence. It seems that the true enforcement of the right of the suspect, accused to protection, as well as the clear manifestation and operation of the principle of presumption of innocence is possible only in criminal proceedings, where the objective and principle is the objective truth, in contrast to the probabilistic and legal truth.

In criminal proceedings with formal legal truth, the adversarial principle does not serve,

respectively, the achievement of objective truth, and alternatively, it is strictly opposed – one excludes the other. Therefore, such a process is adversarial-winning, and not objectively – reliable process with objective truth.

It should be concluded, therefore, that the presumption of innocence, as a principle of criminal procedure, extends to any person and not only to the suspect or accused. This person can be a citizen of the Republic of Kazakhstan, as well as a foreign citizen and a stateless person.

The meaning of this principle, firstly, is that all citizens are assumed to be honest, so if any of them is suspected or accused of committing a criminal offense, then special care is needed in making accusations, guaranteed by the fact that the investigator's indictments are controlled by the Prosecutor, and then by the court, which has the most favorable opportunities for establishing the truth (transparency, adversarial process, immediacy in the study of evidence, etc.).

Secondly, the meaning of this principle is that a citizen is guaranteed the right to be presumed innocent until the conviction has entered into legal force, to enjoy the right to defence, not to be publicly discredited until guilt has been established by a court verdict, to demand treatment of himself as innocent (prevention of excessive severity in the election of preventive measures, exclusion of cruelty in the establishment and application of the regime of detention and arrest, etc.).

One of the requirements of this principle is, thirdly, that the prosecution must be reliably proven; the failure to prove guilt is legally equivalent to proven innocence; if there is insufficient accusatory evidence, the person must be fully rehabilitated.

Fourthly, this principle means that doubts about guilt, and also in justifying the prosecution of the actual circumstances generated by the insufficiency of the evidence must be construed in favor of the accused (questionable data accusatory nature are excluded from the system of evidence and justifying nature, remain in the system).

Fifthly, the meaning of this principle is that, since the innocence of the accused is presumed, he cannot be obliged to prove the existence of justifying or mitigating circumstances (this duty lies with the organs of the state conducting the criminal proceedings), and he cannot be compelled to substantiate his allegations on the grounds that they will not be taken into account and objectively verified.

Sixthly, the significance of this principle is that, by allowing the accused not to accept evidence and thereby assist the state authorities in exposing him, the presumption of innocence is the most stimulating factor for the investigator and the Prosecutor to establish the true perpetrator and creates conditions that prevent the conviction of an innocent person.

The criminal procedure is constructed in such a way that the accused does not act as an object of investigation, but as a full-fledged subject occupying a certain procedural position. "This procedural provision is characterized both by the rights and duties of the accused in relation to the bodies of investigation, prosecution and court, and the powers of investigation, prosecution and court in relation to the accused" (Strogovich M.S. 1955: 67).

As already mentioned, if the criminal procedure is designed so that a person brought to criminal responsibility is considered guilty in advance only because he is brought as an accused, and therefore he is obliged to prove his innocence, there is no room for presumption of innocence in this process. In criminal proceedings, the body that has brought the charge is obliged to prove the charge, and until the charge is proved, the accused is presumed innocent.

Further, the presumption of innocence is fully derived from the objectives of criminal proceedings. Since the law considers the accused innocent and those who believe that he or she is guilty are obliged to prove it, the presumption of innocence helps to expose the perpetrators and ensure the correct application of the law so that everyone who commits a criminal offence is fairly punished. "On the other hand, according to the presumption of innocence, if the prosecution fails to prove, that is, in the case there is insufficient evidence of guilt of the person in the Commission of the crime, the person is found innocent. In other words, the presumption of innocence requires that "no innocent person be prosecuted and convicted". Thus, the presumption of innocence exactly corresponds to the tasks of criminal proceedings, contributes to their implementation (Kasumov C.S., 1984: 89).

In the history of legislation, this principle was first reflected in the Declaration of human and civil rights during the French bourgeois revolution. In this act said: "as every man is presumed innocent, then, if necessary, arrest him, any rigor, which is necessary for its security, should be strictly punished by law" (article 9) (https://jurisprudence.academic.ru/1731). This principle opposed the Inquisition process with its theory of formal evidence and the harsh treatment of the accused. He contributed to the emergence of the bourgeois law of the principle of free evaluation of evidence, that is, the judgment of sentence on the basis of internal judicial beliefs, independent from

outside influences and from the pre-assessment that was the basis of the theory of formal evidence. The modern criminal procedure law expressly States: "a Judge, Prosecutor, investigator, investigator assesses evidence on the basis of internal conviction, based on a comprehensive, complete and objective examination of evidence in their totality, guided by law and conscience" (article 125 of the code of criminal procedure).

The presumption of innocence was expressed in an international legal act – adopted by the UN General Assembly on 10 December 1948, the universal Declaration of human rights: "Everyone charged with a crime has the right to be presumed innocent until his guilt has been established by a lawful procedure through a public trial in which he is afforded every opportunity for protection" (art.11) (http://www.consultant.ru/document/cons_doc_LAW_120805).

Since the Republic of Kazakhstan is a member of the UN, the Declaration of human rights is valid on its territory. Presumption of innocence is enshrined in the Constitution of Kazakhstan in article 77:

1) a person shall be presumed innocent of the Commission of a crime until his guilt has been established by a final judgement of a court;

2) the accused is not obliged to prove his innocence;

3) any doubt as to the guilt of the persons shall be interpreted in favour of the accused."

It is important to note that the constitutional law of 25 December 2000 "on the judicial system and the status of judges of the Republic of Kazakhstan" also contains an article which States: "No one may be deprived of the right to a hearing of his case in compliance with all the requirements of the law and justice by a competent, independent and impartial court" (https://online.zakon.kz/Document/?doc_id=1021164). In the current CPC, the principle of presumption of innocence is expressed in many provisions of its articles (e.g. article 19, etc.).

The word presumption comes from the Latin (praesumtia) means the assumption (Sukharev A.Y., 2002: p.476). This is one of the principles that establishes the nature of the investigation and trial of a criminal case, as well as the position of the individual in criminal proceedings. It is based on more General principles: the value of the human person, respect for the fundamental rights and freedoms of citizens.

We have repeatedly emphasized above that the accused is not yet guilty. Sometimes he can be found guilty and then deservedly will bear criminal responsibility. Sometimes, if in the process of investigation or in court proceedings the innocence of the accused is found out, the groundlessness of the charge brought, he will be found innocent, rehabilitated, acquitted by a court sentence or the case will be terminated on rehabilitating grounds, restored in his good name, in his dignity. And sometimes it may be that the accused will be found guilty by the court, will be subject to criminal punishment, and later it will be discovered that this is a judicial error, that in reality he is innocent, then the illegal sentence will be canceled, the truth and justice will be restored.

Different may be the results of the proceedings, but one thing is certain: the accused is not identified with the guilty, he can be recognized only as a result of the entire criminal proceedings (after its investigation, bringing to trial) court-ordered conviction (upon entry into force of the sentence). If the accused is not guilty, the case ends with either termination or acquittal of the court. What should be the attitude to the accused before the resolution of the case in which he is involved?

We may argue that the issue of the guilt of a person brought to criminal responsibility is being resolved even at the stage of investigation, pre-trial investigation and trial. Sometimes it is even taken into custody. Doesn't this mean that the issue of guilt falls within the competence not only of the court, but also of the investigator, the Prosecutor? It doesn't mean. The concept of accused and guilty is not equivalent. The accused is guilty of a crime only from the subjective point of view of the investigator. However, the conclusion of the investigator in this part is preliminary, because the final decision on the guilt of the accused belongs only to the court. That is why article 24 of the code of criminal procedure obliges the investigator and the person conducting the inquiry to take all the measures provided for a comprehensive, complete and objective investigation of the circumstances of the case, to identify both incriminating and justifying the accused circumstances.

It is clear that in deciding whether to bring a person to criminal responsibility, the investigator and the Prosecutor proceed from their internal conviction of his guilt, when the data collected in the case, in their opinion, are sufficient for this. However, this does not mean that the decision on the guilt of the citizen. This issue is solved only by the court, provided that his sentence enters into legal force (Elemisov, G.B., 1979: 234).

The identification, together with the incriminating circumstances of the accused, of those justifying him would be meaningless if the indictment were to

resolve the question of guilt. But since this issue will be finally decided by the court, the investigator and the investigator must provide him with materials that not only confirm their opinion about the guilt of the accused, but also refute this opinion. The court will evaluate those and other materials.

Thus, it is not the accused who is found guilty, but only the convicted person who has been sentenced and has entered into legal force.

Despite the legislative consolidation of the principle of presumption of innocence, not all scientists and practitioners agree with its application. The most consistent opponent of the presumption of innocence is Professor V.D. Arsenyev. So, he argued: "it is contrary to article 2 principles of criminal procedure requiring that "no innocent person was prosecuted and convicted" (Arsenyev V.D., 1969:3).

Despite the development of the principle of presumption of innocence in a number of works by L.M. Karneev, A.A. Chuvilev and other scientists. (Karneeva L.M., Chuvilev A.A., 1976: p.69). It should be noted that, first, these studies were conducted in a different socio-political environment than the current transition period. This explains some dogmatism and schematism in the presentation of certain aspects of the principle of the presumption of innocence. Secondly, the issues of presumption of innocence have not been studied in depth by scientists of the Republic of Kazakhstan, which is absolutely necessary in connection with a significant update of the legislation of the Republic of Kazakhstan, as well as emerging new social relations in Kazakhstan, which entails a significant expansion of personal rights and freedoms of citizens. Thirdly, it seems that the theoretical analysis of this principle, combined with practical materials of law enforcement agencies will develop and offer a number of scientific recommendations aimed at improving investigative practices to comply with the principle of the presumption of innocence, rights, freedoms and legitimate interests of citizens. This, in our opinion, demonstrates the relevance, importance and timeliness of the in-depth development of this issue.

Conclusion

Some practitioners, in particular investigators, argue that the indictment and the indictment are incompatible with the presumption of innocence, as the law requires sufficient evidence in these proceedings, implying that the investigator is convinced of the guilt of the person. But this conviction of the investigator in guilt of the person does not stop the principle of presumption of innocence, as according to its wording and under the law it can be refuted only by a guilty verdict of the court, which entered into force. Moreover, even if there is such a conviction of guilt, the law requires the investigator to conduct a comprehensive, complete and objective investigation of all the circumstances of the case, obliges to establish both aggravating and mitigating circumstances of the accused. But the last word in the resolution of the case remains with the court.

Thus, the inconsistency of the points of view that deny the presumption of innocence and its effect in criminal proceedings is obvious. The principle of the presumption of innocence implies a number of provisions that are of theoretical and practical importance for the observance of individual rights in criminal proceedings. Thus, the strengthening of guarantees of the rights of the accused to protection and strict observance of the principle of presumption of innocence by the pre – trial investigation bodies are necessary conditions for building a state based on the rule of law.

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