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PROBLEMS OF THE PROCEDURAL STATUS OF A JUVENILE PARTICIPANT IN CRIMINAL PROCEEDINGS

Juvenile delinquency as a social phenomenon, as well as the problems of criminal proceedings involving minors, is relevant for objective reasons. Psycho-physiological features of a minor's personality determine the specifics of legal regulation of criminal procedural legal relations, through the prism of observing his (her) rights and obligations and achieving the goals of justice. The aim of this research is to develop an inclusive mechanism for ensuring the rights of juveniles in criminal proceedings, by improving the procedural status of a minor suspect (accused, defendant), a witness who has the right to defense, a victim witness, and to develop a unified approach to the status of a minor.

In order to solve the tasks set in this article, the composition of participants in criminal proceedings was analyzed through the prism of the scope of their procedural rights and obligations, and thus, significant differences in the procedural status of minor participants in criminal proceedings were identified, which potentially create risks of violation of their rights. As a result, minors may in practice be deprived of the rights proclaimed at the normative level due to the lack of procedural possibilities in their implementation. The paper presents well-founded proposals for improving legislation and judicial and investigative practice in this direction.

Theoretical and practical usefulness of the study is that the formation of a unified approach to the status of a minor, regardless of the procedural position he occupies in the criminal process, is designed to give a positive practical result. This will be reflected in overcoming terminological problems and forming a unified practice of legal proceedings in criminal cases involving minors and thus also in real protection of the rights of minors in criminal proceedings.

Key words: juvenile (minor), procedural status of a minor, juvenile justice, minor suspect, victim, witness, guarantees of rights, representation of interests of minors.

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Қылмыстық сотөндірісіне қатысушы кәмелетке толмағанның процессуалдық мәртебесінің мәселелері

Кәмелетке толмағандардың қылмыстылығы әлеуметтік құбылыс ретінде және кәмелетке толмағандардың қатысуымен қылмыстық сотөндірісін жүргізу өзінің объективті себептеріне байланысты өзекті болып табылады. Кәмелетке толмағандардың жеке басының психофизиологиялық ерекшеліктері, аталмыш санаттағы қылмыстық процестік құқықтық қатынасқа түсушілердің арнайы құқықтық реттелуін қажет етеді. Бұл қылмыстық процеске қатысушы кәмелетке толмағандардың құқықтары мен заңды мүдделерін және міндеттерін сақтау арқылы ғана қол жеткізіледі. Қылмыстық сотөндірісін жүргізуде кәмелетке толмағандардың құқықтары мен бостандықтарын қамтамасыз етудің тиімді тетігін әзірлеу кәмелетке толмаған адамның жеке басының ерекшеліктерін ескере отырып қана мүмкін болады. Кәмелетке толмаған адамның жеке басының ерекшеліктері оның қылмыстық сотөндірісін жүргізуде құқықтарын қамтамасыз ету тұжырымдамасын қалыптастыру басты назарда болып отыр. Аталған мақала аясында қойылған міндеттерді шешу барысында қылмыстық процеске қатысушылардың процессуалдық құқықтары мен міндеттерінің көлемі тұрғысынан талданып, қылмыстық процеске қатысушылардың ішінде кәмелетке толмағандардың процессуалдық мәртебесінде елеулі айырмашылықтардың бар екендігі және бұл кәмелетке толмағандардың құқықтарының бұзылу қаупін тудыртуы мүмкін екенін көрсетіп отыр. Кәмелетке толмағандардың құқықтарының бұзылуы берілген құқықтарды жүзеге асыру кезінде нормативтік бекітілген, нақты, дәйекті тетігінің болмауынан көрсетеді. Нәтижесінде кәмелетке толмағандар іс жүзінде оларды іске асыруда іс жүргізу мүмкіндігінің болмауына байланысты нормативтік деңгейде жарияланған құқықтардан айырылуы мүмкін. Мақала шеңберінде осы бағыттағы заңнама мен сот-тергеу практикасын

жетілдіру бойынша негізделген ұсыныстар енгізілді. Зерттеудің теориялық және тәжірибелік құндылығы кәмелетке толмағандардың мәртебесіне бірыңғай көзқарасты қалыптастыру, оның қылмыстық іс жүргізудегі процессуалдық мәртебесіне қарамастан, тәжірибеде оң нәтиже беруге бағытталуы. Бұл кәмелетке толмағандардың қатысуымен қылмыстық істерде сот ісін жүргізуде терминологиялық проблемаларды еңсеруден, бірыңғай практикасын қалыптастырудан және тиісінше қылмыстық процесте кәмелетке толмағандардың құқықтарын нақты қорғаудан көрініс табуы көздейді.

Түйін сөздер: кәмелетке толмағандар, кәмелетке толмағанның процессуалдық мәртебесі, ювеналды әділет, кәмелетке толмаған күдікті, жәбірленуші, куә, кепілдіктер, кәмелетке толмағандардың мүддесіне өкілдік ету.

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Проблемы процессуального статуса несовершеннолетнего участника уголовного судопроизводства

Преступность несовершеннолетних как социальное явление, а также проблемы осуществления уголовного судопроизводства с участием несовершеннолетних актуальны по объективным причинам. Психологические особенности личности несовершеннолетнего обуславливают специфику правового регулирования уголовно-процессуальных правоотношений через призму соблюдения его прав и обязанностей и достижения целей правосудия. Выработка эффективного механизма обеспечения прав и свобод несовершеннолетнего в уголовном судопроизводстве возможна только с учетом особенностей личности несовершеннолетнего. Особенности личности несовершеннолетнего служат отправной точкой в формировании концепции обеспечения его прав в уголовном судопроизводстве. Для решения поставленных в рамках данной статьи задач был проанализирован состав участников уголовного судопроизводства через призму объема их процессуальных прав и обязанностей и выявлены существенные различия в процессуальном положении несовершеннолетних участников уголовного процесса, которые потенциально создают риски нарушения их прав. Нарушение прав несовершеннолетних выражается в отсутствии нормативно-закрепленного, четкого, последовательного механизма реализации предоставленных прав. В результате несовершеннолетние на практике могут лишаться прав, провозглашенных на нормативном уровне, по причине отсутствия процессуальной возможности в их реализации. В работе были представлены обоснованные предложения по совершенствованию законодательства и судебной практики в этом направлении. Теоретическая и практическая ценность исследования заключается в том, что формирование унифицированного подхода к статусу несовершеннолетнего, вне зависимости от процессуального положения, который он занимает в уголовном процессе, призвано дать положительный практический результат. Это будет выражаться в преодолении терминологических проблем, формировании единой практики судопроизводства в уголовных делах с участием несовершеннолетних и, соответственно, реальной защите прав несовершеннолетних в уголовном процессе.

Ключевые слова: несовершеннолетний, процессуальный статус несовершеннолетнего, ювенальная юстиция, несовершеннолетний подопреваемый, потерпевший, свидетель, гарантии прав, представительство интересов несовершеннолетних.

Introduction

In the Republic of Kazakhstan and throughout the world, the issue of combating juvenile delinquency is acute. Recent statistics show a consistently high level of juvenile delinquency. So, in 2018, 3156 juveniles were brought to criminal responsibility. In 2019, their number was 2148 people. 2227 minors were involved in the criminal proceedings as victims in 2018, and crimes were committed against 1827 minors in 2019. That is to say, the number of criminal cases which involve minor suspects, accused persons, and victims is

consistently high, and the study of problems of protecting their rights in criminal proceedings is relevant.

The object of the research is social relations formed in the course of criminal proceedings involving minors. The subject is empirical sources of the legal framework regulating criminal proceedings involving minors.

The purpose of this article is to form an inclusive mechanism for ensuring the rights of minors in criminal proceedings, by improving the procedural status of a minor suspect (accused, defendant), a witness who has the right to defense, a victim

witness, and to develop a one-size-fits-all approach to the status of a minor.

According to the fact that minors' participation in criminal proceedings is possible in different variations (as a suspect, accused, defendant, witness entitled to protection, victim, witness) analysis of proceedings and real legal possibilities of protection of their rights, the study of procedural status problems conducted with subject classification. Also, the analysis was conducted from four main positions corresponding to the main procedural guarantees of juveniles' rights protection in criminal proceedings.

Materials and methods

The research conclusions are based on the materials of domestic and foreign science in the field of juvenile justice. When analyzing the problems of juvenile participants' procedural status in criminal proceedings, formal and logical methods of induction and deduction were used; the method of scientific generalization; statistical; comparative legal method, which allowed us to identify differences in the legal regulation of the individual juvenile participants' procedural status in criminal proceedings.

Results and discussion

One of the features of the differentiated procedural form of criminal proceedings involving juveniles is the specificity of their procedural status, which is based on its psycho-physiological features due to age. The peculiarities of a juvenile's personality formed the basis for the formation of his (her) special criminal procedural status as a participant in criminal proceedings, which is the subject of research in this article.

Psychological characteristics of a juvenile participant in criminal proceedings are not always associated with their lack of psychological maturity. Along with the protection of minors' rights and interests, the interests of justice are not ignored. Maintaining a balance between the protection of the rights of participants in criminal proceedings and the tasks of justice, for example, the establishment of objective truth, contributes to the understanding of the fact that due to the specifics of the psychology of minors, they are more likely to give evidence that does not correspond to objective reality. These circumstances indicate the need to develop an adequate mechanism to protect the rights of minor witnesses and victims, along with the protection of

the rights of suspects in criminal proceedings (Loren 2018).

The participation of juveniles in criminal proceedings is possible in different variants: as a suspect, accused person, the defendant, defending against criminal prosecution; the victim involved in the criminal process due to the infringement; other parties – witness or witness entitled to protection. Consequently, a juvenile participant may have any procedural status provided for in the criminal procedure legislation.

Concerning the fact that the differentiated procedural form and additional guarantees for the protection of rights and legitimate interests are based on the minor's personality, then it is assumed that the scope of procedural guarantees for the protection of his (her) rights and interests should be the same, unified, regardless of the procedural status that the minor has in a particular criminal case.

The understanding of the need to develop a unified concept in understanding the procedural status of a minor participant in criminal proceedings, the application of uniform standards in the field of human rights and the unification of basic guarantees for ensuring the rights and interests of minors is also justified in foreign literature (Brants 2009).

In this regard, the scientific developments of processualists (the researchers who deal with legal procedure) who have studied the problem under consideration are interesting.

Problems of ensuring the rights of juveniles, including within the framework of criminal proceedings, are the focus of research by many scientists all over the world. According to international legislation and standards on children's rights, the opportunity to be heard in juvenile court proceedings should be given accused minors. Moreover, psychological research shows that minor participants usually have a limited understanding of court procedures in court proceedings (Stephanie Rap2016), (Archard 2009).

The rights of minors in juvenile justice, and in particular their right to be heard or "participate" in such proceedings, have been a sphere of great interest in recent years. According to some foreign authors, minor participants in court proceedings should not be deprived of the opportunity to be active in resolving a situation that directly relates to their interests (Daly 2019), (Burman 2010).

It should be noted that from a practical point of view, the primary role in ensuring the rights of juveniles involved in criminal proceedings is played by the body leading the criminal process. In the framework of pre-trial investigation, these

are authorized persons of the criminal prosecution authorities, judicial control, and in the judicial stages – the court. (Cashmore 2007).

K. S. Ualiev, believes that “The principle of equality means not only providing the parties with equal opportunities to provide and follow evidence, but also providing equal procedural guarantees for the participants’ rights and legitimate interests, regardless of their procedural status and degree of interest in the outcome of the case. Meanwhile, the sector-specific legislation is skewed towards protection: the legislator initially puts underage participants in an unequal position in the implementation of their rights, preferring to protect the interests of suspects and accused. Therefore, based on the competition principles and parties equality in criminal proceedings, it is necessary to ensure equal opportunities to exercise their rights not only for juvenile suspects and accused, but also for juvenile victims and witnesses (Ualiev 2005).

According to V. I. Novoselov, “the procedural status of a minor in criminal proceedings is based on the trinity of his (her) procedural status: general, special, individual (Novoselov 1979)

Kim K. V.: “The whole the principles formulated in the constitutional norms of justice according to their aim can be systematized into two groups: to determine the procedural status of participants in legal proceedings; to guarantee the protection of citizens’ rights and freedoms”.

The Criminal Procedure Code of the Republic of Kazakhstan classifies criminal proceedings participants into protecting their rights and interests, as well as other persons. The first group includes the suspect, the accused (defendant), and the victim. The right to protect their rights and interests is determined by the presence of two factors: the fact that criminal prosecution is being conducted against them or they have suffered physical, property or moral harm caused by the criminal offense.

The contents of the procedural status of the participants’ data should reflect the provisions of the constitutional principles of justice and equal rights as members of the opposite parties in criminal proceedings to participate in the proving: collection, examination, evaluation and use of evidence” (Kim 2017)

In other words, it is presumed that the adversarial nature and equality of the parties, as a principle of criminal proceedings, should presuppose that the parties have equal rights and opportunities in the implementation of the goals pursued by the parties.

Based on the presence or absence of interest in the outcome of a criminal case, participants of

criminal proceedings are divided into two groups, with specific features of procedural status that are unique to them.

E.V. Markovichev believes that it is necessary to consider a juvenile participant in criminal proceedings as a person with a complex procedural position, defined by the trinity of his (her) procedural status.

That is, the features of the procedural status of a minor participant in criminal proceedings are directly related to his (her) personal characteristics. Analyzing the dynamics of legal thought in determining the procedural status of a minor in criminal proceedings, E.V. Makovichev points to a tendency to shift the emphasis from improving the procedural status of a minor suspect, accused, or defendant to modernizing the procedural status of a juvenile victim. That is to say, that once again there is a tendency not to solve the problems of procedural participation of all minors of criminal proceedings in a comprehensive manner, but a conjunctural solution of certain problems.

The major problem of modern regulation of minors’ participation in criminal proceedings is the lack of a theoretical concept of the legal status of juveniles in criminal proceedings and there is only the single way out of this problem: namely, the formation of a concept taking into account the trinity of the juvenile’s procedural status” (Markovichev 2014).

Foreign literature also deals with the procedural status of a minor from the point of view of his (her) competence to appear before a court. At the same time, competence is understood not only as the legal content of the procedural status of a minor, but also as a set of other components that make it possible to be an equal participant in criminal proceedings. (Matthew Soulier 2006), (Soo Jung Lee 2016).

Problems related to ensuring access to justice for minors and their rights, freedoms and legitimate interests protection exist not only in our country and neighboring countries, but also far abroad (Kennan 2015), (Kilkelly 2005a), (Kilkelly 2008b).

The analysis of scientific developments devoted to the study of minors’ participation in criminal litigations, it possible to identify the following problems with the help of statistical data and investigative practice, the solution of which will contribute to the improvement of criminal proceedings involving minors:

1. Despite the fact that the special procedural status of a minor is based on his (her) personality, personal characteristics that are inextricably linked to him (her) and inherent in him (her) regardless of

participation in criminal proceedings, there are significant differences in the scope of procedural rights of minors participating in criminal proceedings. A minor participant in criminal proceedings does not cease to be a minor, depending on the procedural status that will be assigned to him in the course of criminal proceedings.

2. Analysis of statistical data for the Republic of Kazakhstan for 2018 and 2019 shows that the number of minors who have committed criminal offenses and the number of minor victims is approximately the same. In other words, minors are equally represented both by the defense in the person of suspects in criminal offenses and in the person of victims.

3. There isn't one approach to ensuring the rights and legitimate interests of juveniles involved in criminal litigations.

These problems served as the basis for setting the goal in this article. To solve the above-mentioned problems of legal regulation of criminal proceedings involving juveniles, it is necessary to unify the norms that form the basis for guaranteeing the rights of juveniles, regardless of their status.

To achieve this goal, it is necessary to analyze the composition of participants in criminal proceedings through the prism of the scope of their procedural rights and obligations; identify differences and offer reasonable suggestions.

The analysis of the procedural status of juveniles participating in criminal proceedings allows us to state the following facts:

The first position – providing juveniles of criminal proceedings with the right to qualified legal assistance:

It appears reasonable to analyze the procedural capacity of minor participants in the criminal process from the position of ensuring the right to qualified legal assistance in the face of 1) the defender of the suspect (accused, defendant); 2) representative of the victim, represented by counsel; 3) the attorney of the witness; 4) a witness's attorney, entitled to defense.

Problem: the participants of the criminal process, designed to protect the rights and interests of the suspect (accused, defendant) and the representation of the victim, determined by the norms of Chapter 9 of the Code of Criminal Procedure, under which lawyers provide qualified legal assistance in the face of a defender and in some cases the victim's representative. In section 2 of the Code of Criminal Procedure "Public authorities and persons participating in criminal proceedings" there is no separate participant – a lawyer (his (her) participation in the case is possible in the person of

a defense counsel or a representative of the victim). However, the term "witness advocate" is used in the text of the norms of the Code of Criminal Procedure of the Republic of Kazakhstan, the attorney of a witness who has the right to defense by the norms of Section 2 of the Code of Criminal Procedure of the Republic of Kazakhstan is not defined as a participant in the criminal process and accordingly his (her) procedural capacity is not regulated, there is no clearly regulated circle of his (her) procedural rights and obligations.

1) A juvenile suspect, accused person or defendant. In Paragraph 2 of Section 1 of Article 67 of the Code of Criminal Procedure of the Republic of Kazakhstan, the participation of defense counsel in criminal litigations is obligatory if the suspect, accused person, defendant, convicted or acquitted have not reached the age of majority. Criminal proceedings in cases of criminal offenses of minors are regulated by Chapter 56 of the Code of Criminal Procedure of the Republic of Kazakhstan and prescribe the mandatory participation of a defense counsel. These legal provisions correspond to the world practice of ensuring the protection of the rights of juvenile suspects in criminal proceedings (Rap S, 2013).

2) A juvenile victim. Paragraph 6 of Section 6 of Article 71 of the Code of Criminal Procedure of the Republic of Kazakhstan grants victims, including minors, to have a representative – an attorney or other person authorized and allowed to participate by the resolution of the body conducting the criminal procedure, according to the rules of Section 1 of Article 76 of the Criminal Procedure Code of the Republic of Kazakhstan.

Section 2 of Article 76 of the Criminal Procedure Code of the Republic of Kazakhstan defines that in the case of a minor victim, their legal representatives and representatives are required to participate in the process. In this case, a lawyer chosen by the victim or their legal representative is allowed to represent the victim. If the lawyer is not invited by the victim themselves or their legal representative, the participation of the lawyer is ensured by the body conducting the criminal process, by issuing a decision that is mandatory for the professional organization of attorneys or its structural division.

In other words, if the victim is a minor, a lawyer is required to participate in the case as a representative of the victim, which corresponds to international standards of justice (Child Rights International Network 2016).

Consequently, the participation of a lawyer-a representative of a minor victim-is mandatory. In

this regard, the question arises about the limits of mandatory participation of a lawyer-representative of the victim, since article 215 of the CPC of the Republic of Kazakhstan, “The peculiarities of questioning a juvenile witness or victim” does not provide for the involvement of a lawyer-representative in the interrogation of a minor victim, although it mentions the possibility of involving a teacher, psychologist and legal representative. In this connection, when interpreting the norm of this article, it seems that the interrogation of a minor victim does not necessarily involve the participation of a teacher, psychologist and legal representative, as well as a lawyer-representative of the victim, since the last is not mentioned at all.

3) A juvenile witness. According to the established rules in Paragraph 3 of Article 78 of the Code of Criminal Procedure of the Republic of Kazakhstan where it is said that a witness has the right to testify in the presence of his (her) lawyer. The absence of an attorney by the time established by the person conducting the pre-trial investigation does not prevent the witness from being questioned.

If a witness appeared for questioning with an attorney invited by the witness to provide legal assistance according to Paragraph 2 of Article 214 of the CPC, then the lawyer has the right to attend the questioning. At the end of the interrogation, the attorney has the right to bring comments and submit petitions on the merits of the questioning, which must be noted in the questioning Protocol.

Article 215 of the Criminal Procedure Code of the Republic of Kazakhstan, which regulates the particularities of the procedure for interrogating a minor witness, also does not contain a rule on the mandatory participation of a lawyer in the conduct of this investigative action. It follows from the above that a minor involved in the criminal case as a witness has the right to use the right to qualified legal assistance himself (herself) or through legal representatives, however, the participation of a lawyer during the interrogation of a minor witness is not necessary, as well as his (her) legal support when participating in the case.

4) A juvenile witness who has the right to defense. Special attention must be given to the problem of participation in the case of a minor recognized as a witness with the right to defense.

A person gains the status of a witness who has the right to defense if the following two conditions according to Article 78, Part 5 of the RK CPC:

1) When a suspicion arises regarding this person based on:

a. a witness testimony as a person who has committed a criminal offense.,

b. as a person who committed a criminal offense, if it is indicated in the application and report of a criminal offense;

2) However, this person has not been subjected to procedural detention or a decision has not been made to recognize him (her) as a suspect.

That is to say, that a witness who has the right to defend himself (herself) is a person who is suspected, but because there are insufficient grounds for his (her) procedural detention or for making a decision to recognize the person as a suspect. The body conducting the case leaves it in a “borderline” state, between the suspect and the witness. The presence of procedural interest in the outcome of the criminal case indicates that this subject is closer to the suspect than to other persons, to whom the witness belongs.

The main difference between a witness entitled to defense and a suspected person is the discretion of the body conducting the pre-trial investigation. Common to these participants in the criminal process is the suspicion put forward against them of their possible involvement in the criminal offense under investigation. Consequently, there is every reason to develop a unified approach to the issue of guaranteeing their rights in the course of criminal proceedings while protecting them from suspicion of committing a criminal offense.

The witness is eligible for protection is entitled: independently or through a third party invite a lawyer according to Section 6 of Article 78 of the criminal procedure code; On the basis of the Paragraph 3 of Section 6 of Article 78 of the Criminal Procedure Code he (she) has the right to give testimony in the presence of his (her) chosen lawyer, involved as a defense counsel prior to interrogation.

The CPC of the Republic of Kazakhstan does not contain a detailed legal regulation of the legal status and procedure for participation of a minor in cases of recognition as a witness entitled to protection. Consequently, the general rules on a witness who has the right to defence apply equally to a minor who has been granted the specified procedural status.

It follows that in the case when a minor acquires the status of a witness who has the right to defense, according to Paragraph 2 of Section 6 of Article 78 of the CPC of the Republic of Kazakhstan, he (she) can invite a lawyer, whose participation is not required. The Criminal Procedure Code of the Republic of Kazakhstan does not have rules that oblige the criminal prosecution authority to involve

a lawyer in a case involving a minor witness who has the right to defense.

Thus, when the suspect (accused, defendant) and the victim participate in the case of minors, they are guaranteed the mandatory participation of a lawyer-defender and a lawyer-representative of the victim. In cases of involving minors as witnesses and witnesses who have the right to defense, the participation of their lawyers is not mandatory.

The second position is the participation of legal representatives in criminal proceedings involving juveniles.

1) A minor suspect, accused or defendant.

If a minor suspected, the accused, then the participation of the parents or other legal representatives in the case is mandatory according to Article 537 of the Criminal Procedure Code of the Republic of Kazakhstan. The criminal procedure code contains a special rule, prescribing the mandatory participation of a defense counsel and legal representative during the interrogation of juvenile suspect (accused) (Article 535 of the Criminal Procedure Code).

2) A minor victim. To protect the rights and legitimate interests of victims who are minors, their legal representatives are required to participate in the process (Paragraph 2 of Article 76 of the CPC of the Republic of Kazakhstan).

However, a special rule defining the features of the interrogation of a minor victim establishes the non-mandatory participation of a legal representative in the interrogation of a minor victim (Section 1 of Article 215 of the CPC of the Republic of Kazakhstan). Thus, according to this rule, the legal representatives of a minor victim may be present during the interrogation. In other words, the legislator establishes the right to allow legal representatives of a minor victim to participate in the interrogation, but their participation is not necessary. The result is a situation in which on the one hand, the legislator requires the authority conducting the criminal process to bring to compulsory participate in the proceedings legal representatives of the victim, and on the other hand recognizes the unreliability of their participation in one of the most important investigations – the interrogation of a minor victim.

3) A minor witness. According to the norms of the RK CPC, there isn't mandatory involvement of legal representatives of minor witnesses in the case.

The law only provides for the right of legal representatives of minor witnesses to be present during their interrogation.

4) A minor witness who has the right to defense. The cases when a minor is recognized as a witness

who has the right to defense isn't regulated by the law in detail. Section 5 of Article 78 of the Criminal Procedure Code of the Republic of Kazakhstan only defines the circumstances under which a person acquires this procedural status.

According to Section 2 of Article 113 of the CPC of the Republic of Kazakhstan, the testimony of a witness who has the right to defense is recognized as an independent source of evidence. However, neither Chapter 56 of the Criminal Procedure Code of the Republic of Kazakhstan nor certain articles of the criminal procedure law provide for a special procedure for questioning a minor witness who has the right to defense. Article 215 of the Criminal Procedure Code of the Republic of Kazakhstan regulates the features of interrogation of a minor witness or victim. The literal interpretation of this rule gives reason to believe that these rules apply to the subjects directly specified in the norm – the witness and the victim. The broad interpretation and application of the norms of Article 215 of the criminal procedure code of the Republic of Kazakhstan to cases of interrogation of a minor witness who has the right to defense seems to us unfounded due to his (her) special status, which is in fact closer to the procedural status of a suspect.

The third position is the participation of specialists: a teacher and a psychologist in criminal proceedings involving minors.

1) A minor suspect, accused, or defendant. The issue of participation of specialists-teachers and psychologists in cases of criminal offenses of minors is regulated in detail in the criminal procedure code of the Republic of Kazakhstan.

The participation of a teacher or a psychologist is mandatory in proceedings involving a minor suspected, accused, defendant, who have not gained the age of sixteen, as well as those who attained that age, but with signs of mental retardation according to article 538, part 1 of RK CPC.

A teacher or a psychologist is allowed to participate in the case at the discretion of the investigator or the court, or at request of the defense counsel, the legal representative in cases of minors who have attained the age of sixteen.

That is, the legislator, having provided for the mandatory participation of a legal representative and a defender in cases of this category, recognizes the mandatory participation of specialists-a teacher or a psychologist only in cases when the minor is under sixteen years old or when he has a mental development lag. In other cases, this issue is decided by the bodies conducting criminal proceedings at their own discretion or at the request of interested

persons. The law does not provide for the obligation to satisfy the request of a defender or legal representative to involve a teacher or psychologist in the case.

2) A minor victim.

Involvement of specialists—a teacher or a psychologist to participate in criminal proceedings is limited to the scope of questioning of a minor victim. The issue of participation of specialists in other investigative actions is not regulated in detail by the law and is resolved on the basis of general rules of procedure.

Article 215 of the Criminal Procedure Code of the Republic of Kazakhstan, which regulates the features of interrogation of a minor victim, raises the question of mandatory participation of a teacher and (or) a psychologist depending on the age of the minor. So, it is mandatory to involve a teacher and (or) a psychologist to participate in the interrogation of a victim under the age of fourteen years. The question of involving a teacher and (or) a psychologist in the interrogation of a victim aged from fourteen to eighteen years depends on the discretion of the body conducting the criminal process.

3) A minor witness.

Participation of specialists in criminal proceedings involving minor witnesses is limited by the legal framework provided for minor victims and is regulated in the same way: involvement of a teacher and (or) a psychologist in proceedings involving a minor witness on the basis of general rules, with clarification regarding the procedure for conducting an interrogation, on the basis of Article 215 of the CPC of the Republic of Kazakhstan.

4) A minor witness who has the right to defense.

There are no special rules in the criminal procedure legislation that regulate the involvement of a teacher and / or psychologist in proceedings involving a minor witness who has the right to defense. When regulating these relations, the rules relating to the procedural figure of a minor witness are applied. This state of affairs seems unfounded, since the presence of a procedural interest in a witness who has the right to defense brings his (her) status closer to that of a suspect than that of a witness. Therefore, in the interests of protecting the rights and ensuring the legitimate interests of minor witnesses who have the right to protection, it is necessary to review the position of the legislator at the regulatory level and regulate in detail the procedure for attracting specialists: a teacher and a psychologist, to participate in procedural actions with the participation of the considered participant in the criminal process. The basis for such conclusions

is an incorrect, in our opinion, understanding of the essence of the institution of a witness who has the right to defense. The presence of a direct procedural interest in the outcome of the case indicates that it is necessary to allocate the rules on the witness who has the right to defense in a separate article and place it in Chapter 9 of the CPC of the Republic of Kazakhstan “Participants in the process, protecting their rights or represented rights and interests”.

Conclusion

To achieve the goals of the study, the composition of participants in criminal proceedings was analyzed through the prism of the scope of their procedural rights and obligations; differences were identified and reasonable proposals were proposed. The analysis was made from three main positions and criteria that correspond to the main procedural guarantees of the rights of a juvenile participant in criminal proceedings: ensuring the right of minor participants in criminal proceedings to qualified legal assistance; participation of legal representatives in criminal proceedings involving minors; participation of specialists: a teacher and a psychologist in criminal proceedings involving minors, and the following conclusions were made:

1. The participation of a lawyer— a representative of a minor victim—is mandatory. On this point, the question arises about the limits of mandatory participation of a lawyer—representative of the victim, since article 215 of the CPC of the Republic of Kazakhstan, “Features of questioning a minor witness or victim” does not provide for the involvement of a lawyer—representative in the interrogation of a minor victim, although it mentions the possibility of involving a teacher, psychologist and legal representative. In this connection, when interpreting the norm of this article, it seems that the interrogation of a minor victim does not necessarily involve the participation of a teacher, psychologist and legal representative, as well as a lawyer—representative of the victim, since he (she) is not mentioned at all.

2. The RK CPC doesn’t have a detailed legal regulation of the legal status and procedure for participation of a minor in cases of recognition as a witness entitled to protection. Consequently, general rules on a witness who has the right to defense apply equally to a minor who has been granted the specified procedural status.

It follows that in the case when a minor acquires the status of a witness who has the right to defense, according to Paragraph 2 of Section 6, Article 78 of

the CPC of the Republic of Kazakhstan, he (she) can invite a lawyer, whose participation is not required. The Criminal Procedure Code of the Republic of Kazakhstan does not have rules that oblige the criminal prosecution authority to involve a lawyer in a case involving a minor witness who has the right to defense.

Thus, when the suspect (accused, defendant) and the victim participate in the case of minors, they are guaranteed the mandatory participation of a lawyer-defender and a lawyer-representative of the victim. In cases of involving minors as witnesses and witnesses who have the right to defense, the participation of their lawyers is not mandatory.

3. Under Article 113, Paragraph 2 of the RK CPC, the testimony of witness eligible for protection is recognized as an independent source of evidence. However, neither Chapter 56 of the CPC of the RK nor certain articles of the criminal procedure law provide for a special procedure for questioning a minor witness who has the right to defense. Article 215 of the CPC of the RK regulates the features of interrogation of a minor witness or victim. The literal interpretation of this rule gives reason to believe that these rules apply to the subjects directly specified in the norm—the witness and the victim. The broad interpretation and application of the norms of Article 215 of

the RK CPC to cases of interrogation of a minor witness who has the right to defense seems to us unfounded due to his special status, which is in fact closer to the procedural status of a suspect.

4. It is necessary at the regulatory level, in the interest of protecting the rights and legal interests of juvenile witnesses, entitled to protection, to reconsider the position of the legislator and thoroughly regulate the procedure for engagement of specialists: the teacher and the psychologist to participate in procedural actions with the participation of the participant in the criminal process. In our opinion, the basis for such conclusions is an incorrect understanding of the essence of the institution of a witness who has the right to defense. The presence of a direct procedural interest in the outcome of the case indicates that it is necessary to allocate the rules on the witness who has the right to defense in a separate article and place it in Chapter 9 of the CPC of the Republic of Kazakhstan “Participants in the process, protecting their rights or represented rights and interests”.

In other words, to ensure the protection of the rights of a juvenile participant in criminal proceedings, it is necessary to unify the procedural guarantees provided by law for the protection of the rights and freedoms of minors, in whatever capacity they may act.

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