

**Actual problems of criminal law,
criminal procedure and criminalistics**

Materials of scientific conference

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The reasons considered by me are urged pre-judicial trial and only promotes to prove need and efficiency of introduction realization of the principles of criminal legal of institute of the investigative judge for the proceedings. new code of criminal procedure. I believe, this institute will positively affect control of

References:

- 1 Zinchenko I.A. (2015). Investigative judge as participant of criminal pre-judicial proceedings. Bulletin of the Kaliningrad branch of the Ministry of Internal Affairs St. Petersburg university. № 3, 41 - 44.
- 2 Trefilov A.A. The Investigator in pre-revolutionary Russia: comparative and legal aspect. Bulletin of the Ministry of Internal Affairs Kazan legal institute of Russia No. 4/2012. Page - 2.
- 3 Smirnov A.V. Institut of investigative judges – a way to competitiveness in criminal trial. Euroasian Legal Profession magazine of page 7
- 4 Muratova N.G. Sistem of judicial control in criminal legal proceedings: questions of the theory, legislative regulation and practice. The abstract of the thesis on competition of an academic degree of the doctor of jurisprudence. Yekaterinburg, 2004.
- 5 Smirnov A.V. Institut of investigative judges – a way to competitiveness in criminal trial. Euroasian Legal Profession magazine of page 7
- 6 Petrukhin I. About efficiency of judicial control of a consequence and operational search activity / I. Petrukhin//Criminal law, 2007. - No. 2. page – 4

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Equality of the parties as a principle of criminal proceedings

Abstract. The article examines the legal nature of the principle of judicial proceedings on the basis of equality of the parties as a basic guideline and start the criminal process the Republic of Kazakhstan. Actualized need for further improvement of legislation defining the legal regime of judicial proceedings on the basis of equality of the parties in criminal proceedings. Consider the need to expand the provision of arms began to advocate the right to express their objections to the indictment, in the form of defensive conclusion.

Keywords: the principle of judicial proceedings on the basis of equality of the parties, the criminal proceedings for prosecution, protection function, the administration of justice.

Human rights form a set of principles of the principles and norms of disclosure laws and rules governing certain social inherent in this field of human relations. relationships. Hence the need for knowledge Research Institute of the rights and freedoms

of man and citizen replenished and the area of criminal - procedural, characterized by applying to the individual state coercion, in which the latter are subject to significant restrictions of freedom. The legal status of the individual, which is based on the natural and inalienable rights and freedoms also includes a robust system of protection and enforcement of these rights. Norms of the Constitution of the Republic of Kazakhstan established the fundamental rights and freedoms of man and citizen, the guarantee of their implementation, including responsible parties liable for their compliance and implementation. [1]

These rules should be fully implemented. The legal status of the individual must be guaranteed by the current legislation, provides a strong mechanism for the protection of their rights, freedoms and legitimate interests.

The doctrine of the principles is an essential part of the criminal justice theory. The level of its elaboration, according to AV Grinenko gives an indication of the state of legal science in general, as well as the law enforcement culture [2.21]. This view is difficult to disagree. The democratic construction of the criminal process, ensuring that the rights and legitimate interests of citizens in criminal proceedings based on the principles enshrined in the Constitution and the Criminal - Procedure Law. The doctrine of the principles is an essential part of the criminal justice theory. The level of its elaboration, according to AV Grinenko gives an indication of the state of legal science in general, as well as the law enforcement culture [2.21]. This view is difficult to disagree. The democratic construction of the criminal process, ensuring that the rights and legitimate interests of citizens in criminal proceedings based on the principles enshrined in the Constitution and the Criminal - Procedure Law. An analysis of the criminal - procedural principles shows that most of them (competitiveness, rule of law, security of person, equality of human and civil rights before the law, etc.) are guaranteed by the Basic Law of the country, and these are the general legal principles, that is an expression of the nature and the essence of a democratic state of law. These principles recognize the

man, his rights and freedoms are the supreme value and the property of the state. They must act in the framework of an integrated system of criminal procedure in all its stages.

One of these principles is the principle of the legal proceedings on the basis of competitiveness and equality of the parties. adversarial principle characterizes such a construction of the trial, in which the functions of prosecution, defense and administration of justice are separated from each other and are carried out by various agencies and officials (Art. 2, Art. 23 Code of Criminal Procedure) [3]. This principle is inseparable from the procedural equality of the parties, which is its basis, because it is endowed with equal rights and obligations of the parties gives the opportunity to compete in front of a court.

The principle of equality of the parties in the criminal process has its own specific features. The implementation of this principle in its entirety to create a mechanism of an objective consideration of the case.

Structurally, the adversarial process is a rigorous differentiation, that is, the prosecution function (pre-trial investigation, prosecute them, picking accusatory evidence, the prosecution in the court), the protection function (gathering exculpatory evidence, the protection of the court) and the trial function (determination of the degree of culpability, the choice of penalties).

The court :

1) is not a prosecuting authority, does not act on the prosecution or the defense, and does not express any interest was, in addition to the right to interest;

2) maintaining objectivity and impartiality, creates the necessary conditions for the implementation by the parties of their procedural obligations and exercise of the rights granted to them;

3) establishes procedural decision only on evidence, which participated in the study, on an equal basis was provided by each of the parties;

4) on the request of a party, help it to obtain the necessary materials in the manner prescribed by the Criminal Procedure Code of the RK;

5) provides the parties the right to participate in the proceedings on the first.

order of supervision, according to newly discovered circumstances.

In our opinion, this is a clear differentiation of the defense and prosecution functions, as well as the role of the court that best guarantees the realization of individual rights in criminal proceedings. However, analyzing the existing in Kazakhstan's criminal procedure problems, we can conclude that for the legitimate interests of the person are sufficiently protected, the legislator needs a lot more work.

Current trends of criminal - procedural legislation of the Republic of Kazakhstan aimed at guaranteeing that the rights and freedoms of citizens, as well as the realization of the constitutional principles of justice and criminal proceedings are increasingly based on the direction of protecting the rights of persons involved in the process of orbit, the pre-trial stage. Maximum high degree of protection of the rights and legitimate interests of the person, the more the person involved in the orbit of criminal justice is the hallmark of a democratic and legal state.

In a preliminary investigation and judicial examination of court cases any citizen involved as suspect, the defendant and the defendant by the Constitution of the Republic of Kazakhstan and the Criminal - Procedure Code of the Republic of Kazakhstan have the right to be protected from criminal persecution. The inherent, natural right to the protection of the competitive process occurred structure when severe charges must confront adequate protection.

Thus, the presence in criminal proceedings requires the accusation against the opposition to protect him. The fundamental approach to the right to protection arises from the norm Part 2 of Art. 13 of the Constitution of the Republic of Kazakhstan, according to which "Everyone has the right to qualified legal assistance...". The right to defense is enshrined in Articles 26 and 28 of the Code of Criminal Procedure [1].

The use of opportunities provided by the law to defend both himself and with the help of a professional defense counsel (lawyer), the individual in criminal proceedings there is a

Participation of the defender in preliminary investigation raises its objectivity, allows for a more comprehensive assessment of imputed episodes, and sometimes a whole to come to the conclusion that the innocence of the accused. The main task of the defense, participates in the preliminary investigation is to establish the facts of compliance with all procedural rules and the clarification of the circumstances justifying his client or mitigating his guilt.

Professional protector is obliged to oppose any attempts to pressure on freedom and in any case does not waive requirements professional debt and ethics. On this requires not only a defender of professional duty, but also an active law advocacy. Excluding the impact of foreign activities defender - a general rule, do not allow interference government bodies, public organizations and individuals officials. The question now is whether these established rules of law are working, and if so, what position a lawyer during the preliminary investigation stage in reality.

Distribution of the adversarial principle, which exists in criminal proceedings, at the preliminary investigation stage makes the whole criminal process more efficient, ensuring the protection of the rights of its members in the early stages. However, despite the fact that Kazakhstan's legal system, enshrines the adversarial principle in criminal proceedings through the criminal procedure law, the adversarial principle does not apply to pre-trial criminal proceedings. So at the preliminary investigation stage of criminal cases are instituted and terminated on the initiative of the Prosecution and Investigation. Thus, part of the functions of the court is concentrated in the hands of the Prosecutor's Office, the preliminary investigation and inquiry. That is, the rights and freedoms can be restricted without the consent of the judiciary enshrined in Paragraph 2 of Article 16 of the Constitution of the Republic of Kazakhstan: "Arrest and detention shall be allowed only in cases stipulated by law and only with the approval of the court, with the provision of the right to appeal...". This provision is a direct

investigative (inquisitorial) the principle of the criminal proceedings at the stage of pre-trial proceedings, as the bodies of inquiry, preliminary investigation and prosecution are not limited in their actions and make up a whole in the system of criminal prosecution and the prosecution. At this stage of the criminal proceedings are possible costs.

If we make our own analysis, we see that a number of norms of Code of Criminal Procedure is contrary to the provisions of Article 23. Thus, the provisions of Art. 23 Code of Criminal Procedure are in conflict with Art. 24 and Part 1 of Art. 34 Code of Criminal Procedure stipulates that criminal prosecution authorities (prosecutor, investigator, body of inquiry, investigator) must identify the circumstances, not only the incriminating but also the exculpatory, not only aggravating, but also mitigating his responsibility and punishment. Thus, the prosecution is not separated from the protection, and the investigation body carries two defense and prosecution functions. And if there are grounds under Art. Art. 35, 36 of the CPC - and the resolution of the case. Consequently, the officials and authorities carrying out a preliminary investigation, carried out all three functions, that is fundamentally contrary to the principle of competition.

Further, there can be no question of equality of the parties during the preliminary investigation. For example, even a cursory analysis of the rights of the victim and the accused does not allow to conclude that they are equal. Especially as n . 45 Art. 7 of the CPC as opposed to hours. 1 tbsp. 23 Code of Criminal Procedure refers to the principle of adversarial litigation.

There can be no question of equality of the parties, at the stage of preliminary investigation, the suspect, the accused, the defender does not compete with the investigator, prosecutor, and humbly request them to declare. Implementation of persons belonging to these rights is made dependent on the discretion of the prosecution authorities. As you know, at the end of the investigation bodies of the preliminary investigation (inquiry) constitute an indictment (charges)

would be recorded, assessed the evidence, that there is a criminal case. The position in law that the prosecutor should be directed not only to the indictment with the materials of the criminal case, and the written opinion of the defense in the case, to some extent eased further and the work of the court in deciding on the appointment of the main trial, and provided implementation of the principle of equality and the adversarial principle.

According h. 3 Article 23 of the burden of proof brought against the accused the charges entrusted to the prosecutor, the defense opposes the obligation to use all the means provided by the law and how to protect the defendant (part 4 of article 23 of the Code of Criminal Procedure). Although declaratively approved the procedural equality of the prosecution and defense. But what may be in the same position on the one hand two powerful public prosecution system, and on the other - for the right to the public in the form of a bar association. The lawyers in our country will never have equal rights with law enforcement or judicial authorities. For example, to initiate criminal proceedings against judges or prosecutors is extremely difficult. For lawyers, the law applies both to ordinary citizens. Lawyer - the opponent of those in power, so it is often tried, and are trying to act as a self-imposed excitation of criminal cases, and the denial of their excitation. So, for example, or in investigative practice, the right of citizens to be protected does not provide the prosecution authorities and the different ways used declination detainee to abandon the assistance of counsel (a high level of pay for legal assistance, proof of guilt, and the ineffectiveness of protection, etc). Such an infringement of the status of the defense gives us reason to raise the question of strengthening its independence and the expansion of procedural rights.

It is in violation of the equal and adversarial process, namely leveling a defender and his legal authority and there is a risk to comply with the interests of individuals, guarantees its integrity, as defender (especially professional) - it is a criminal procedural safeguard the rights and freedoms of the

violation of the adversarial principle, we find limited.
every time when the role of defender of his

References:

1. The Constitution of the Republic of Kazakhstan. The constitution adopted by national referendum 30 August 1995 // Bulletin of the Parliament of the Republic of Kazakhstan, 1996, № 4, p. 217;
2. Grinenko AV Sources of criminal procedural principles // Journal of Russian law. - 2001. - № 5. - C. 21-27;
3. Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014 № 231 // "Kazakhstan truth" from 10.07.2014 № 133 (27754).

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Legal regulation of publicity in criminal proceedings

Abstract. The article examines the legal nature of the principle of transparency as a fundamental guideline and start the criminal process of the Republic of Kazakhstan. Actualized the need for further improvement of the legislation defining the basic elements of a mechanism for implementing public. The questions of the need to identify ways to increase openness in criminal proceedings.

Keywords: the principle of transparency, prosecuting function accusations protection function, the administration of justice.

In many countries of the world, "the right to a public hearing" in court cases raised to the level of constitutional principle. This is not surprising, because international experience shows us that the transparent and public trial - is an effective means of social control over the judicial activities. The public nature of court proceedings contributes to the objectives of Article 6 § 1 European Convention on Human Rights, namely a fair trial [1].

Publicity and go through the secret history of the world of criminal justice. It is no coincidence these two procedural institute remain in the focus of the international law.

So, on the basis of Article 6 § 1 European Convention on Human Rights to claim 1 or Article 14 of the International Covenant on Civil and Political Rights, the court may consider the case in closed session [2]. At the same time press and public may be excluded from all judicial proceedings or a part thereof for reasons of morals, public order or national security in a democratic society, and where the interests of juveniles or the protection of the private life of the parties, or - to the extent that in the opinion of the court, is strictly necessary - in special circumstances where publicity would prejudice the interests of justice.

In addition, the court may consider a