

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

Materials of scientific conference

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

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- Moscow, 2008.
3. Masur N.W., associate professor of criminal trial of the Karaganda academy MIA RK named after B. Beysenov, candidate of law sciences, associate professor. Article on the subject "Problems of Public Prosecutor's Supervision of Legality of Executive Production" – Habarshy - Vestnik of the Karaganda academy MIA RK.
 4. Law of the Republic of Kazakhstan. About Prosecutor's office. of December 21, 1995 No. 2709
 5. The instruction on the organization of public prosecutor's supervision of legality of executive production is approved by the order of the Attorney-General of the Republic of Kazakhstan of December 28, 2010 No. 88
 6. Akparova R. N. Public prosecutor's supervision. The manual – Astana, 2008.

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The legal basis of criminal procedure protection of individual rights

Abstract. The article highlights the issue of balance of interests of the individual and the state, is most pronounced in the criminal process, the example of the implementation of the legislation.

We study theoretical - legal bases as the integrity of the individual categories of state - legal science, as well as the legal basis of the principle of the inviolability of the person as a criminal procedure of the Republic of Kazakhstan.

Keywords: personality, rights and freedoms, criminal procedure, damage reparation.

Protection of the rights of the individual in varying degrees subordinate to the whole system of law. In particular, in such areas as civil law, family law, labor law, administrative law, criminal law, the protection of individual rights has an important place. A special place in the legal regulation of the rights and freedoms of the individual occupies a branch of international and constitutional law. In determining the priority of the person in the state and legal institutions of the Republic of Kazakhstan. Constitution thus established that

a person, a citizen, and uniting these two concepts- the person is the most important objective value of world civilization, its history and development [1]. The Concept of Legal Policy of the Republic of Kazakhstan for the period 2010 to 2020 emphasizes the need to "... the maximum combination of interests of the individual and society, the use of rights in line with its social purpose" [2].

Person, provided the legal system of constitutional guarantees, which include guarantees of the right to a

To review the concept of the individual can be approached from the point of view of the integrity of its physiological being. Here, the object becomes a person as a consideration of biosocial being, as an object of legal protection in favor of human life and health, which consist not only of biological processes, but also include public relations, providing human activity and protecting its vital functions.

The right to life - a fundamental right, a natural and inalienable. In proclaiming this right, International Covenant on Civil and Political Rights notes that it is "the inalienable right of every human being. This right is protected by law. No one shall be arbitrarily deprived of his life" (n. 1, Art. 6). [3] In Art. 3 of the Universal Declaration of Human Rights proclaims the right of every individual to life, liberty and security of person [4].

The right to life - a fundamental principle of all other human rights, which no one can take away under any circumstances. Nobody has the right to arbitrarily deprive a person of life, and to encroach on it. Criminal law sanctions the criminal assault on human life, establishing penalties for acts that cause harm to human life and health and the risk of such harm [5]. Moreover, the development of criminal law on the protection of the rights and interests of individuals from criminal encroachments associated with the protection and defense of the sovereignty of the Republic of Kazakhstan, its constitutional order, public order and safety.

A special role in the consideration of this issue have categories such as "health" and "morality". We agree with the authors of scientific-legal commentary on the Constitution of the Republic of Kazakhstan, believes that "the parameters determining the health and morals of the ideals of both the individual and society historically mobile and embody the values of the society stable interaction with the new" [6].

Health involves both physical and mental health of the population. In accordance with the Code of the Republic of Kazakhstan dated 18 September 2009 "On people's health

following principles: shared responsibility of the state, employers and individuals for the preservation and strengthening of individual and social health; classification of public health, safety, efficacy and quality of drugs as a factor of national security and others.

In criminal proceedings, the health of the suspect, the accused, put in extreme conditions. In - the first, a person is limited to the rights and freedoms (it can not take care of your health as possible while not "under investigation"); in - the second, the person is subject to procedural coercion, which in itself is an additional pressure on the mental, and the physiological state (stress, emotions, a daily life and so on). Therefore, Art. 14 Code of Criminal Procedure stipulates that "No one may be induced to participate in endangering the life or health of a person proceedings. Remedial actions that violate the integrity of the person, may be made against the will of a person or his legal representative only in cases and in the manner expressly provided by this Code" (p.6). "The content of a person against whom a preventive measure as a detention and persons detained on suspicion of a crime, should be carried out under conditions that do not endanger his life and health" (p.7) [8].

Special Law "On state protection of persons participating in criminal proceedings," the participants of the criminal process, their family members and close relatives are provided with additional safeguards to protect health in the production of proceedings. The law ensures the safety of these persons in order to prevent unlawful interference in criminal proceedings [9].

The health of persons who have fallen under the rules of criminal - procedural coercion, regulated and standards Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated July 9, 1999 N 8 "On judicial practice in application of compulsory medical measures" [10] which stipulates that "the correct application of compulsory medical measures helps to cure or improve the health of persons who have committed socially dangerous acts in a state of insanity or ill mental illness after committing a

alcoholism, drug addiction, substance abuse, and helps prevent these persons have committed new acts, responsibility for which is set by the criminal law."

Immunity is built as a legal category of individual human rights and freedoms, and warranty protection of the state. Based on n. 8 Art. 14 and paragraph 2 of Article 15 shows that compensation for harm caused by the violation of his rights and freedoms in criminal proceedings (including the unlawful deprivation of liberty, detention in conditions dangerous to life and health, cruel treatment) shall be compensated in order prescribed by Criminal Procedure Code (Chapter 4). In accordance with Art. 42 Code of Criminal Procedure the right to compensation arises only after complete or partial rehabilitation of persons. Code of Criminal Procedure provides that the authority conducting the criminal proceedings to bring a formal apology rehabilitated (Part 1 of Article 44). This provision is, of course, meets the requirements of the ethics of the criminal proceedings, respect for human rights.

Institute of redress is also the subject of civil - legal regulation. In accordance with Art. 923 special part of the Civil Code "...State compensated the damage caused to a citizen as a result of unlawful conviction, unlawful criminal prosecution, illegal application as a measure of preventive detention, house arrest on his own recognizance, unlawful imposition of an administrative penalty in the form of arrest or correctional labor, unlawful placement in a psychiatric or other hospital ..".

According to the norms of the code of Criminal Procedure (Article 39 - 42) and civil Code (922, 923) that the damage is compensated only to persons with respect to whom, it is possible rehabilitation. However, from the standpoint of the principle of inviolability of the individual in criminal

proceedings whether it would be compensated for damage to persons not subject to rehabilitation. After all, legally detainees suspected of committing a crime and lawfully arrested shall have the right to security of person. And if they are in the correct application of the Code of Criminal Procedure were allowed violence dangerous for life and health, degrading the honor and dignity? Here, law enforcement officials authorized to proceedings in criminal cases, it is important to know that according to the Resolution of the Plenum of the Supreme Court of the Republic of Kazakhstan dated July 9, 1999 N 7 "On the practice of application of the law on compensation of damage caused by unlawful actions of bodies conducting the criminal process" (p. 5) and "in accordance with "In accordance with Part. 2 of Article 13 and Part. 8 Article 14 of the Criminal Procedure Code of detainees, suspects, defendants and convicts are also entitled to compensation for the harm caused, and when in the course of proceedings against them have been subjected to violence or abuse, when the decisions or actions of the authorities conducting the criminal proceedings have been humiliated their honor and dignity or when without the need for the case under investigation collected, disclosed or distributed personal information that a person considers it necessary to keep secret, as well as when the person deprived of liberty shall be held in conditions dangerous to life and health". The norm of Article 42 of the Criminal Procedure Code therefore need amending and supplementing, in accordance with the Resolution of the Plenum of the Supreme Court of the Republic of Kazakhstan. If a notice explaining the damages rehabilitated or partially rehabilitated issued with a copy of an acquittal, in the ruling and even more so in the code does not say anything about the order for damages aforementioned parties.

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

- 2020" Decree of the President of the Republic of Kazakhstan dated August 24, 2009 № 858 // SAPP of the Republic of Kazakhstan, 2009, № 35, Art. 331;
3. International Covenant on Civil and Political Rights. Adopted by General Assembly resolution 2200A (XXI), UN General Assembly on December 16, 1966 // The international instruments on human rights. Collection of documents. - M.: Publishing House of NORM (ed. NORMA Group - INFRA. M), 2000. - 784 p.
4. The Universal Declaration of Human Rights. Adopted by General Assembly resolution 217 A (III) of the General Assembly on December 10, 1948 // The international instruments on human rights. Collection of documents. - M.: Publishing House of NORM (ed. NORMA Group - INFRA. M), 2000. - 784 p.
5. The Criminal Code of the Republic of Kazakhstan of July 16, 1997 N 167 // Bulletin of the Parliament of the Republic of Kazakhstan, 1997, N 15-16, Art. 211
6. Sapargaliyev GS The Constitution of the Republic of Kazakhstan: Scientific and legal commentary. Ed. second, corrected. and add. Almaty Zheti zharry, 2004. 424 pp.
7. Code of the Republic of Kazakhstan dated September 18, 2009 № 193-IV «On Public Health and Healthcare System" // Kazakhstanskaya Pravda on September 29, 2009 № 230-231
8. Criminal Procedure Code of the Republic of Kazakhstan from July 4, 2014 № 231 // "Kazakhstanskaya Pravda" from 10.07.2014 № 133 (27754);
9. Law of the Republic of Kazakhstan dated 05.07.2000 N 72-II "On state protection of persons participating in the criminal process" // Bulletin of Parliament, 2000, N 10, Art. 241
10. Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated July 9, 1999 № 8 "On judicial practice in application of compulsory medical measures" // Kazakhstanskaya Pravda on 08/05/99, the № 187-188

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Lawyer mystery

Abstract. This article describes attorney secrets which are voiced by many lawyers. The article also overviews secrecy of information which is necessary guaranteed to principal and portraits preservation of lawyer secret.

Keywords: lawyer, secrets, attorney secretes, mysteries.

Protection guaranteed by the Constitution of the Republic of Kazakhstan of the rights and freedoms of man and citizen, promotion to elimination of violations of law and strengthening rule of law are responsibility of professional and high moral duty counsel.

In this regard, the legal profession involves accurately and consistently comply with requirements of the current legislation, to do not violate ethical standards of conduct lawyer, to use all means provided by the law