

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

**Materials of scientific conference**

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criminal procedure and criminalistics**  
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other laws applicable in the territory of the Republic of Kazakhstan:

- to provide guarantees of the rights and legitimate interests of minors;
- to intensify efforts to fight crime and juvenile delinquency;
- identify and eliminate the causes and conditions that contributed to them;
- to achieve a return to honest labor life of every teenager stumbled.

To summarize, it should be noted that the protection of the rights and freedoms of minors is a strategic objective of any society and the state. And prosecuting authorities play an important role in ensuring the rights and freedoms of minors. The human rights prosecutor's function is aimed at addressing shortcomings of the legal system of the state. In the case of "silence" of law or contrary to norms and values of society prosecuting authorities have to be almost the only tool guarantor and safeguard the rights and freedoms of minors.

The basis of understanding of children's rights is the recognition of the child's personality, which has the same dignity as the adult. The difference is that an adult can own to defend the interests and defend their rights, while the child is forced to wait or ask for help from those who are ready and shall ensure compliance with its rights. [5]

Protecting children's rights is intended to be a conceptual point in the current situation of

childhood. In the case of protection of the rights and freedoms of minors and the system of law enforcement bodies of Kazakhstan prosecuting authorities play an important role historically, realizing the function of supervision over the implementation of the legislation on minors in order to ensure law and order in society, protection of their rights and freedoms against criminal and other encroachments. This feature is one of the main functions of the Office of Public Prosecutor of Kazakhstan and implemented in the framework of general supervision.

Attorney Powers include both his rights and his duties. Said correlation of powers due to the fact that detection of violations of the law the prosecutor is obliged to exercise their rights and to eliminate the revealed violations. And the activities of prosecutors characterized by a set of powers to perform effectively the duties to identify and address violations of the law. It is extremely necessary to concentrate in one unit of the General Office of Public Prosecutor of Kazakhstan (and, accordingly, prosecutors in the regions), all areas of public prosecutor's supervision of the juvenile. This is due, on the one hand, the specificity of protection of the rights of the social and age groups of population, requiring a systematic, comprehensive approach, on the other - peculiarities of the child's legal status.

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### The necessity of introducing in the criminal proceedings of the Institute of the investigating judge

**Abstract.** In article the questions concerning need of introduction of institute of the investigative judge are considered. The concept of the investigative judge reveals. Problems of criminal trial which can be resolved with introduction of institute of the investigative judge are specified. Based on statements of a number of prominent processualist scientists, the legal status of the investigative judge according to norms the criminally –procedural code is estimated.

**Keywords:** investigative judge, judicial control, principle of competitiveness and equality of the parties, powers of the investigative judge.

With acceptance the new criminally – procedural code in domestic legal proceedings the institute of the investigative judge is entered. It is necessary to believe that this phenomenon result of the legal reforms which are carried out in our country on the basis of the principle of humanity. The institute of the investigative judge best of all promotes realization of the principle of competitiveness and equality of the parties in criminal legal proceedings.

In the criminally procedural code the investigative judge is defined as the judge of court of the first instance who is carrying out the powers provided by the Code during pre-judicial production. In turn Zinchenko I.A. defines the investigative judge as the judge of the first instance to whom along with implementation of justice on criminal case the additional powers connected with realization of judicial authority (judicial control) in pre-judicial production are imputed. That is a distinctive feature of the investigative judge is that is the judge of court of the first instance and differs from other judges in powers in the sphere of pre-judicial production and calling to exercise judicial control.

Misunderstanding in concepts between "the investigative judge" and "a forensic investigator" occurs in the theory among foreign and domestic lawyers. The institute of the forensic investigator is entered in the

Russian Empire according to the Judicial Charter in 1864, based on the European experience of institute of the investigative judge. A.A. Trefilov specifies that "the forensic investigator is a judge who before consideration of the case by court in essence accepts this case to production, carries on preliminary investigation, carries out investigative actions, collects proofs and takes part in the solution of a question, whether about that case will be considered further in court in essence. Whereas the investigative judge – the judge who is not the person carrying on preliminary investigation; thus such judge exercises judicial control in pre-judicial production".

Thus, the difference between the forensic investigator and the investigative judge is obvious and consists in various powers and the carried-out activity.

Introduction of institute of the investigative judge in criminal legal proceedings has a number of positive lines. Same prove also active discussions on this matter. By the way, A.V. Smirnov speaking about need of introduction of institute of the investigative judge allocates some reasons:

"The first is that the party of criminal prosecution cannot control effectively itself, whether it be departmental control or public prosecutor's". I believe, this statement is very fair as both the prosecutor and chiefs of investigating authorities represent the

accusatory party and are interested in removal of a conviction by court. Whereas delegation of power on authorization of actions which significantly affect constitutional rights and freedoms of citizens to the investigative judge provides objective judicial control of criminal prosecution.

Also it should be noted the fair approval by Muratova N., allocating some purposes of judicial control: "The purposes of judicial control in pre-judicial production are: first, elimination of violations of the criminal procedure law, secondly, ensuring compliance with the rights, freedoms and legitimate interests of participants of criminal legal proceedings and other persons, thirdly, restoration of the violated rights and freedoms of citizens in pre-judicial production. Specifics of forms of judicial control in pre-judicial production consist in its implementation in conditions as open competitive process (consideration of complaints and petitions), and the closed competitive process (receiving a judgment about application as a measure of restraint detention, etc.). Introduction of a position of the investigative judge will allow to provide effectiveness and efficiency of judicial control at this stage".

The second reason why the investigative judge is necessary, claims A. V. Smirnov: "on preliminary investigation we actually have no equality of the parties as judicial proofs are only one formed here – the accuser. Protection actually can only ask the procedural opponent about familiarizing with business of its proofs or their fixing by means of investigative actions". And with introduction of institute of the investigative judge the lawyer has the right to petition before it for reclamation of any data, documents, subjects necessary for rendering an appropriate legal aid and protection of interests of the suspect accused of the witness having the right for protection, in case of refusal performed by inquiry or rejection the decision on it within three days. That provides to the lawyer opportunity to collect proofs and to claim necessary information. Besides the new criminally – procedural code provides possibility of the lawyer to petition before the investigative judge for purpose of examination if by body of criminal prosecution satisfaction of such

petition it was unreasonably refused or on it the decision within three days is not made. Also the lawyer has the right to petition for the compulsory drive in the body conducting criminal trial, the witness who is earlier interrogated by it which providing an appearance for evidence difficult. Similar innovations and reference of consideration of similar petitions to powers of the objective and not interested in outcome of the case investigative judge as much as possible will provide realization of the principle of competitiveness and equality of the parties in criminal legal proceedings.

Besides need of control over the party of criminal prosecution and ensuring equality of the parties I.L. Petrukhin allocates additional problems inherent in criminal trial. In particular he notes: "High level of satisfaction of petitions of prosecutors and investigators not a sign of great success of prosecutor's office and bodies of investigation, but testimony of low efficiency of judicial control of investigation of crimes. Reasons here a little:

First, high office load of judges of a regional link.

Secondly, assignment of the same function on the investigator, the prosecutor and the judge".

Certainly, these conditions reduce efficiency and objectivity of consideration and permission of petitions. Besides at the judge of the charge which satisfied the petition of the party for restriction of constitutional rights of the citizen the prejudiced opinion on the accused is formed.

Whereas existence in court of the investigative judge facilitates load of the judges considering criminal case in essence in view of the fact that from now on they should not consider petitions and complaints to actions (inaction) and decisions of the investigator, body of inquiry, the investigator and the prosecution and also to authorize procedural actions. In addition the new criminally–procedural code provides one of the bases of removal of the judge his participation on this case as the investigative judge and consideration by it of complaints and protests to resolutions of the investigative judge.

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. the new code of criminal procedure. I believe, this institute will positively affect control of

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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. Hence the need for knowledge Research Institute of the rights and freedoms