

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

Materials of scientific conference

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The legal nature of the principle of openness in criminal proceedings

Annotation. 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 trial" court cases elevated to a constitutional principle. This is not surprising because the world experience convinces us that the transparent and public proceedings - is an effective means of social control over the judicial activities. The public nature of the proceedings to the aims of Article 6 § 1 European Convention on Human Rights, namely a fair trial [1].

In many countries of the world, "the right to a public trial" court cases elevated to a constitutional principle. This is not surprising because the world experience convinces us that the transparent and public proceedings - is an effective means of social control over the judicial activities. The public nature of the proceedings to the aims of Article 6 § 1 European Convention on Human Rights, namely a fair trial [1]. 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 criminal case in a closed session to protect the interests of any minor whose rights may be violated in the case of an open trial, in which a minor is a victim or a witness.

The form of the proceedings of cases of crimes committed by persons under the age of 18, is considered and the United Nations Standard Minimum Rules relating to the administration of juvenile justice (The Beijing Rules) [3], paragraph 8.1 of which provides that the right of minors to Confidentiality shall be respected at all stages in order to avoid causing harm to her or him by undue publicity or because of potential damage to reputation. These rules of international law in accordance with Art. 4 of the Constitution of the Republic

The principle of transparency, enshrined in Art. 29 Code of Criminal Procedure is constitutional provision that the court has every right to be heard. However, that provision can not fully reveal the content of the principle of openness in criminal proceedings.

Publicity of the trial is one of the most important constitutional guarantees of human and civil rights in criminal proceedings. Given the importance attached by the international publicity-legal acts, it must be enshrined in the basic documents as a fundamental principle, which would be the main guarantee of its strict compliance enforcer.

According to the decision of the Supreme Court of the Republic of Kazakhstan "On the observance of the principle of publicity of criminal proceedings" under the publicity of court proceedings should be understood not only for an open trial, but also to ensure participation of the parties, the possibility of the presence of other persons not involved in the case. Publicity involves the availability of participants in the process to all the case files, including received in the course of search operations, to the instructions of the prosecutor, according to the preliminary investigation (except as provided by law). In addition, the guidelines include a public declaration of judgment, notice and to familiarize parties with the received complaints of other participants in the process, awareness of time and place of the hearing in any court, the creation of a single database entered into force verdicts and decisions of courts and free access to them, the availability of information on the performance of judicial acts.

It is interesting correlation principle of publicity and privacy of the individual in criminal proceedings. On the one hand the publicity of the trial suggests openness and transparency of the actions of the judges and the entire judicial system, on the other hand "excessive publicity" leads to a violation of privacy of the accused. Thus, good compliance with the principle of transparency in the criminal process and contributes to the implementation of the principle of inviolability of the person, as It provides safety, non-

defendant. For example, the balance of this ratio emphasized norm Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated December 6, 2002 N 25 "On the observance of the principle of publicity of criminal proceedings" [4], according to which "insubordinate presiding entails application of the measures under Art. 346 Criminal Procedure Code, in cases of violation of constitutional rights to privacy, personal and family secrets of the perpetrators can be brought to the statutory responsibility."

In Art. 29 Code of Civil Procedure of Kazakhstan found that the trial of criminal cases in all courts and in all courts is happening openly. Limiting the publicity of the trial may be: 1) to non-disclosure of state secrets; 2) in cases of offenses committed by minors;

3) in cases involving sexual crimes, in other cases in order to prevent the disclosure of information about the private life of the persons involved in the case; 4) in cases where it is required by the security interests of the victim, witness or other persons involved, as well as members of their families or close relatives; 5) when considering complaints against actions and decisions of the body conducting the criminal proceedings. [5]

Limiting the publicity of the trial can be extended for the duration of court proceedings or that part, which examines the above mentioned circumstances, as shall be specified in the decree. If for certain defendants there are grounds for holding a closed trial in connection with the protection of state secrets, and the other defendants, these circumstances do not apply, the court may allocate from the criminal case into separate proceedings another criminal case, which will be reviewed in a closed court session. If the selection of the case will affect the comprehensiveness, fullness of his studies and permits the production of such action, in accordance with Part. 4 Art. 49 Code of Criminal Procedure is not allowed. In this case, the court, in accordance with Part 1 of Art. 29 Code of Criminal Procedure, decide whether to hold a closed trial of the case in general. In accordance with Art. 403 Code of Criminal

Procedure a court ruling on the issue of publicity of the trial, taken during the trial, a separate appeal and protest are not subject to objections against them may be set out in the appeal or protest filed against the verdict (ruling) of the court, handed down on the merits.

The verdict of the court and the decision taken in the case, in all the cases announced publicly.

The Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated December 6, 2002 N 25 "On the observance of the principle of openness of court proceedings in criminal cases" found that "the violation of the principles of criminal procedure, including publicity, depending on its nature and materiality, implies recognition held manufacturing invalid, the abolition of the decisions made or the recognition of materials collected at the same time do not have the strength of evidence." In this regard, the courts ordered to prevent illegal restrictions of publicity, allow free access to the courtrooms of all stakeholders and members of the media. The Supreme Court has fixed that transparency ensures the availability of participants in the process to all the materials of the case, public proclamation of judgment, notice and to familiarize with the parties received complaints of other participants in the process, awareness of time and place of the proceedings in any court, and on the performance of judicial acts.

The limits of transparency in the pre-trial stages of the proceedings in accordance with Art. 205 Code of Criminal Procedure defines the authority conducting the criminal proceedings, and in the hearing - the court. The

Court, at the request of a party or on its own initiative, the appointment of the main trial, with reduction in the resolution of the relevant reasons, must decide whether a public or private hearing.

Making the application for the limitation of public hearings on the stage of the main purpose of the trial (preliminary hearing), and in the course of the main trial shall be entitled to only factors. Other persons, including the media, denied that right.

With respect to the media in the Resolution of the Plenum of the Supreme Court of the Republic of Kazakhstan dated May 14, 1998 N 1 "On some issues of application of the legislation on the judiciary in the Republic of Kazakhstan" [6] found that courts should bear in mind that the principle of publicity of the trial is to enable all citizens, including non-parties to the process of the subject court case, be present at his hearing. It should therefore be deleted as contrary to the principle of transparency cases of unjustified refusal to media representatives present in the courtroom. The media should not prejudge in their reports the results of the trial before the decision or sentence in force or otherwise influence the court. Failure to comply with this requirement shall result in liability of those responsible for interference in judicial activity and contempt of court. By prejudging the results of the trial in relation to the said provision of law to be understood as media reports, directly or indirectly, to the creation of public opinion about the correctness of the position of one of the parties to the trial and about the legality and fairness of the forthcoming judicial decision only if the Court has determined solutions.

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The concept and essence of prosecutorial supervision

Abstract. This article discusses the concept and essence of prosecutorial supervision in the Republic of Kazakhstan. Speaking about the importance of prosecutorial oversight and gives it definition.

Keywords: prosecutor's office, prosecutor, court, law.

Public prosecutor's supervision is a highest supervision which is exercised by the Chief prosecutor and other prosecutors of the state to watch process of implementation of laws, at all stages of activity of legal entities, people, also human rights bodies (to analyze, premature investigation, consideration of a problem by court, and performance of others the requirement the order of court).

Bodies of prosecutor's office even if are connected functionally with three types of the power, but to one aren't subject. Such peculiar condition of prosecutor's office in government institution gives the chance to balance types of the power and to carry out them in action as the separate type of the state work leaves public prosecutor's investigation.

Firstly, public prosecutor's supervision is a special and only type of the state work which the state, social, and other organizations, legal entities, except prosecutor's office can't make in any way.

Secondly – public prosecutor's supervision is carried out by the Republic of Kazakhstan. Importance of these rules is defined by how the prosecutor carries out investigation by both definition of offenders, and undertaking of measures for guilty of an offense.

Thirdly, public prosecutor's supervision – a special type of the state work. And feature from other state works is check of saving of the Constitution of RK, performance lawful the requirement, and coincidence of legal acts to the law [1].

According to the big encyclopedic dictionary the prosecutor in French of "procie", and in Latin "забучусь" is a stately person of body of prosecutor's office. In court it represents interests of the state.

Public prosecutor's supervision differs in other directions of the state work, especially in performance state functions by purpose of.