

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

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## Actual problems of criminal law, Criminal procedure and criminalistics

Materials of scientific conference

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### **Principles of criminal procedure and their importance**

**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.

Intellectually caved in to the depth and grandeur of the Roman legal thought, Europe of the Middle Ages, and later the rest of the world have recognized the genius of the Roman jurists Guy, Ulpian, Paul, Modest, Papaniana and others apprehended all major legal formulas, categories and principles of law, developing and adapting them to the needs of his being. One of these centuries verified formulas and legal categories Latins is the concept of «principium». It is the foundation, the beginning of something [1, c.17].

Modern encyclopedic dictionaries emphasize the semantic diversity of the concept of "principle." Firstly, it refers to a basic, initial position of any theory of science, as well as the teachings and philosophy. Secondly, a person inner conviction, determining its relation to reality, norms of behavior and activity. Third, the main features of the device of any mechanism, device [2, c.621].

Indeed, in the hierarchy of legal, criminal and procedural categories, the category of "principle", along with the category of "problem" is the main reference position. This category, reflecting the legal ideology of a particular society and criminal procedure policy of the state, the algorithm

sets the lawmaking and law enforcement process, known and largely determines the hierarchy of different legal categories, mediates their interaction, interdependence, interdependence, consistency. Reflected in the principles of criminal procedure, legal ideology and criminal procedure policy, as this recognition and assimilation of the subjects of the criminal procedure law and criminal procedure (inquirers, investigators, prosecutors, judges, lawyers, etc.), it becomes a part of their inner beliefs. It determines mainly their attitude to the criminal reality, directs their behavior and determines the moral foundations of criminal procedure.

In the science of criminal procedure there are numerous definitions, revealing the authors' opinion, the essence of the principles of the criminal process.

The term "principle" means generalized expression of a phenomenon.

Principles of criminal proceedings - it is basic, reflecting its essence the beginning (patterns) of the criminal procedure law and the activities on the application of its provisions [3, c.32].

The principles of the criminal process are called the basic legal provision or rule of law of general and guiding values, which express the nature and essence of the process is determined to build all its stages, forms and

institutions and direct criminal procedural activities to achieve the objectives and targets set by the state before the criminal proceedings [4, c.26].

Those or other provisions can be attributed to the category of the criminal process principles, provided that they meet the following requirements:

1) they (rules) define in law enforcement chief,

starting points from which, in turn, followed by private law;

2) in all aspects of what is permitted or mandatory behavior and all the elements of a legal norm (hypothesis, disposition, sanction the principles themselves should not be formed);

3) The essence of the fundamental provisions is the stability, constancy (canceled the rule of law, there is a change in the law, and the principles are preserved);

4) should have a powerful, imperative nature, their implementation is provided by the state;

5) in the criminal procedure system should occupy a dominant position;

6) common to the principles is that our regular destination they have the appropriate state bodies. State authorities are responsible for the strict observance of the principles and shall bear all the consequences associated with their disorder.

The principles are the primary rules of law covering other standards that specify the content of the principles and who are subject to them. As a more general rules, principles determine all matters arising in the course of practice. If detected gaps or contradictions between the specific rules of law, the key to resolving the difficulties encountered are the principles. The principles include generally binding regulations, the implementation of which is ensured by the state. The principles should be enshrined in law. While the idea is not fixed in the law, they are principles of justice, scientific findings, but not the principles of criminal proceedings [4, c.27].

Normative principles - is an important sign of binding.

The principles provide a single remedial order in all criminal cases and serve as a conductor of legality in criminal proceedings.

Certain provisions, the principles of criminal justice enshrined in the Constitution of the Republic of Kazakhstan. These are the principles that are of particular importance in the overall policy which pronounced the very essence and reflects the views of the legislator in the criminal proceedings as part of the state. The remaining principles which are primarily functional in nature and disclose the contents of the criminal proceedings as a special kind of activity to prevent and solve crimes, get their consolidation in the CPC. These principles do not compete with the first, and follow from the general provisions of the Constitution, are with them in the organic connection and complement them. Together with them, they form an integrated system, where the nature and significance of this or that principle does not only own the content, but also the functioning of the entire system, where the violation of any other principle is not necessary in isolation from other principles, as reflected in their implementation as a whole, where each principle defines a side of the criminal process, without which it is impossible to correctly carry out the tasks.

All the principles of criminal proceedings are the normative expression, ie, enshrined in law. That is what provides their direct regulatory effect on the criminal-procedural relations. Whatever may be the valuable scientific idea, this or that legal thought, it will not be the principle of the criminal proceedings, until it receives a normative form.

Each of the principles of criminal justice is the traditional structure of criminal procedure, including the hypothesis, dispositions and sanctions. Having such a common feature as laid down by law, the principles of criminal justice vary forms such consolidation.

All the principles of criminal proceedings due to these or other provisions of the Constitution. Most of the principles enshrined directly in the individual articles of the Constitution in the form of specific legal rules, and the mechanism of their implementation in relation to the criminal proceedings is given in the Code of Criminal Procedure. However, some of the principles



have no direct constitutional and legal consolidation in the form of separate standards, and are derived from the contents of the other provisions of the Constitution.

Principles of criminal proceedings are the rules governing values, ie, are directly applicable and are binding on all the parties to the criminal proceedings, together with specific rules. Binding principles of criminal process guarantees enshrined in their Constitution of the Republic of Kazakhstan, which has the highest legal force in the territory of the Republic of Kazakhstan. In case of ambiguity with regard to the content of a rule of criminal procedure law, it must be interpreted in the context of enforcer of meaning attached to it complies with the principle of criminal proceedings. All the principles of criminal proceedings form an integrated system, where the content and meaning of each principle is due to the operation of their entire system. Violation of the principle of criminal procedure usually entails a violation of a number of other principles.

All the principles form a system. Although each principle has its own content, they operate in conjunction with each other. Each of the principles is a guarantee of the other. For example, the principle of presumption of innocence, guarantees compliance with the principle of the accused, the suspect's right to protection. The question of the principles of the system is still *diskussionnym*. Thus, some authors share the principles at the place of fixing them on the constitutional and other. Others shared their sphere of influence - procedural (*sudoproizvodstvennyye*) and *sudoustroystvennyye*. Still others divide them into *obsheprotsessualnyye* that are the basis for the whole system of criminal procedure, and the specific characteristic of its subsystems: the pre-trial and trial proceedings.

The value of the principles of criminal procedure consists in the fact that their violation, depending on its nature and materiality, entails recognition held the proceedings null and void, cancellation made during such production decisions or

recognition assembled with materials not having a proof strength [5, c. thirty].

A broad interpretation of the principle is as follows:

1) in the system of criminal procedure are central, leading role;

2) are primary source, the governing regulations closely and harmoniously connected with each other;

3) are of a regulatory, unconditional, binding;

4) define the basic, main directions and prospects of development of criminal procedure;

5) contribute to the proper interpretation of the rules of procedure [6, c.62].

By virtue of a general, guiding nature of the principles of criminal proceedings, their influence on all stages of the criminal process, the presence in all the procedural acts or decisions of their neglect, forgetfulness authorities in criminal proceedings, of course, - the ground for unfair criminal proceedings in the case and the evidence failure to reach the goals and objectives of the criminal process. In this regard, strict adherence to the principles of criminal proceedings - the main condition for the legality of the entire proceedings, its decisions and collected *dokazatelstv*.UPK establishes a system of rules governing the general conditions of the preliminary investigation and the main trial, which prescribe the authorities conducting the criminal proceedings, to follow certain rules in order to avoid violations of the principles of the criminal process. This guidance, which is carried out in the framework of criminal procedural activities of bodies responsible for criminal proceedings, during the entire proceedings. How big is the importance of the principles of criminal procedure in a particular criminal case and the consequences of non-compliance with authorities in criminal proceedings, shows a wide range of decisions made by the court of appeal and supervising instances when detecting grounds for quashing or changing judgments, rulings of the lower courts. In addition, the evidence obtained in violation of the principles of due process recognized null and void and can not be the basis for the charges, and also used in proving any of the circumstances [4, c.31].

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