

# **Some issues of providing the rights of the personality in criminal trial of the Republic of Kazakhstan**

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## **Abstract**

In modern conditions of development and enhancement of the constitutional state a personal freedom, its rights and a guarantee increase, therefore, it is peculiar also to criminal trial. Providing the rights of the personality is especially actual in the sphere of criminal procedure, because in this sphere of imperious activities of state bodies essential restrictions and even violations constitutional the right of the personality arise and are shown.

Increasing of guarantees of the rights and legitimate interests of the persons participating in criminal procedure corresponds both to interests of the personality, and interests of society as a whole. Only in case of conditions of a security of the rights and legitimate interests of the persons participating in criminal procedure and first of all charged, accomplishment of tasks of criminal trial is possible.

**Keywords:** rights and freedoms of the person, personality, concept, policy of law, etc.

## **Introduction**

Law-enforcement activities for fight against crime first of all shall be directed on protection of the status of the personality established by the law, ensuring full-fledged sales opportunities with subjects of the public relations of the rights and interests. Procedural coercion constantly needs restriction with a strict framework of justice and feasibility.

Providing the rights of participants of investigation according to Constitution of the Republic of Kazakhstan shall answer ideas of the person, his life, the rights and freedoms as about the supreme values and to correspond to the international principles and regulations in the field of human rights. If the personality possesses a constitutional law on immunity, the state is obliged to guarantee implementation it in relation to each individual. This provision is especially actual in conditions when the person gets to the sphere of criminal and legal impact. Integrity of human beings becomes the predetermining and fundamental principle of criminal trial.

Each of participating in investigation (the citizen of the Republic of Kazakhstan, and equally the foreigner or the stateless person) is the personality possessing advantage and the inalienable rights belonging from the birth. The state can set laws restrictions of the rights only for the purpose of due recognition and respect of the rights of others and satisfaction of justified claims of morals and a public order in democratic society. In the Constitution of the Republic of Kazakhstan regarding 1 article 1 it is established that, "The Republic of Kazakhstan approves itself the democratic, secular, constitutional and social state which supreme values are the person, his life, the rights and freedoms" [1, page 2].

In the theory of criminal trial participating persons in legal proceedings are called differently – "participants of criminal trial", "subjects of criminal trial", "participants of criminal procedure activity", "participants of the criminal procedure relations". For justification of legitimacy of this or that name various arguments taking into account procedural position of persons, their roles in criminal trial, interest in outcome of the case, etc. are used. The point of view about opportunity to unite all provided names under one general concept – "participants of criminal trial" as, participating in criminal trial is represented to the most acceptable and justified, the person can't but be the subject of the criminal procedure rights and duties, always makes criminal procedure actions or takes in them part, enters the criminal procedure relations. Speech can go only about features of participation.

Participants of criminal legal proceedings (individuals), certainly, are persons and in its legal aspect. All of them are allocated with the criminal procedure rights and duties which have to be guaranteed. However the concept "ensuring rights of the personality" extends only for a certain category of participants of criminal legal proceedings.

### **The main part**

Criminal procedure represents the special sphere of the social relations. During preliminary inquiry and judicial permission of affairs on socially dangerous, illegal acts the state purchases special powers on invasion into private life of citizens and restriction of their inherent constitutional laws and freedoms. Therefore the main sign of democratic and humane society is availability of effective mechanisms of rational mitigation of repressive nature of criminal prosecution.

In the Concept of policy of law of the Republic for the period from 2010 to 2020 of the Republic of Kazakhstan approved by the Presidential decree of August 24, 2009 No. 858, it is accurately fixed that, "The effective criminal policy of the state is impossible without optimum model of criminal trial. Therefore, speaking about prospects of development of a criminal procedure law, it is necessary to emphasize that the existing Code of penal procedure of the republic generally brought system of punitive justice into accord with characteristics of the modern democratic, constitutional state. The main goal of the legislator consisted in forming of the criminal procedure law based on recognition of the constitutional regulations about the rights and freedoms of the person and the citizen directly operating, determining sense, content and application of laws and provided with justice.

Therefore a priority of development of a criminal procedure law there is a further consecutive implementation of the fundamental principles of the criminal trial directed on protection of the rights and freedoms of the person" [2, page 3].

In the Code of penal procedure of the Republic of Kazakhstan (RK Criminal Procedure Code) it is specified that the order of production established by the law on criminal shall provide to affairs protection from unreasonable accusation and condemnations, from illegal restriction of the rights and freedoms of the person and the citizen, in case of illegal accusation or condemnation innocent – immediate and its complete rehabilitation, and also to promote legality and law and order strengthening, the prevention of crimes, forming of respect for the right (part 2 of article 8 Criminal Procedure Code RK) [3, page 4]. Thereby at the national level it was acknowledged that competent authorities of the state, their officials not always work within the law, break it and therefore protection of the personality against it is necessary.

The constitutional state is engaged in protection and providing the rights and legitimate interests of the persons participating in criminal procedure, and in particular, charged. Fighting crime, it is impossible to forget about the rights of the personality. Only in case of observance of this condition opportunity to subject guilty fair, punishment corresponding to weight of a crime and its personality and to protect innocent from superficial criminal prosecution and condemnation opens because to expose and punish only the guilty means not to allow accountability and condemnation innocent. Real providing the rights of the personality, first of all charged, is criterion of an assessment of democratic, humanity of criminal procedure. Direct obligations of the state bodies conducting process, include providing to participants of process (charged, injured, etc.) opportunity to implement the rights is caused by that the actual use of the rights of participants of process - one of the most important conditions of objective, impartial research of case, establishments of truth, protection of legitimate interests of the personality in process. In this sense a procedural law of the personality acts as a special type of procedural guarantees of justice. Therefore bodies and the persons conducting legal proceedings are obliged to observe a procedural law of citizens. They shall be interested in that participants of process knew the rights and used them as only provided that objective, comprehensive and complete investigation of case can be reached, the accusatory bias is excluded; the legal and reasonable judgment is passed. The most important procedural guarantees of the rights of the personality are those means which provide the actual implementation of these rights. For example, the right charged to have the defender it is guaranteed by an explanation to it this right, provision of the right to elect the defender, rendering to it, in the cases specified by the law, free of charge help of the defender and others.

The place which is taken by human rights in culture of society in general, in political culture in particular, is in many respects determined by nature of a political regime, level of social and economic development of the country, laws and historical traditions, and also features of mentality of citizens. All history of development of humanity, in fact, accumulates and reflected in security of the personality – differently, in human rights.

Among cultural wealth of a modern world of law of the person occupy one of the most important places. Besides, for Kazakhstan the situation with human rights protection becomes the important indicator, guided by democratic legal values which shall become the most important factor of strategy of development of Kazakhstan.

Some scientists believe that the legal understanding of the personality shall be based on her philosophical and psychological concept. So, considering the personality as the subject of the rights and freedoms, V.A.Kuchinsky approves: "The person are born, the personality become. That the been born person became a personality, he shall pass the corresponding stages of natural and social development, not only reach a certain level of physical and intellectual

development, but also gain necessary social experience in process of communication with other people" [4, page 27]. The conclusion is as a result drawn that, for example, children or the insane can't be considered as persons [5, page 42-43].

In our opinion, it is impossible to agree with this line item. People usually participate in legal relations. Possessing reason and strong-willed qualities. However absence at possible participants of legal communication of such qualities owing to age or psychological features doesn't give any grounds to deny behind them personal (in legal sense of the word) properties in general as they don't lose legal capacity under no circumstances. It is necessary to recognize the correct point of view of V. S. Shadrin that in legal aspect the personality is any person [6, page 5-6]. About same witnesses also the analysis of use of the term "personality" in various industries of the right, including in constitutional, criminal, criminal procedure in which it is applied in the most extended sense as a concept "person" synonym.

The person in the development can be enhanced as the personality. To tower in own idea of and in opinion of people around, but can fall, degrade under the influence of various circumstances. However, even when making an immoral act or illegal act he doesn't cease to be a personality, and it can't refuse the right to be considered that. Finding the person guilty of a crime, the court doesn't cease to consider him as the personality and doesn't deprive of it the right to advantage even in case of application to it the most severe penalty.

### **The Conclusion**

In our opinion, private interest also is absent at the citizens involved in criminal legal proceedings owing to professional qualities, official position, and also the persons participating in criminal procedural activity owing to a public obligation. It, first of all, participants of criminal legal proceedings and other persons representing in it interests of society (jurors), and also rendering assistance in production on criminal case ( the expert, the teacher, the translator). Through its activities they contribute to the realization of the public interest, so their rights and duties provided the procedural safeguards of justice.

Specially addressed the issue in question in relation to the witness. The performance of his legal duty to assist the justice does not exclude cases where the witness is interested in the outcome of the case. Therefore, the rights and legitimate interests are protected, not only guarantees justice, but also the procedural means to ensure the rights of individuals in criminal proceedings. So, for example, protecting the private interest of the witness from the invasion of his privacy, part 3 of Article 82 of the CPC RK gives him the right not to testify against himself, his relatives and his wife.

A separate group of participants in criminal proceedings, persons who have a criminal case, his legal interest. The accused, a suspect, victim, civil plaintiff and civil defendant always have in the criminal case his private interest, which is caused by certain personality traits that result from the commission of the offense under investigation, determining their procedural status. They make these participants essential subjects of the criminal process. Social interest in relation to their self-interest as defined lines of possible behaviors that participants in criminal proceedings may be taken in whole or in part. But even fully coincide with the public interest, personal interest is not absorbed by them. It only shows that the interests of the individual in this case are social in nature. And the rights and obligations of such participant provided not only by special procedural means and methods, but also guarantees of justice.

Among the participants in the criminal proceedings are also individuals who represent and protect the interests of other participants of the proceeding. It defender of suspect and the accused, their legal representative, and a representative of the victim, civil plaintiff and civil defendant. Despite the fact that the criminal-procedural activity defender aims to promote the interests of his clients, in criminal justice he pursues interests of society. To criminal-procedural activities of defender inherent a public interests. The word "public" - derived from Latin, it means "national". In the literature it is treated as "social, not private". It is advisable to use the term in relation to the activities of the defender in this sense. About the public nature of the defense suggests the following. Firstly, the need to implement the activity in question is due to public demand to protect innocent citizens from the use of state enforcement of criminal and criminal-procedural nature. Secondly, the defense attorney does not appear as an individual person, but as a member of the organization which accept the performance of the very important role in the law enforcement mechanism - providing qualified legal assistance to citizens (paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan). He is required to act within the law of the profession in which the requirements are presented to him much higher than to ordinary citizens. Thirdly, an implicit admission of the public of the defender's legal status shows: the prohibition to refuse to accept a lawyer to protect themselves, the possibility of the suspect and the accused legal aid at the expense of the state. Consequently, the duty of the defense to carry out their activities in accordance with the requirements of the client is limited to the scope of public interest expressed in the law.

In contrast from the defender to the representative is relevant presumption of legitimacy of interest of the participant of criminal proceedings. His procedural position must fully and in all cases correspond to the position, electing a person whose interests he represents.

Violation of the procedural rights of the defender and at the same time leads to the violation of the rights of defense of the suspect and the accused, which he must provide competent legal assistance. Consequently, the rights and obligations of

the defender (representative), as well as the rights of other participants of the criminal proceedings are subject to the rights of the individual in criminal proceedings.

The right restrictive orientation of coercion in criminal procedure follows from a general axiom of the state coercion, where as a main goal exclusively state interests act. The Kazakhstan scientist A.N.Akhpanov considers that, "the state coercion should be considered as one of methods of regulation of the public relations. Such understanding of essence of coercion allows marking out in it the most characteristic, main quality uniting both target and tool purpose of enforcement powers". The author understands as target purpose "set of the tasks solved by means of the state coercion. The tool purpose of coercion causes a choice and operating by specific means and methods for the purpose of achievement of available tasks" [7, page 34].

The appeal to means of criminal procedure coercion is dictated by objective circumstances. The citizen subjected to the state coercion in the sphere of criminal trial, shall realize the obligation to follow the instruction established by the law or coercion.

Interests of the personality as interests of a certain participant of criminal trial express his need for security of vital values for it. Charged and suspected of crime execution need protection against the shown suspicion and accusation in crime execution and providing their rights and freedoms against unreasonable restriction as a result of application of measures of criminal procedure coercion. The victim needs to provide access to justice and compensation of the harm done by a crime. The right to giving and maintenance of the civil action in criminal trial and the right of protection to it shall be guaranteed to the civil claimant and the civil respondent, respectively.

Thus, the personality needs legal support, and its legal properties (value) not. In legal literature for determination of the legal characteristic of the personality in criminal procedure various concepts are used: legal provisions or procedural status.

During criminal procedure activities shall be provided not only procedural, but also the substantive rights and legitimate interests of participants of criminal trial. For this purpose the law obliges court, the prosecutor, the investigating officer and the investigator to work so that the diversity, completeness and objectivity of research of facts of the case weren't broken.

In the President's letter of the Republic of Kazakhstan - the Leader of the nation N.A. Nazarbayev to the people of Kazakhstan of December 14, 2012 Strategy "Kazakhstan-2050" the New political policy of the taken place state it is accurately fixed: "The most important question of policy of law is implementation by citizens of the right to judicial protection which is guaranteed by the Constitution.

For this purpose it is necessary to simplify process of administration of law, to relieve it of excessive bureaucratic procedures. In case of active implementation of new information technologies it is simple to make it.

At the same time for the purpose of unloading of vessels it is necessary to continue development of institutes of extrajudicial dispute settlement. It is necessary to provide such mechanism in case of which the dispute resolution on insignificant questions will be carried out extra judicially.

The authority of judicial authority is undermined because of unexecuted judgments. With respect thereto measures for cardinal correction of this situation" [8, page 36] shall be taken.

In our country reform of the criminal procedure legislation already began. The draft of the Code of penal procedure of the Republic of Kazakhstan prepares. Providing the rights of the personality and the constitutional guarantees in criminal trial of the Republic of Kazakhstan shall specifically orientate on the Constitution and the President's letter of the Republic of Kazakhstan.

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