



Some Issues of Ensuring of Procedural Guarantees of Participants of the Criminal Process of the Republic of Uzbekistan

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Abstract: *The issues of ensuring the rights and guarantees of such participants in the criminal process as the suspect and the accused are relevant for research at all times. Guarantees are the means in accordance with which the execution of the purpose of criminal proceedings is ensured. In order to further expand the guarantees of such participants as the suspect and the accused, the article analyzes the concept and significance of the procedural guarantees of the participants in the criminal process, in particular the suspect and the accused; their legal status; analysis of the rights and guarantees of the data of participants in the criminal process. The article applies the methodology of comparative legal analysis. In particular, the norms of national legislation are analyzed, as well as the norms of foreign countries on these issues (Russia, Kazakhstan and Germany). Based on the results of the analysis, proposals were developed to improve the guarantees of the rights and freedoms of suspected and accused persons in the criminal proceedings of the country. These proposals can be used to make amendments and additions to the criminal procedure legislation of the country.*

Keywords: *criminal procedural guarantees, participants in the criminal process, the suspect, the accused, the legal status of the participants, the rights and freedoms of the participants in the criminal process, defender, detention, court, court sanction.*

I. INTRODUCTION

According to Article 13 of the Constitution of the Republic of Uzbekistan, a person, his rights and freedoms, honor, dignity and other inalienable rights are proclaimed the highest value; their recognition, compliance and protection are the responsibility of the state [1]. In accordance with Article 2 of the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter - the CCP of the Republic of Uzbekistan), one of the objectives of the criminal procedure legislation is to expose the perpetrators and ensure the correct application of the law so that everyone who commits a crime is subjected to fair punishment and not a single innocent prosecuted and convicted. The procedure for criminal cases established by the criminal procedure legislation should help strengthen the rule of law, prevent crime, protect the interests of individuals, the state and society [2].

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These regulatory requirements oblige officials conducting a preliminary investigation of a criminal case to take measures to provide the accused with the opportunity to exercise procedural rights and legitimate interests by all means and means not prohibited by law.

II. LITERATURE REVIEW

In criminal proceedings, there is such a notion as a guarantee. The guarantee comes from the French word "garantir" and means to provide, protect. In turn, regarding criminal procedural guarantees, it should be noted that lawyers have not yet been able to develop clear signs of this definition.

Some authors believe that criminal procedural guarantees are a "system of legal remedies". Another sees this definition in the form of "legal means". Still others are convinced that these are "means, methods, and conditions." Fourth conclude that under the procedural guarantees should be understood as "all criminal procedural law". However, on the question of what these means are, what is their essence and content, various opinions are expressed. [12]

Kurushin S.A. defines criminal procedural guarantees as established by applicable national (constitutional and criminal procedural) legislation and generally accepted norms of international law, provided by the state, especially legal means and methods that create equal opportunities for all participants in criminal proceedings to exercise their rights and conditions for fulfillment tasks of criminal proceedings. [10]

Iseev D.R. believes that criminal procedural guarantees should be understood as a system of legal means for successfully solving the tasks of justice and protecting the legitimate interests of all persons involved in the case, which ensures strict observance of the forms and principles of legal proceedings established by law, fixing the rights of participants in the process and the conditions for their implementation, in the form exact performance of duties by officials and bodies carrying out criminal procedure activities. [8]

Motorin A.S. offers the following wording of this definition: "Criminal procedural guarantees are means established by the procedural law that ensure that criminal proceedings fulfill their purpose and that the rights of the subjects of the criminal process are respected." [11]

Consequently, it can be argued that the criminal procedural guarantees are the means in accordance with which the execution of the purpose of criminal proceedings is ensured.

III. DISCUSSION AND ANALYSIS

This article analyzes the procedural guarantees of individual participants in the criminal process, namely, the suspect and the accused. In accordance with the Code of Criminal Procedure of the Republic of Uzbekistan (hereinafter - the Code of Criminal Procedure of the Republic of Uzbekistan), a suspect is a person in respect of whom there is evidence of a crime committed by him, but insufficient to attract him to participate in the case as an accused (Article 47 of the Code of Criminal Procedure). In turn, the accused is recognized as a person in respect of whom, in accordance with the procedure established by the Code of Criminal Procedure, a decision has been issued to attract him to participate in the case as the accused. In court, the accused is called the defendant, and after the verdict (conviction or acquittal) - respectively convicted or acquitted (Article 45 of the Code of Criminal Procedure).

The rights of the accused and suspected person and the corresponding procedure for criminal proceedings are regulated in the Code of Criminal Procedure of the Republic of Uzbekistan. In accordance with Articles 46 and 48 of the aforementioned act, the accused, the suspect have the right to know what he is accused of (suspected of); on a phone call; have a defender and meet him in private without limiting the number and duration of visits; give evidence on the charges against him (suspicion) and any other circumstances of the case, or refuse to testify and be notified that his testimony can be used as evidence in a criminal case against him; use the native language and translation services; to exercise personally his right to defense; file petitions and challenges; provide evidence, etc.

Among the above rights of the accused, the suspect, the right to defense should be highlighted. The right of a suspect, accused, defendant, convicted, acquitted of defense is one of the fundamental principles of criminal proceedings, guaranteeing the adoption of a legal, reasonable and fair decision in the case [5].

Considering the issue of ensuring the suspect and the accused the right to defense, one cannot but note the reforms taking place in the country. So, in particular, the Decree of the President of the Republic of Uzbekistan "On measures to further reform the judicial system, strengthening guarantees of reliable protection of the rights and freedoms of citizens" dated October 21, 2016 No. DP-4850 was adopted, in accordance with which the deadline for the application of measures was reduced restraint in the form of detention and house arrest, as well as preliminary investigation from 1 year to 7 months; in addition, in order to continue to expand the application of the Habeas Corpus Institute, the right to issue sanctions for the arrest of mail and telegraphic items and for exhumation was transferred to the courts. Also, in improving the above factor, the President of the Republic of Uzbekistan adopted the Decree "On Additional Measures to Strengthen Guarantees of Citizens' Rights and Freedoms in Judicial

Investigation Activities" dated November 30, 2017 No. DP-5268, in accordance with which evidence obtained with violation of rights is recognized as unacceptable citizens with the use of torture, psychological and physical pressure and other cruel, inhuman forms of treatment, in violation of the rights to defense and the right to use an interpreter. An important innovation in accordance with this act was the provision to the defender of the right to collect and present evidence in a criminal case, which should be attached to the materials of the criminal case, as well as to be checked and evaluated during the inquiry, preliminary investigation and consideration of the criminal case in court.

There are two ways to protect in criminal proceedings: the person who is being prosecuted can defend his rights and legitimate interests, or a professional lawyer who acts as a defender.

Zimarin A. considers that independent protection by the suspects and the accused of their rights and interests is considered to be ineffective, poor-quality and not capable of guaranteeing full protection to themselves. One cannot disagree with this point of view, because in most cases these persons do not have a legal education or experience in this field. In his opinion, the defense of an experienced lawyer is devoid of the above shortcomings, and that is why the suspect and the accused are given the right to use a professional lawyer [7, p. 255-256]. But it should be noted that the suspect himself, the accused can choose a remedy and a lawyer.

The right to defense is a constitutional guarantee. So, according to article 116 of the Constitution of the Republic of Uzbekistan, the accused is guaranteed the right to defense. Moreover, the right to professional legal assistance is guaranteed at any stage of the investigation and legal proceedings [1].

In accordance with the current criminal procedure legislation, a defender is allowed to participate in the case at any stage of the criminal process, and when a person is detained, from the moment his right to freedom of movement is actually restricted (Article 49 of the Code of Criminal Procedure).

It should be borne in mind that in cases of detention of a person on the grounds provided for in Article 221 of the Code of Criminal Procedure, he becomes suspected from the moment of actual restriction of his right to freedom of movement, although the detention protocol is drawn up after the detainee is brought to the police or other law enforcement bodies. From this moment on, the detainee enjoys all the rights of the suspect. Consequently, in such circumstances, it is impossible to question him as a witness, to conduct investigative actions with him without announcing a decision to involve him in the case as a suspect, explaining his rights and obligations [5].

As a comparison, it should be noted that in accordance with the Code of Criminal Procedure of the Republic of Kazakhstan (hereinafter - the Code of Criminal Procedure of the RK) [4],

a defense lawyer is entitled to participate in criminal proceedings from the moment a person obtains the status of a witness who has the right to defense, a suspect, an accused, as well as at any subsequent time criminal procedure (Article 66 of the Code of Criminal Procedure of the Republic of Kazakhstan). Here, such a participant as “a witness entitled to defense” is of interest. The notion of a witness entitled to defense is given in the disposition of Art. 78 of the Code of Criminal Procedure of the Republic of Kazakhstan, which determines the general status of a witness. Part 5 of the said norm contains the following provision: “... in the event that the person indicated in the application and the report of the criminal offense as the person who committed it or against him is testified by a witness participating in the criminal process, but not to that person procedural detention is applied or the decision on recognition of him as a suspect is not issued, then it acquires the status of a witness having the right to defense ...”. It is of interest to introduce this institution in the criminal procedure legislation of our country, since this institution will serve as an even greater guarantee of the rights and freedoms of such a participant as a witness who becomes a suspect. In accordance with the Code of Criminal Procedure of the Republic of Uzbekistan, the witness is given the opportunity to use the legal assistance of a lawyer (Article 661 of the Code of Criminal Procedure of the Republic of Uzbekistan), however, the introduction of a witness advocate who has the right to defense provides for a wider range of rights and mechanisms for protecting the rights and freedoms of this participant in the criminal process.

Also of interest is the issue of the mandatory participation of a criminal defense counsel, which is provided for in article 51 of the Code of Criminal Procedure of the Republic of Uzbekistan. In particular, paragraph 4 of the aforementioned article provides for the mandatory participation of a defense counsel for persons suspected or accused of committing crimes for which life imprisonment may be imposed as a punishment. It should be noted that this rule requires a change. So, as a comparison, it should be noted that according to the Code of Criminal Procedure of the Russian Federation, the participation of a defender is mandatory if the person is accused of committing a crime for which a sentence of imprisonment for a term of more than fifteen years, life imprisonment or the death penalty may be imposed (paragraph 5 Article 51 of the Code of Criminal Procedure of the Russian Federation) [3]; while this period in accordance with the legislation of the Republic of Kazakhstan is a period of more than ten years. We consider it appropriate to set forth paragraph 4 of Article 51 of the Code of Criminal Procedure of the Republic of Uzbekistan as follows: “persons accused of committing a crime for which punishment in the form of imprisonment for a term exceeding ten years or life imprisonment may be imposed”, which will serve as an additional guarantee of the rights and freedoms of individuals in respect of which criminal proceedings are ongoing.

In addition, one of the important rights of a suspect and accused person is the right to liberty and security of person. In accordance with article 25 of the Constitution of the Republic of Uzbekistan [1], everyone has the right to liberty and security of person. No one may be arrested or detained other than by law. This norm is developed in the criminal procedure

legislation - in principle, the protection of the rights and freedoms of citizens (Article 18 of the Code of Criminal Procedure of the Republic of Uzbekistan) [2]. According to this principle, no one may be arrested or detained other than on the basis of a court decision. The court and the prosecutor are required to immediately release any person who is illegally deprived of their liberty or detained or held in house arrest beyond the time limit prescribed by law or a court sentence.

One of the procedural actions restricting a person’s freedom in criminal proceedings is detention. Detention consists of short-term imprisonment of a person suspected of committing a crime, in order to prevent his criminal activity, to prevent escape, concealment or destruction of evidence by him. Moreover, detention may be carried out both before the initiation of a criminal case, and after its initiation. If the detention is carried out after the initiation of a criminal case, then its implementation is allowed only by order of the inquiry officer, investigator or prosecutor. Nevertheless, it should be noted that in accordance with the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (paragraph 5.15), any person arrested or detained under a criminal charge must have the “right so that a decision can be made as to the legality of his arrest or detention, to be urgently brought before a judge or other official authorized by law to perform such a function” [6]. At the same time, it should be noted that in a number of countries the procedural action - detention, is authorized by the court. For example, German law distinguishes between detention at the scene of a crime (in flagrante delicto) and detention on a court order. If there are grounds for issuing a detention warrant, or if the accused did not appear on the subpoena of a judge or prosecutor, the judge may also issue a special order forcing the accused to appear in court (Vorführungsbehl). The judge issues a warrant of detention (Haftbefehl) in the event that there is serious evidence against the suspected offender (dringender Tatverdacht). [9]

In order to further expand the guarantees of the rights and freedoms of both detained and suspected persons, it is proposed that the court become the only body that must pre-authorize detention in all cases except detention at the crime scene and other exceptional cases, to verify the legality and validity of detention, in if it was committed without the prior sanction of the court, as well as sanction any other restrictions on human rights in criminal proceedings.

In addition, returning to the issue of ensuring the right to defense of a suspect and an accused person, it is proposed to provide for a procedural procedure in accordance with which the persons conducting a preliminary investigation will be required to familiarize themselves with the available materials of the defense attorney from the moment a decision is made to involve the person as a suspect. Currently, according to article 375 of the Code of Criminal Procedure, recognizing the evidence collected as sufficient to draw up the indictment, the investigator announces to the accused and defense counsel that the preliminary investigation has been completed,

explains to them the right to familiarize themselves with all the materials of the criminal case and provides them with a case for review.

IV. CONCLUSION

Based on the above analysis, we offer the following changes and additions to the criminal procedure legislation of the Republic of Uzbekistan.

1. Implement in the list of participants in criminal proceedings such a participant as “a witness with the right to defense”. The introduction of this institution will serve as an even greater guarantee of the rights and freedoms of such a participant as a witness passing into a suspect.

2. Paragraph 4 of the Article 51 of the Code of Criminal Procedure of the Republic of Uzbekistan (Mandatory participation of a defense counsel) should be amended as follows: “persons accused of committing a crime for which punishment in the form of imprisonment for a term of more than ten years or life imprisonment may be imposed”, which will serve as an additional guarantee of the rights and freedoms of persons in respect of whom criminal proceedings are being conducted.

3. In order to further expand the guarantees of the rights and freedoms of both detained and suspected persons, it is proposed that the court become the only body that must pre-authorize detention in all cases except detention at the crime scene and other exceptional cases, to verify the legality and validity of detention, if it was committed without the prior sanction of the court, as well as sanction any other restrictions of human rights in the criminal process.

It should be noted that large-scale reforms are underway in the country to further improve the guarantees of the rights and freedoms of suspected and accused persons. For these purposes, the proposed changes and additions to the criminal procedure legislation of the country also serve. Indeed, the highest value is a person, his rights and freedoms.

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