

About the System of Procedural Guarantees to Ensure the Rights of Participants in Criminal Proceedings

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Abstract— *At present, one of the most pressing problems in Uzbekistan is as follows and in the majority of states on the way of democratization of public life, where the main value is the human being, the provision of reliable and effective guarantees of rights and freedoms of the individual, its protection, especially in the sphere of criminal proceedings, running in the atmosphere of high tension and negative emotional and psychological load for the majority of participants of criminal proceedings, remains. It cannot be argued that the problems of ensuring and implementing human rights guarantees, including the process of its participation in criminal proceedings, have previously not attracted the attention of legal scholars or have been insufficiently researched in depth and comprehensively*

Keywords— *criminal procedural guarantees, evidence, legislations, rights of participants*

I. INTRODUCTION

Modern problems of legislative consolidation and organizational-legal questions of realization of criminal procedural guarantees of observance of the rights and freedoms of persons involved in the sphere of criminal proceedings, problems of legislative regulation of criminal procedural legislation of the international standards of administration of justice in criminal cases, despite its importance still remain insufficiently theoretically developed, as evidenced by the small number of scientific publications and researches within the framework of dissertations.

At the same time, it should be noted that there is a certain lag between scientific thought and the legislative, executive and judicial branches of power, which is wrong, since the State can ensure the protection of human, civil and individual rights and freedoms only with the help and by means of those laws and regulations that were prepared on the basis of in-depth theoretical research and practical recommendations developed on their basis.

Communication between state and society takes place through many channels, but the state's impact on civil society comes mainly from legal regulation, although it is not the only lever for managing society. The state, being a form of public system, gives it a certain qualitative state. Civil society and State power are always in constant interaction and in some kind of confrontation with each other, which is not antagonistic in Uzbekistan.

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Society and its citizens, as objects of power, want to feel protected from the arbitrariness of power, to have a sufficient measure of freedom, independence, opportunities for creative development of their abilities.

It can be concluded from the above mentioned thesis that the laws emanating from the state are "mature" and meet the requirements and interests of modern society, ensuring its progressive development. Thus for realization of the accepted laws the effective decision of questions of the organization of activity of state structures is required, and also wide carrying out of work on moral and legal socialization of officials, understanding by them of the letter and spirit of laws, in this connection laws should consider this important point.

Issues related to the protection of the rights of the individual are of the greatest urgency and significance in the area of criminal proceedings in connection with the judicial reform under way in Uzbekistan, the aim of which is to create a highly effective system of criminal proceedings capable of combining the activities of the country's law enforcement agencies in preventing and solving crimes, investigating and resolving criminal cases with the protection of the rights, freedoms and legitimate interests of persons involved in criminal proceedings.

Constitutional and other guarantees of these rights are the basis for ensuring the rights of the individual. In legal science, there is a generally accepted division of guarantees of individual rights into general (resulting from the socio-economic, political and ideological conditions of society) and special (directly legal guarantees) guarantees.

Among the authors who studied the problem of criminal procedural guarantees, both in the Soviet and current periods, there are differences in the number of procedural means included in the concept of procedural guarantees. Formulating the definitions of the phenomenon in question, they come to the conclusion that it should be understood as a system of procedural norms. But the question of what elements should be included in it remains debatable.

Kokorev L.D. and Lukashevich V.Z. were included in the system of legal guarantees:

- (a) The principles of justice;
- b) the procedural norms fixing the rights and obligations of the participants in the proceedings;
- c) the procedural form of justice in criminal cases;
- d) activities of participants in court proceedings;
- (e) The system for verifying the legality and validity of procedural actions and decisions.

The third, fourth and fifth elements contain a legal and organizational component. Expressively and concisely concerning the system of guarantees of personal rights in criminal proceedings, M.M. Vydrya spoke at the beginning of the second half of the last century. He believes that the system of guarantees of personal rights gives an opportunity to realize rights and legitimate interests, at the same time protects the person, any participant of criminal proceedings from arbitrariness of bodies of investigation and law and order, as it is the guarantees that establish the borders and legal conditions of possible actions of officials.

Other scientists have a similar position. Thus, M.V. Parfenova states that "the system of criminal procedure guarantees not only provides an opportunity for realization of rights and legitimate interests of a person, but also protects them from still occurring cases of arbitrariness of bodies of preliminary investigation".

The system of procedural guarantees of the rights and legitimate interests of the individual is conditioned by the fact that in criminal proceedings, the individual's relationship with the State may be

accompanied by intensive coercive action by the latter. In this connection. A.S. Stroykova emphasizes that the significance of procedural guarantees in criminal proceedings is particularly high, since "it covers the sphere of acute conflict relations related to the use of measures of procedural coercion (detention, imprisonment, dismissal from office, etc.), which result in the restriction of constitutional human rights and freedoms".

N.I. Kapinus defines the system of procedural safeguards in criminal proceedings as the organic integrity of procedural means and methods that interact with each other in ensuring the rights and legitimate interests of participants in criminal proceedings to establish the truth in a criminal case.

With regard to the content of the system of guarantees under consideration, different points of view have also been expressed in the legal literature.

A.V. Grinenko believes that the system of criminal procedure guarantees accumulates three components:

1. criminal procedural form;
2. the principles of criminal procedure;
3. rights and freedoms of the participants of the process established by law.

The author's team of lectures on criminal proceedings edited by V.I. Kachalov and O.V. Kachalova highlights the following procedural guarantees of the accused at the preliminary investigation:

1. rights of subjects;
2. obligations established by law aimed at protecting the legitimate interests of the accused;
3. The form of criminal procedure;
4. The principles of criminal procedure.

Yu.A. Ivanov includes in the system of procedural guarantees:

1. the criminal procedural form;
2. principles of justice;
3. the system of procedural coercion;
4. procedure of control over legality of procedural actions;
5. procedural sanctions.

It should be noted that it does not include rules stipulating the rights and obligations of the participants in the process, but at the same time, unlike others, it additionally highlights procedural sanctions.

G.P. Khimicheva, O.V. Khimicheva and A.I. Borodulin note: "It is hardly correct to reduce criminal procedural guarantees to any one means. They represent a multilevel system".

In their opinion, this system is included:

1. the criminal procedure form;
2. the principles of criminal procedure;
3. procedural rules setting out the rights and obligations of participants in criminal proceedings;
4. verification of the legality and validity of procedural actions and decisions (departmental control, prosecutor's supervision and judicial control);
5. content and power nature of activities of state bodies and officials involved in criminal proceedings;
6. the obligation of bodies and officials carrying out criminal proceedings to explain the rights of persons involved in the case and to ensure the possibility of exercising these rights, etc.

The latter two elements distinguish the system of this group of authors from the other procedural guarantee systems mentioned above.

R.H. Yakupov takes a similar position, stressing that guarantees have an important feature of their security nature: their multilevel system.

He believes that it includes the procedural steps prescribed by law:

1. an investigator, an inquiry officer, an organ of inquiry, a court and a judge in whose proceedings a criminal case is pending;
2. state bodies and officials performing their control and supervisory functions.

As we can see, the R.H. system... Yakupova's system is somewhat narrowed, unlike that of other researchers, as its classification is based solely on the procedural actions of officials involved in criminal proceedings.

A.S. Stroykova, considering guarantees of the rights of the accused, refers to them:

1. Procedural norms that establish the subjective rights of the accused;
2. procedural rights, which correspond to them;
3. duties of officials and bodies conducting legal proceedings, their procedural activity and the procedural activity of the defense counsel in the course of which they receive their implementation.

It is not quite clear what the author means by such a guarantee as correspondent procedural rights. Apparently, these are the rights of the accused, which are not included in Art. 47 of the Criminal Procedural Code of the Russian Federation, but are provided by in other rules of criminal procedure law. Despite this observation, we believe that the abovementioned system of procedural guarantees of the accused undoubtedly fits into the general system of guarantees of participants of criminal proceedings.

Some authors, especially from the Soviet period, did not consider guarantees as a system of procedural means, including the content of guarantees, for example, the rights and obligations of participants in criminal proceedings, operating procedures of public authorities or norms of criminal procedure law, procedural duties of officials and bodies conducting criminal proceedings, legal proceeding, code of practice and procedure in tandem, criminal procedure principles, legal form.

In 1976, A.P. Gulyaev wrote that "in the Soviet criminal procedure science, procedural guarantees are understood as all norms of criminal procedure law that ensure the implementation of the tasks of socialist justice, protection of rights and legitimate interests of all persons, organizations, institutions and enterprises involved in criminal proceedings". V.B. Alekseev demonstrates a similar understanding and P.E. Kondratov.

A similar position is taken by some modern researchers. F.N. Bagautdinov believes that criminal procedure guarantees in the broad sense can be understood as all norms of the criminal procedure law. Therefore, the entire criminal process as a whole is a guarantee of the rights and interests of the individual. At the same time, in his opinion, it is necessary to distinguish criminal procedural guarantees in the narrow sense - the most important, common for all or part of the participants in the process provisions of the criminal procedural law.

This is what the author considers to be the most important rules:

- a. The principles of criminal procedure;
- b. an enforcement act that defines the legal status of a person as a participant in a trial (e.g. an order to be charged as a defendant);

- c. norms determining the procedural position of a participant in the process, i.e. setting out his subjective rights and obligations;
- d. Norms regulating the right to defense;
- e. Norms regulating the familiarization of participants in criminal proceedings with the materials of the criminal case after the investigation is completed.

As for the rules defining the procedural position of the participant, L.M. Volodina, unlike other authors (F.N. Bagautdinov, A.I. Borodulin, V.I. Kachalova, O.V. Kachalova, L.D. Kokorev, E.F. Kutsova, G.P. Khimicheva, O.V. Khimicheva), sticks to the polar point of view; criminal procedural guarantees cannot be confused with subjective rights vested in the subjects of the process; securing the rights of the participants of the process in the law is not yet a guarantee that these rights will be effectively realized. As an example, she cites one of the rights of the accused - the right to a defence - and immediately asks the question: "How is that right ensured, are there guarantees that make it possible to exercise the right to defence?". Proceeding from L.M. Volodina's judgments, we conclude that it is the ways to ensure the realization of the rights of the participants in the process, in this case - the right to defense, and are the very guarantees of the criminal process.

This position is not new. Thus, in 1967, V.Z. Lukashevich came to the conclusion that criminal procedural guarantees are the duties of bodies of inquiry, investigation, prosecution and court aimed at protecting the interests of the accused, as well as at explaining and ensuring the actual exercise of their rights by the latter. The author stresses, however, that the means set out in the law provide the accused with an effective opportunity to obtain the restoration of the violated interests and to raise the issue of the responsibility of officials.

One decade later, this opinion was supported by E.G. Martynchik and V.E. Yurchenko, disputing the inclusion of the rights of the process participants in the procedural guarantees on the grounds that the presence of rights does not guarantee anything, since it is the rights that are the object of guarantees.

In criminal proceedings, the activity of a suspect, accused person, victim, civil plaintiff, witness, as well as an understandable one, is directly dependent on the discretion of officials vested with authority. A subject involved in criminal proceedings should be aware of his or her rights, which determine his or her legal position. The law of criminal procedure lays down the obligation to clarify, as well as to ensure the rights of persons involved in a case, to the investigator and the person conducting the initial inquiry, elevating this provision to its basic principles - the principles of criminal procedure.

In this regard, the system of procedural safeguards proposed in the L.M. Volodina, favourably differs from systems of other authors.

It includes:

1. Obligations of bodies and officials carrying out proceedings in a criminal case in terms of realization of rights of its participants;
2. The right to appeal against the actions and decisions of the bodies of preliminary investigation, to the court, prosecutor and the head of the investigation body;
3. The right to appeal and cassation by persons interested in the outcome of the case;
4. Supervisory proceedings;
5. Criminal case proceedings in view of new or newly discovered circumstances.

Without going into deep scientific analysis, we emphasize that the existence of the rights of the process participants, especially on the part of the prosecution and the defence, is undoubtedly not a guarantee for their

successful implementation. Formulating the concept of criminal procedure guarantees, we have come to the conclusion that it also includes the legitimate activities of state bodies and officials in the implementation of legal means, which includes the rights of subjects. Existence of rights without their realization is meaningless and loses any sense, and also grossly violates the principle of protection of human and civil rights and freedoms in criminal proceedings.

The exercise of the rights of suspects, accused persons, victims, civil plaintiffs and civil defendants is the duty of the court, the investigator and the person conducting the initial inquiry to explain these rights in an accessible form, i.e. the former goes hand in hand with the latter. That is why the position of individual scientists (L.M. Volodina, E.G. Martynchikova, V.E. Yurchenko and V.Z. Lukashevich) that criminal procedure guarantees cannot be mixed with subjective rights is controversial. We are impressed by the point of view of those legal scholars who include both rights of citizens and obligations of officials on realization of these rights into the system of criminal procedure guarantees.

Moreover, as procedural guarantees, the subjective rights of participants in criminal proceedings do not act separately from each other, but as a whole. In such an aggregate, some rights, by virtue of their substance, provide and guarantee the reality of others.

It is possible to define a specific legal means as a procedural guarantee only within the framework of one or more homogeneous legal relations aimed at achieving a certain result significant for the participant of the criminal proceedings. Depending on the tasks to be solved, the procedural means (rules of law), which play the role of the main tool, and auxiliary means, i.e. serving as procedural guarantees in this legal relationship, are defined. If there is a need for a procedural guarantee, it becomes the main content of the new legal relationship, and its place is taken by another procedural guarantee.

It is difficult not to agree with the statement of Yu. In dynamics, they exist only as a system of ensuring individual rights, in which the rights of citizens, duties of officials, principles of criminal proceedings, etc. are realized in interaction. A precondition for the interaction of individual elements of the system of procedural guarantees is a unified target-oriented legal field of their action, i.e. the purpose of criminal proceedings.

The basis for interaction is the multifunctional nature of procedural guarantees, their ability to simultaneously provide both basic and auxiliary tasks. And although each procedural guarantee has its own purpose, all of them together through the protection and defense of individual rights ensure the achievement of the truth in a criminal case.

Thus, despite the polarized scientific points of view on the safeguards system, we emphasize once again that procedural safeguards are a system of legal means of security, and not some separate procedural means. The social value of this system lies in the fact that it directs the officials conducting criminal proceedings to refuse declarative character, to shift the center of gravity to real ensuring the rights of the individual in criminal proceedings provided by the criminal procedure law.

In our opinion, based on the above numerous interpretations, it is reasonable to consider the system of procedural safeguards in a broad and narrow sense.

In the broad sense, the system should include the following components, which vary considerably in content, but together are closely interacting elements:

- i. principles of criminal procedure;

- ii. the procedural form of criminal proceedings;
- iii. rights and obligations of participants in the process;
- iv. duties of bodies and officials to implement the rights of citizens involved in criminal proceedings.

In the narrow sense, the system of procedural guarantees to ensure the rights of participants is formed by those norms (sanctions), which provide for adverse consequences that occur in the event of violation by a participant of the prescriptions, restrictions and prohibitions established for its procedural status (removal and application of disqualifications for officials; recognition of evidence as inadmissible; annulment or modification of procedural decisions, etc.).

Unfortunately, procedural guarantees of the rights of participants of criminal proceedings in their systematic understanding have not been normatively fixed in the criminal procedure legislation, but remain only the subject of theoretical research and scientific discussions, mainly among foreign scientists.

Despite the numerous publications on this topic in special legal literature, the problems of guaranteeing the rights of participants in domestic criminal proceedings remain unjustifiably out of sight of our researchers and, accordingly, require the initiation of scientific developments with a view to a deep and comprehensive study of the current state of law enforcement practice of ensuring procedural guarantees of the rights of each participant in criminal proceedings in Uzbekistan.

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