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# THE PRINCIPLES OF CRIMINAL TRIAL IN THE SYSTEM OF GUARANTEES OF THE RIGHTS AND LEGITIMATE INTERESTS OF THE SUSPECT AND DEFENDANT

Protecting citizens from crime is the most important function of any state. The object of it is as persons who have suffered from unlawful encroachments, in respect of which urgent action is required to take government measures to uncover, investigate and judicially resolve criminal cases, as well as illegally subject to criminal prosecution. From this position, both groups of people are victims of criminal encroachment, involved in the sphere of criminal jurisdiction. The principles of criminal procedural law, along with the categories of the subject and method of legal regulation, are one of the categories of a very general nature and expressing the essence of the criminal process. This article discusses the principles of criminal proceedings relating to and ensuring the rights, freedoms and legitimate interests of suspects and defendants in the criminal proceedings of the Republic of Kazakhstan. To achieve the goal and objectives, an analysis of the scientific principles of the criminal process has been carried out. Some recommendations on introducing amendments to the criminal procedure legislation in the field of ensuring the rights, freedoms and legitimate interests of suspects and accused are given. Separately, the essence and content of the principle of personal immunity, the principle of the presumption of innocence, and the principle of ensuring the right to defense of the suspect and the accused are examined and analyzed. The point of view is substantiated, according to which the principles of criminal procedure should be essentially a kind of concept of building the activities of state bodies and officials conducting the proceedings on the protection of the rights and legitimate interests of an individual in criminal proceedings.

**Key words:** criminal procedure legislation; criminal trial; principles; bodies of preliminary investigation; court; prosecutor; lawyer; participants of criminal procedure; suspect; defendant; presumption of innocence; rights, freedoms and legitimate interests; inviolability of the person; right of protection.

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## Күдікті мен айыпталушының құқықтары мен заңды мүдделерін қорғаудағы қылмыстық сот өндірісінің қағидалары

Азаматтарды қылмыстан қорғау – кез келген мемлекеттің маңызды функциясы. Оның объектісі заңсыз қол сұғушылықтан зардап шеккен, оларға қатысты қылмыстық істерді ашу, тергеу және сот арқылы шешу бойынша мемлекеттік шараларды жедел қабылдау талап етілетін, сондай-ақ қылмыстық жауапкершілікке заңсыз тартылған адамдар болып табылады. Осы ұстанымнан бастап сол және басқа да адамдар тобы қылмыстық юрисдикция саласына тартылатын қылмыстық қол сұғушылықтың құрбандары болып табылады. Қылмыстық іс жүргізу құқығының принциптері, құқықтық реттеудің мәні мен әдісінің категорияларымен қатар, шекті жалпы сипаттағы және қылмыстық процестің мәнін білдіретін санаттардың бірі болып

табылады. Аталған мақалада Қазақстан Республикасының қылмыстық процесінде күдіктілер мен айыпталушылардың құқықтарын, бостандықтары мен заңды мүдделеріне қатысты және оларды қамтамасыз ететін қылмыстық сот өндірісінің принциптері қарастырылады. Мақсат пен қойылған міндеттерге қол жеткізу үшін қылмыстық процесс принциптерінің ғылыми тәсілдеріне талдау жүргізілді. Күдіктілер мен айыпталушылардың құқықтарын, бостандықтары мен заңды мүдделерін қамтамасыз ету саласында қылмыстық іс жүргізу заңнамасына өзгерістер енгізу бойынша кейбір ұсынымдар берілді. Жеке басқа қолсұғылмаушылық қағидасының, кінәсіздік презумпциясы қағидасының, сондай-ақ күдіктіге және айыпталушыға қорғану құқығын қамтамасыз ету қағидасының мәні мен мазмұны жеке қаралады және талданады. Қылмыстық процестің принциптері іс бойынша іс жүргізуді жүргізетін мемлекеттік органдар мен лауазымды адамдардың қылмыстық сот ісін жүргізуде жеке адамның құқықтары мен заңды мүдделерін қорғау жөніндегі қызметін құрудың қандай да бір тұжырымдамасы болуға тиіс деген көзқарас негізделеді.

**Түйін сөздер:** қылмыстық-процестік заңнама, қылмыстық сот өндірісі, қағидалар, алдын ала тергеу органдары, сот, прокурор, қорғаушы, қылмыстық процесс қатысушылары, күдікті, айыпталушы, кінәсіздік презумпциясы, құқықтар, бостандықтар мен заңды мүдделер, жеке басқа қолсұғылмаушылық.

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## Принципы уголовного судопроизводства в системе гарантий прав и законных интересов подозреваемого и обвиняемого

Защита граждан от преступлений – важнейшая функция любого государства. Объектом ее выступают как лица, пострадавшие от неправомерных посягательств, в отношении которых требуется срочное принятие государственных мер по раскрытию, расследованию и судебному разрешению уголовных дел, так и незаконно подвергшиеся привлечению к уголовной ответственности. С этой позиции и та и другая группа лиц являются жертвами преступного посягательства, вовлекаемыми в сферу уголовной юрисдикции. Принципы уголовно-процессуального права, наряду с категориями предмета и метода правового регулирования, являются одной из категорий, носящей предельно общий характер и выражающей сущность уголовного процесса. В данной статье рассматриваются принципы уголовного судопроизводства, касающиеся и обеспечивающие права, свободы и законные интересы подозреваемых и обвиняемых в уголовном процессе Республики Казахстан. Для достижения цели и поставленных задач проведен анализ научных подходов принципов уголовного процесса. Даны некоторые рекомендации по внесению изменений в уголовно-процессуальное законодательство в области обеспечения прав, свобод и законных интересов подозреваемых и обвиняемых. По отдельности рассматривается и анализируется сущность и содержание принципа неприкосновенности личности, принципа презумпции невиновности, а также принципа обеспечения подозреваемому и обвиняемому права на защиту. Обосновывается точка зрения, согласно которой принципы уголовного процесса должны быть по сути некоей концепцией построения деятельности государственных органов и должностных лиц, ведущих производство по делу, по защите прав и законных интересов личности в уголовном судопроизводстве.

**Ключевые слова:** уголовно-процессуальное законодательство, уголовное судопроизводство, принципы, органы предварительного расследования, суд, прокурор, адвокат, участники уголовного процесса, подозреваемый, обвиняемый, презумпция невиновности, права, свободы и законные интересы, неприкосновенность личности, право на защиту.

## Introduction

Human rights are the supreme value of a human civilization. The principle of respect for human rights as the leading beginning of legal activity became fundamentals of constitutionalism of the states not only in the European region, but also almost over the world. The international and regional organizations which appeared in the 20th century proclaimed the principle of respect for human rights as their purpose.

The Republic of Kazakhstan approves itself by the democratic, secular, constitutional and social state which supreme values are the person, his life, rights and freedoms (The Constitution of the Republic of Kazakhstan of August 30, 1995).

On the basis of the Legal Policy Concept of the Republic of Kazakhstan (point 2.9) for the period from 2010 to 2020 approved by the Presidential decree of the Republic of Kazakhstan No. 858 of August 24, 2009 (The Presidential Decree of the Republic of Kazakhstan of August 24, 2009), a main goal of the state is formation of the criminal procedure act based on recognition of the constitutional norms on the rights and personal freedoms, since the most important indicator of the state development is the protection efficiency of citizens` constitutional rights and freedoms, availability and transparency of justice. Therefore further realization of the fundamental principles of criminal trial directed to protection of the person`s rights and freedoms remains a priority of development of the criminal procedure law (Karatayev, 2015: 315-318)

The solution of this task gains extremely important value in the sphere of the criminal procedure activity which is inevitably connected with constraint of the person`s constitutional rights within the permit of the law. Criminal trial is the sphere of the state activity where the person`s rights are affected most noticeably. The application of various measures of criminal procedure coercion is possible here; the issue of the fate of the person facing criminal prosecution, his freedom and even his life is resolved.

It is not by chance that among violations of standards of the criminal procedure law by some scientists are distinguished for a special research connected with non-compliance of constitutional rights and freedoms of the person and citizen in criminal procedure (Nazarov, 2003: 24).

In this regard, special position is held by the suspect and the defendant in criminal procedure as those participants of legal proceedings concerning whom criminal prosecution is carried out, criminal procedure coercion is concentrated and which therefore have to be allocated with rather effective remedies.

Studying bodies` activity which is carrying out criminal prosecution demonstrates existence in their work of the facts of violation the suspects and defendants` constitutional rights and legitimate interests.

As we see, the problem considered by us is an object of many researches that confirms need of its further studying.

**Methodology**

During work on this article the dialectic approach which allowed considering the principles of criminal trial on ensuring the rights of the suspect and defendant of the criminal procedure legislation in various aspects was applied.

The methods like logical, comparative and legal, historical, etc. were applied as the main scientific methods.

Also the international documents were studied in the course of working on article.

The separate direction of the conducted research was complex studying of the criminal procedure legislation of the Republic of Kazakhstan on ensuring the rights and legitimate interests of suspects and defendants in criminal trial.

**Discussion**

Nowadays Kazakhstan is reformed to the constitutional state where fight against crimes has to be carried out on the basis of the laws protecting persons` rights and freedoms involved in the sphere of criminal trial, guaranteeing protection them against violations. Recognition and observance, protection of the rights and freedoms have to be provided with lawmaking, law-enforcement practice of the competent authorities of the government which are carrying out criminal trial and also with institute of public control. For successful realization of this complex problem there is rather strong international and interstate legal base now.

Criminal procedure as a special kind of activity of special public authorities exists and is necessary only so far as continues will remain crime – the negative social phenomenon which direct consequence is heavy violations of the citizens` rights and freedoms, infringement of the society and state`s interests (Bayshev, 1991: 65-68). At investigation and judicial proceedings of concrete case in the sphere of criminal procedure is involved, as a rule a great number of the citizens are taking part in this case in different procedural forms as suspects, accused (defendants), victims, witnesses, experts, specialists, translators, witnesses, etc. All of them in various forms they interact with body of inquiry, pretrial investigation, prosecutor’s office and courts and also with each other as participants of process, i.e. the concrete criminal procedure relations settled by the provisions the law.

For the expired years a lot of things are made in respect of formation in Kazakhstan of the modern system of criminal trial meeting high international standards. On July 4 in 2014 is accepted the Code of penal procedure of the Republic of Kazakhstan (took legal effect in 01.01.2015), which significantly changed the systems of implementation conducting criminal proceedings. Therefore, in a certain

measure changes a format of the rights and legitimate interests of participants of criminal proceedings, including the rights of the suspect and defendant and respectively demands from us new mechanisms of ensuring protection and interests.

As in every legal relationship, they have certain rights and bear corresponding responsibility that in general makes a subject of the procedural relations. There is no such participant who only have alone duties, but have no rights in relation to procedural contractor, whether it will be a state, official or citizen (Grishin, 1984: 23).

Ensuring the rights of participants involved in investigation according to the Constitution of the Republic of Kazakhstan has to answer to vision about the person, his life, the rights and freedoms as about the supreme values and to meet the international principles and standards in the field of human rights. If the personality has constitutional right on inviolability, then the state is obliged to guarantee realization of it in relation to each individual. This situation is especially relevant in conditions when the person gets to the sphere of criminal and legal influence. Inviolability of the person become predetermining and core principle of criminal trial.

In the Russian pre-revolutionary criminal procedure was considered that bodies of preliminary investigation can establish only probability guilt of the accused, but not reliability of his fault. Therefore, even making up the indictment, the prosecutor had been guided by the assumption of guilt of the accused (Lukashevich, 1959: 28-32).

Professor I.Ya. Fojnitskij wrote that accusation «makes significantly an important part of criminal case, determining the content and the direction of judicial proceedings. Its existence is necessarily supposedin all stages of criminal process, besides not only in adversarial part, but also in investigative one.The last, as well as the first, assumes construction on a certain person of the suspicions allowed by criminal court (Foynitsky, 1996: 145-151).

In the system of the principles of criminal trial promoting the rights and legitimate interests of suspects and defendants, the principle integrity of human beings play an important role. Ensuring integrity of human beings is an unconditional indicator of a maturity level and development of the constitutional state.

The right to personal integrity is understood as the personal security and freedom of the person guaranteed by the state consisting in prevention, suppression and punishability of encroachments on:

1) Life, health, corporal inviolability and sexual freedom (physical integrity);

2) Honor, advantage, moral freedom (moral inviolability);

3) Mentality of the person, for example, application of illegal means of influence on mentality of person interrogated (psychological inviolability);

4) Individual freedom, i.e. possibility of communication with the outside world (personal liberty and safety) (New Code of Criminal Procedure of the Russian Federation and human rights, 2003: 3).

The human right to individual freedom and personal integrity consists that he can have completely dispose of oneself, not be exposed to arbitrary detentions and arrests, to dispose of the time, to move freely around the country, to choose the residence

Thus, the inviolability of the personality, first of all, isthe highest social blessing established at the constitutional and branch levels, including an obligation of public officials for ensuring restriction of both mental and physical integrity in criminal trial only in strict accordance the cases provided by the law and with the established procedural procedure.

According to article 14 of the existing Code of Criminal Procedure of the RK, nobody can be detained on suspicion of commission of criminal offense and taken into custody or otherwise imprisoned differently as on the bases and in the manner, which established by Codes of Criminal Procedure of the Republic of Kazakhstan (Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014).

Need of ensuring due behavior of participants of criminal trial for the purpose of suppression of an opportunity from their party of illegal acts and also providing appropriate conditions for successful solving of problems of criminal legal proceedings induces the bodies conducting preliminary investigation to invasion into the sphere of the personal rights of citizens. The state coercion in criminal trial is inevitable.

The Constitution of the Republic of Kazakhstan according to article 16 has provided an exception and has allowed detaining the person suspected of crime commission for the term of no more than 72 hours without sanction of court. Arrest and detention are allowed only in the cases provided by the law and only from the sanction of court with providing the appeal to the arrested of the right to appeal. Each detainee, arrested, accused in crime commission has the right to use the help of the lawyer (defender) from the moment of detention, arrest or indictment respectively (The Constitution of the Republic of Kazakhstan of August 30, 1995).

Application of coercive measures has to be carried out according to the legality principle, i.e. only provided by law rules; the participants of process authorized on that; to the subjects specified in the law (Ongarbekova, 2004: 6).

The empirical material collected by us at a research of this problem has revealed the following picture: the citizens` rights and interests violation who have got to an orbit of criminal prosecution continues to remain problem. The main reason for violation of the rights and the criminal trial participants' interests is a neglect and ignorance by the persons authorized by the law for application on measures of criminal procedure coercion, substantive norms and procedural law. Namely: violation of a procedural form and conditions of criminal procedure detention on the person suspected in commission of crime is observed in 89,5% of cases.

The above violations pose a threat to the interests of the suspect and defendant`s rights protection. Entering the sphere of criminal legal proceedings, by the general rule, the person protects the general constitutional legal status guaranteeing measures of his freedom in society and also gets special procedural position on the suspect accused, etc. with the legal status inherent in each of them.

The suspect and defendant's legal status in the current legislation of the Republic of Kazakhstan is regulated by the following acts:

– Universal Declaration of Human Rights from 1948;

– The Convention of the UN against tortures and other cruel, inhuman or degrading treatment or punishment;

– Declaration on protection of all faces and tortures and other cruel, inhuman or degrading treatment or punishment of 1975;

– Constitution of the Republic of Kazakhstan from August 30, 1995;

– Criminal Code of the Republic of Kazakhstan from July 03, 2014;

– Code of Criminal Procedure of the Republic of Kazakhstan from July 04, 2014;

– The Law of the Republic of Kazakhstan from March 30, 1999 No. 353-I «About an order and conditions on keeping the persons in the special facilities providing temporary isolation from society»;

– The Order of the Ministry of Internal Affairs of RK No. 182 from March 29, 2012. «Regulations of pre-trial detention centers in committee of a penal correction system on the Ministry of Internal Affairs of the Republic of Kazakhstan», etc.

Studying of court practice shows that in some cases criminal prosecution authorities, working on the stereotype which developed for many years, ignore separate provisions of the law which observance is recognized by the new criminal procedure law as obligatory.

Let's stop at suspects' right in more detail.

So, the suspect has the right to know what he is suspected of and to receive copies of resolutions on recognition by the suspect, the civil defendant, qualifications on act, the detention protocol, the petition and the resolution on election and term extension of a restraint's measure, the resolution on the termination of criminal case.

In order to allow a suspect actively oppose or agree with a suspicion, prove his innocence to a crime or tell about the events of a crime, he must know the essence of suspicion.

The law demands that the criminal prosecution authority explained essence of suspicion (an article, a part of the Criminal Code of Kazakhstan under which act is qualified). Such explanation allows the suspect to take the measures provided by the law for production of innocence's evidence. The suspect's right to know in what he is suspected, provided with an obligation of criminal prosecution authority at the time of detention, i.e. criminal prosecution authorities immediately prior to production of any investigative actions with participation of the suspect are obliged to explain to the suspect his rights about what the mark in the protocol of detention, the record of suspect's interrogation and resolutions on person's recognition by the suspect and suspect's act qualification is made.

In Zh. Ongarbekova`s opinion, it is not enough to tell the suspect only the name of crime in which he is suspected, it is necessary that the formula of suspicion included also the instruction on those concrete circumstances of crime about which it is possible to report to the suspect without prejudice to the interests of investigation (the place, time of crime execution and other data). Full realization of this right allows the suspect to challenge legality of detention in necessary cases, to produce the evidence of the innocence, to bring complaints and to file reasonable petitions. On the other hand, bodies of investigation will also be able to investigate more fully and objectively all circumstances of criminal case (Ongarbekova, 2004: 7).

There is one more problem. Frequently, assuming that a certain person commits a crime, bodies of preliminary investigation in some cases do not inform the citizen about available suspicions concerning him in order to ensure that he would not impede to establishment of the truth in the given case or evade the investigation agency or from the

court. Some investigators, breaking the law, for a long time hiding the suspicion against the alleged guilty person, interrogate him as the witness. Moreover, for confirmation or a denial of suspicion the investigator carries out a number of investigative actions concerning this person.

Also, unfortunately, in practice on the vast majority of cases requirements of the law are not observed:

– about the immediate message to the detainee about detention bases and also about commission of the act provided by the criminal law he is suspected in;

– about the right to invite the defender independently or through relatives or authorized representatives;

– about the right to have an appointment with the selected or appointed defense lawyer in private and confidentially, including before interrogation period;

– about right to remain silent;

– about the right to file petitions, including measures of taking safety, and formulate objections;

– about the right to give evidences in the native language or language in which they are fluent;

– about the right to use the free help of the translator;

– about the right to get acquainted with protocols of the investigative actions made with its participation and to submit remarks on protocols;

– about the right to bring complaints to actions (inactions) and decisions of the investigator, inquiry agent, procurator and court;

– about the right to petition for additional interrogation of the witness showing against him, to obtain attendance ant examination as witnesses of the persons specified by him on a confrontation with them, etc.

Today there is a task to develop the effective system of procedural guarantees of integrity of human beings. In this process the following directions of development of institute of detention are attractive for us:

– improvement of a procedural order of detention application;

– strengthening of the procedural status of the persons detained on suspicion of having committed an offence;

– expansion of a legal basis of public prosecutor's and judicial control on legality and validity of detention;

– improvement of departmental procedural control of detention application.

Another vital guarantee of protection of the suspect and defendant from illegal and insubstantial accusation, condemnation, restriction of their rights and freedoms is the presumption of innocence, meaning that the defendant is considered an innocent until his guilt in crime commission is not recognized by an effective court sentence (Chalyh, 2007:91-95).

An ancient Roman formula *praesumptio boni viri* sometimes is called as prototype of a presumption of innocence that means: the participant of a lawsuit is considered acting honestly until other is proved. However in Ancient Rome this formula was applied in trial of property cases, did not extend to criminal cases at all. They were solved in other mode, especially cases which affected bases of a slaveholding system or in which the emperor or his confidants were directly or indirectly interested.

Emergence of ideas about the presumption of innocence in criminal procedure and legal fixing of its separate provisions is connected with the English Great Charter of Liberties of 1215. Article 39 of the Charter states: «Any free person will not be arrested or imprisoned, either deprived of possession, or outlawed standing, or expelled, or is destitute by any (other) way, and we will not go to him differently, as on a lawful sentence equal to it and under the law of the country». «We will sell nobody the right and justice, we will refuse them to nobody or to slow down them» (Article 40 of the Charter of Liberties) (Cheltsov-Bebutov, 1995: 154). As D.M. Petrushchevsky notes, right to «equal tribunal» had only barons, serfs were subject to court of the feudal lord therefore it is impossible to say about creation by the Charter of the jury trial, equal for all, subordinated only to the law (Petrushevsky, 1908: 45). Nevertheless, the Charter is an important milestone in the history of formation of the presumption of innocence; in fact, the source of this legal status expressed in common form, corresponding to level of the legal culture of that time. Development of separate provisions of the presumption of innocence in England is acceptance of Habeas Corpus Act (1679) that allows certain scientists to speak about the presumption of innocence as about the principle of the English bourgeois criminal procedure (Cheltsov-Bebutov, 1995: 168).

The principle of the presumption of innocence is fundamental credo of any civilized state, it is written down in all international covenants on human rights.

Legal basis of the presumption of innocence is first of all the Constitution of the Republic of Kazakhstan adopted on August 30 in 1995; determination of the principle of the presumption of innocence is given in the p. 3 of Art. 77: The person is deemed innocent until his guilt is established by

an enforceable court judgment» (The Constitution of the Republic of Kazakhstan of August 30, 1995). And also the content of the principle of the presumption of innocence can be reduced by standards of article 19 of the Criminal Procedure Code of the RK to the following basic provisions:

1. Everybody shall be deemed innocent until his culpability in a commission of a crime is proven in accordance with the procedure established by this Code and as established by a court sentence which entered into legal force.

2. Nobody shall be obliged to prove his innocence.

3. Irresolvable doubts with regard to the culpability of an accused person shall be interpreted for his benefit. Any doubts which arise when applying criminal and criminal procedure laws must be settled for the benefit of the accused.

4. Sentence of guilt may not be based on presumptions and it must be confirmed by sufficient aggregation of credible evidences (Grishin, 1984:24).

In the international legal acts the presumption of innocence received expression in Universal Declaration of Human Rights accepted by the United Nations General Assembly on December 10 in 1948: «Each person accused in crime commission has the right to be deemed as the innocent until his guilt is not established lawfully in order of public judicial proceeding at which all opportunities for protection are provided to him» (Art. 11) (Universal Declaration of Human Rights, 1948). More concise wording of the presumption of innocence is given in the International Covenant on Civil and Political Rights accepted by the United Nations General Assembly on December 16 in 1966: «Each defendant in a criminal offense has the right to be deemed innocent until his guilt is proved according to the law» (The international covenant on civil and political rights, 1976). According to paragraph 2 of Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: «Each defendant in a criminal offense is considered an innocent until his guilt is proved according to the law» (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

Thus the analysis of a legal basis of the presumption of innocence allows determining its content. It is represented that the essence of this presumption is made by the following provisions:

– the guilt of the defendant in crime commission is subject to proof in conducting the preliminary investigation and court proceeding;

– the court, the prosecutor, the investigator and the inquiry has no right to shift a burden of proof onto the defendant;

– prosecuting the defendant, the court or the judge do not determine a question of his guilt;

– the conviction judgment cannot be based on the assumptions and is decided only under a condition if during judicial proceedings the guilt of the defendant is proved;

– all doubts have to be interpreted in favor of the defendant;

The fundament of the presumption of innocence is based upon the idea about what can never be considered established what is not proved yet. The deep moral, humane beginning of the principle is put in it.

Also, the principle of criminal trial promoting the rights and legitimate interests of suspects and defendants is providing to the suspect and defendant a right to protection.

The right of the suspect, accused on protection follows directly from the norms of the Constitution of the Republic of Kazakhstan, guaranteeing right to recognition of its legal personality, protection of the rights and freedoms in all ways which are not contradicting the law, including justifiable defense; right to judicial protection of the rights and freedoms; the right to qualified legal aid.

The right of the suspect, accused person to protection is a set of the procedural opportunities (means and ways) for a denial of the arisen suspicion given him by the law, the indictment or mitigation of responsibility and punishment. It can be realized by the suspect and defendant as directly, and through court and also by means of the defender and (or) the lawful representative.

The right to protection is affirmed in Article 13 of the Constitution of the RK according to which «everyone has the right for judicial protection of the rights and freedoms and that everyone has the right to the qualified legal aid». In the cases provided by the law, legal aid appears free. These norms have not just proclaimed that the suspect and defendant have a right to protection, but place emphasis on security of this right. These constitutional provisions found consecutive continuation in the criminal procedure principle of providing to the suspect and defendant the right to protection enshrined in Article 26 of the Code of Criminal Procedure of the RK. The content of this principle comes down to the following provisions: firstly, the right to protection which he can personally carry out, or by means of the defender and (or) the lawful representative is provided to the suspect and defendant; secondly, the court,

prosecutor, investigator, inquiry explain them their rights and provide an opportunity to be protected in all ways and means which are not forbidden by the law; thirdly, in the cases provided by the law, obligatory participation of the defender and (or) lawful representative of the suspect and defendant is provided with the public officials conducting proceeding; fourthly, in the cases determined by the law, the suspect and defendant can use the help of the defender free of charge.

Being generalizing concept, the right to protection includes: 1) all procedural laws of the suspect and defendant which they personally have, entering the criminal procedure relations and carrying out various legal proceedings; 2) the right of the suspect and defendant to have the defender, to use his legal aid; 3) the right of the suspect and defendant to have the lawful representative.

In the criminal procedure law «the right to protection as the isolated constitutional principle is considered in the form of set of the concrete rights granted to the defendant and suspect for a full or partial denial of charge or mitigation of a criminal responsibility (Reznik, Slavin, 1980: 25]». Each concrete procedural law of the defendant plays a part in protection of his legitimate interests, promotes a denial of charge or clarification of the circumstances extenuating his fault. The role of these procedural laws, extent of their influence on clarification of all circumstances which are subject to proof on criminal case are various, but all of them, undoubtedly, are aimed at providing protection of the defendant against charge, and in this sense make the maintenance of its right to protection.

The defendant, of course, can be protected itself and without assistance. However if the investigator, inquiry, prosecutor are professional lawyers, the defender having the same qualities has to resist to them, but not just the defendant who is usually inexperienced in legal issues (Stetsovsky, Larin, 1988: 7).

I.Ya. Foynitsky's opinion is represented interesting concerning this: «1. The defendant overtaken by criminal prosecution quite often falls into such spirit depression or loses self-control and worries to the point that he cannot give himself an appropriate answer in value of both the charge, and the facts of the case so that the help of the third party, quietly relevant, can be extremely necessary, and in any case can be useful for the benefit to identify the truth. 2. If accusatory functions have already managed to be allocated in especially organized institute of prosecutor's office in process, it is necessary to give the corresponding organization to protective side, otherwise the legal educated, skilled representative of crown case will have against himself weak, inexperienced protection (Foynitsky, 1996: 62-63)». According to G.M. Reznik, «lack of legal issues knowledge in combination with the mental state peculiar to the person who got into heavy and, besides that, conflict situation, seriously interferes with the defendant in realization of his rights. That these rights could be exercised completely and effectively, the defendant needs a help from the knowing and skilled lawyer whose only task is implementation of its protection (Reznik, Slavin, 1980: 35)». Deep personal interest in the result of criminal case in itself already deprives an opportunity to protect the interests coolly and prudently. Especially it becomes obvious in case of application concerning the suspect`s suppression measures – detention when rather passive protection of the interests is objectively possible. The lawyer only is capable to make productive representation of his interests under such circumstances (Andrianov, Shvarev, 2000: 4). All given points of view absolutely fairly consider need of lawyer-defender participation in criminal trial from different perspectives, developing and supplementing each other.

The analysis of the existing criminal procedure legislation of RK allows to mark out the following features in relationship of the defender with the suspect and defendant: 1) the defender can become the participant of criminal procedure only by the invitation of the suspect and defendant or from their consent; 2) the suspect and defendant have the right to refuse from the defender at any time; 3) the law provides that the lawyer has no right to refuse from assumed protection of the suspect and defendant; 4) a guarantee of a right to protection is the indication of the law on obligatory participation of the defender in some categories of criminal cases; 5) a guarantee of the right of the suspect and defendant to protection are defender's procedural rights and duties.

The lawyer has no right to refuse from protection that serves for the defendant and suspect as the guarantee of receiving legal aid irrespective to the seriousness of the offence and other circumstances. Therefore the divergence with the client in a question of his guilt is not the basis for refusal to a protection. The opinion of the lawyer is based not on his awareness on the committed crime, but on the conviction created as a result of proofs assessment, the defender is not belong to those process participants, who obliged to make the decision on

the basis of the internal belief. The decision on guilt or innocence is accepted not by the lawyer, but the judge. «The professional duty of the defender consists in the qualification and conscientious analysis of protective evidences. And such proofs exist in any case, especially in those, where the defendant does not plead guilty. Testimonies of the defendant are judicial evidence. The reproaches to lawyers when their active work is characterized as «opposite to justice» bias in favor of criminal» are possible to explain only with the low level of culture, misunderstanding of the tasks facing the lawyer in criminal procedure (Reznik, Slavin, 1980: 49).

The requirement of procedural solidarity of the lawyer with the client has to extend to all suspects and defendants including the persons suffering from physical and mental defects. They are recognized as the law responsible persons, i.e. capable to give the answer to the actions and to direct them and therefore are subject to a criminal responsibility and punishment. On the basis of it we can draw a conclusion that the lawyer has no right to ignore their position at protection implementation (Chebotaryova, 2004: 165).

## Conclusion

Further consecutive realization of the fundamental principles of criminal trial directed to protection of the person`s rights and freedoms remains a priority of criminal procedural law development.

In this article were considered the principles of criminal trial on ensuring the suspect and defendant`s rights and legitimate interests in criminal procedure legislation of the Republic of Kazakhstan. The authors conducted a complex research of the matter, including the analysis of rules of international law that allowed receiving a complete picture of the current situation.

The conducted research allowed drawing the following conclusions:

1. Strict observance of the requirements following from the principles of criminal trial which are especially connected with restriction of the person`s absolute and inalienable rights is extremely important during proceedings. The feature of the principles of criminal trial is that most of them are enshrined not only in the Criminal Procedure Code of the RK, but mainly in the Constitution of the RK, thereby in fact being all-legal principles. The principles of criminal trial allow not just to open already allowed violations of the criminal procedure law, but also to optimize process of adoption of proceeding decisions in the conditions of uncertainty.

2. The principle of inviolability of the person is understood as the conventional principle of the right consisting in the ban of implementation of the illegal actions without person`s will which are belittling independence and directly limiting integrity of human beings and spheres of their activity.

3. The presumption of innocence is one of the basic concepts in criminal procedure, the fixing innocence of the person until the otherwise is not proved lawfully and is established by a court sentence which entered into legal force.

In the criminal procedural law the presumption of innocence is the necessary element of the mechanism of legal regulation providing realization of the purposes and problems of criminal procedure activity.

4. The right of the suspect and defendant to protection is set of the procedural rights granted by the law to suspected (defendant), his defender and lawful representatives directed as to establishment of innocence of the person or the circumstances softening his responsibility and to protection of his other legitimate interests: honor, dignity, life, health, personal liberty and property.

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