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PROTECTION OF THE RIGHTS OF CITIZENS IN THE FRAMEWORK OF THE DEVELOPMENT OF THE PRINCIPLE OF COMPETITION AND EQUALITY OF THE PARTIES

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Abstract. *The article considers the criminal procedural principle of adversarial parties, which is based on three separate from each other most important functions (defense, prosecution and administration of justice) and is considered a general procedural principle of law enforcement agencies, the prosecutor's office and the court.*

This principle implements one of the most important conditions of democratic judicial proceedings.

In the domestic criminal procedure legislation, it is enshrined in article 23 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter - CPC) and sounds like «criminal proceedings are carried out on the basis of competition and equality of the parties to the prosecution and defense».

The authors propose ways to improve some problematic issues of the application of measures of suppression by the decision of the prosecution without judicial control; provisions directly related to the activities of the prosecutor's office; gaps in the decision on the appointment of the main trial and preparatory actions for the court session, etc.

Also, the conclusions are substantiated on the need to consolidate at the legislative level the use of preventive measures, including the use of electronic means of tracking suspects, accused persons, etc., solely on the basis of the decision of the investigating judge, court; the definition of new criteria for evaluating the work of law enforcement agencies in legislative acts focused on the qualitative indicator of their work.

In order to simplify the proceedings and even to make a court decision at the stage of preliminary investigation, it is necessary to hold hearings by a judge in all categories of cases.

To increase the level of pre-trial investigation, it is proposed to restore the investigative apparatus in the prosecutor's office and determine their jurisdiction in the CPC.

Keywords: *competitiveness, competition, equality, human rights, defense, prosecution, principles, judicial control.*

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ЗАЩИТА ПРАВ ГРАЖДАН В РАМКАХ РАЗВИТИЯ ПРИНЦИПА СОСТЯЗАТЕЛЬНОСТИ И РАВНОПРАВИЯ СТОРОН

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Аннотация. *В статье рассмотрен уголовно-процессуальный принцип состязательности сторон, который основывается на трех отдельных друг от друга важнейших функций (защита, обвинение и осуществление правосудия) и считается общим процессуальным принципом деятельности правоохранительных органов, прокуратуры и суда.*

Данный принцип реализует одно из важнейших условий демократического судопроизводства.

В отечественном уголовно-процессуальном законодательстве он закреплен в статье 23 Уголовно-процессуального кодекса Республики Казахстан (далее – УПК РК)[2] и звучит, как «уголовное судопроизводство осуществляется на основе состязательности и равноправия сторон обвинения и защиты».

Авторами предложены пути совершенствования некоторых проблемных вопросов применения мер пресечений по решению стороны обвинения без судебного контроля; положения, касающихся непосредственно деятельности прокуратуры; пробелы в решении вопроса о назначении главного судебного разбирательства и подготовительные действия к судебному заседанию и др.

Также, обоснованы выводы о необходимости закрепления на законодательном уровне применение мер пресечения, в том числе применение электронных средств слежения к подозреваемым, обвиняемым лицам и привод, исключительно на основании решения следственного судьи, суда; определении новых критерий оценки работы правоохранительных органов в законодательных актах ориентированных на качественный показатель их работы.

Для упрощения судопроизводства и даже вынесения решение суда на стадии предварительного следствия требуется проведения слушаний судьей по всем категориям дел.

Для повышения уровня досудебного расследования предложено восстановить в органах прокуратуры следственный аппарат и определить в УПК их подследственность.

Ключевые слова: *состязательность, конкуренция, равенство, права человека, защита, обвинение, принципы, судебный контроль.*

[2] *Уголовно-процессуальный кодекс Республики Казахстан от 4 июля 2014 года № 231-V ЗРК. https://adilet.zan.kz/rus/docs/K1400000231*

ТАРАПТАРДЫҢ ЖАРЫСПАЛЫЛЫҒЫ МЕН ТЕҢ ҚҰҚЫЛЫҒЫ ҚАҒИДАТЫН ДАМЫТУ ШЕҢБЕРІНДЕ АЗАМАТТАРДЫҢ ҚҰҚЫҚТАРЫН ҚОРҒАУ

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Аннотация. *Мақалада бір-бірінен бөлек үш маңызды функцияға (сот төрелігін қорғау, айыптау және жүзеге асыру) негізделген және құқық қорғау органдары, прокуратура және сот қызметінің жалпы процессуалдық қағидаты болып саналатын тараптардың жарыспалылығының қылмыстық-процессуалдық қағидаты қаралды.*

Бұл принцип демократиялық сот ісін жүргізудің маңызды шарттарының бірін жүзеге асырады.

Отандық қылмыстық іс жүргізу заңнамасында ол Қазақстан Республикасы Қылмыстық іс жүргізу кодексінің (бұдан әрі-ҚР ҚІЖК) 23 – бабында бекітілген және «қылмыстық сот ісін жүргізу айыптау және қорғау тараптарының жарыспалылығы мен тең құқықтылығы негізінде жүзеге асырылады»деген сияқты естіледі.

Авторлар айыптау тарапының шешімі бойынша сот бақылауынсыз бұлтартпау шараларын қолданудың кейбір проблемалық мәселелерін жетілдіру жолдарын; прокуратураның қызметіне тікелей қатысты ережелерді; басты сот талқылауын тағайындау туралы мәселені шешудегі олқылықтарды және сот отырысына дайындық әрекеттерін және т. б. ұсынды.

Сондай-ақ, бұлтартпау шараларын қолдануды заңнамалық деңгейде бекіту қажеттілігі туралы тұжырымдар, оның ішінде күдіктілерге, айыпталушыларға электрондық бақылау құралдарын қолдану және тергеу судьясының, соттың шешімі негізінде ғана алып келу; құқық қорғау органдарының жұмысын бағалаудың жаңа критерийлерін олардың жұмысының сапалық көрсеткіштеріне бағытталған заңнамалық актілерде айқындау негізделген.

Сот ісін жүргізуді оңайлату және тіпті алдын ала тергеу сатысында сот шешімін шығару үшін судья істердің барлық санаттары бойынша тыңдаулар өткізуді талап етеді.

Сотқа дейінгі тергеу деңгейін арттыру үшін прокуратура органдарында тергеу аппаратын қалпына келтіру және ҚІЖК-де олардың тергеулігін анықтау ұсынылды.

Түйінді сөздер: *бәсекелестік, бәсекелестік, теңдік, адам құқықтары, қорғаныс, айыптау, принциптер, сот бақылауы.*

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Introduction

Competitiveness, being a general procedural principle of defense, prosecution and administration of justice, is considered to be a general principle of the activities of law enforcement agencies, the prosecutor's office and the court, which implements the main condition for democratic justice.

The principle of competition in domestic criminal procedure legislation is enshrined in Article 23 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter - CPC of RK)[3] and sounds like «criminal proceedings are carried out on the basis of competition and equality of the parties to the prosecution and defense».

[3] *Уголовно-процессуальный кодекс Республики Казахстан от 4 июля 2014 года № 231-V ЗРК. https://adilet.zan.kz/rus/docs/K1400000231*

Direct competition is not enshrined in the Basic Act of the country, but there is a rule proclaiming the equality of the parties before the law and the court (Article 14), which can be considered the basis for the operation of this principle and ensures the division of procedural functions between the parties to the prosecution and defense in criminal proceedings.

The general provisions of the principle of competition include:

no one can be a judge in his own case;

delimitation in court of 3 criminal procedural functions (accusation, defense and resolution of the case);

performance of each of these functions by bodies independent of each other;

the parties are not obliged to contribute to the establishment of the truth in the case;

equality of the rights of the parties and the observance by the court of equality during the entire proceedings in a criminal case;

the leading role of the court;

prohibition on resolution by the court on its own initiative of disputes arising between the parties;

prohibition of the court to go beyond the limits of the charges;

the law provides for the possibility of the victim and the accused to use the help of a representative (defender) of their rights[4].

In turn, in the criminal procedural law of the Republic of Kazakhstan, competitiveness is defined by the following system of features:

1) normative consolidation and streamlining of the stage of the criminal process;

2) separation of the functions of prosecution and defense, their mandatory equality, so criminal prosecution, defense and resolution of the case by the court are separated from each other and carried out by various bodies and officials (part two of Article 23 of the Code of Criminal Procedure of the Republic of Kazakhstan);

3) the court is not a criminal prosecution body, does not act on the side of the prosecution or defense and does not express any interests other than the interests of law (part five of Article 23 of the Code of Criminal Procedure of the Republic of Kazakhstan);

4) in accordance with part six of Article 23 of the Code of Criminal Procedure of the Republic of Kazakhstan, the court, while maintaining objectivity and impartiality, is obliged to create the necessary conditions for the parties to fulfill their procedural obligations and exercise the rights granted to them. And also based on the norms of the current legislation and his inner conviction, he is called upon to exercise general management at the stages of the criminal process through the confrontation of the subjects of procedural relations to prove the circumstances on which they base their claims and objections, in order to resolve the case on the merits [1].

Summarizing the above, we can derive the following definition of the adversarial principle: ***the adversarial principle*** is one of the general criminal procedural principles that ensures the use by the parties of all legal means and methods of proof at all stages of criminal proceedings for a comprehensive, complete and objective consideration of the case.

Along with the principle of competitiveness, ***the procedural equality*** of the parties is always taken into account, according to which the parties enjoy equal rights at the stage of pre-trial investigation, in court and when challenging court decisions.

The defendant and his lawyer are endowed with the same procedural rights for the purposes of defense, which the prosecutor - for the purposes of the prosecution, collecting and providing tangible and intangible evidence and arguments.

Thus, the presence of parties with opposing interests implies the presence of competition, which, together with equality, realizes the possibility of establishing the truth.

The implementation of the trial in accordance with the principles of competition and equality of the parties is the most important requirement of international law. The effective protection of the rights of persons who have fallen into the orbit of criminal proceedings is one of the main duties of the state, enshrined as the basis of the constitutional order. The judiciary plays an important role in this task.

The 14 Article of the International Covenant on Civil and Political Rights of December 16, 1966[5] (hereinafter - the ICCPR) enshrines the right to a fair trial, namely, everyone has the rights in considering any criminal charge against him or in determining his rights and ob-

[4] *Экспертное заключение «Реализация принципа состязательности в досудебном и судебном уголовном производстве РК», подготовлено при поддержке Фонда Сорос – Казахстан в рамках проекта «Поддержка общественной деятельности в области реформ законодательства, затрагивающего вопросы верховенства права и прав человека» (2019). https://lprc.kz/wp-content/uploads/2020/02/UPK-Kazahstan_sostyazatelnost.pdf*

[5] *Международный пакт о гражданских и политических правах https://sud.gov.kz/rus/content/mezhdunarodnyy-pakt-o-grazhdanskih-i-politicheskih-pravah*

ligations in any or process, to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, everyone is entitled, in the consideration of any criminal charge against him, to at least the following guarantees on the basis of full equality:

- have sufficient time and facilities to prepare his defense and communicate with defense counsel of his own choosing (paragraph 3.b);

- to interrogate witnesses testifying against him, or to have the right to have these witnesses interrogated, and to have the right to call and examine his witnesses under the same conditions as exist for witnesses testifying against him (paragraph 3.e).

Paragraph 13 of the General Comment of the UN Human Rights Committee № 32 of August 23, 2007[6] states that the right to equality before courts and tribunals also ensures equality of opportunity. This means that the same procedural rights must be guaranteed to all parties unless the differences are provided for by law and can be justified on objective and reasonable grounds that do not put the defendant at a de facto disadvantage or otherwise subject him to unfair treatment.

The right to have sufficient time and opportunity to prepare one's defense and to communicate with counsel of one's own choosing, enshrined in Article 14 § 3 b) of the ICCPR, is considered an important element in guaranteeing a fair trial and the application of the principle of equality of arms (paragraph 32 of General Comment No. 32). The opportunity to prepare their defense should include access to all materials and other evidence that the prosecution plans to present at trial against the accused, or exculpate the accused (paragraph 33 of General Comment No. 32).

As mentioned earlier, Article 23 of the Criminal Procedure Code of the Republic of Kazakhstan regulates the implementation of legal proceedings on the basis of competition and equality of the parties.

This article establishes the basic principles of competitiveness, which were discussed above: the separation of the prosecution and the defense; the presence of an impartial court, which is separate from the criminal prosecution body; the possibility of both parties to use procedural rights to achieve their own goals, etc.

Along with this, Article 23 provides for alternative procedures for resolving a criminal legal dispute - a procedural agreement, reconciliation through mediation, refusal of a public or private prosecutor from criminal prosecution, and so on.

In the procedural law, elements of competition are found in all the main institutions related to the restriction of human rights and freedoms by the state (preventive measures, appeals against decisions of the defense and the court, and so on).

Methods

The article uses formal-logical and dialectical methods, comparative legal, empirical analysis, as well as quantitative, qualitative and special methods of scientific research.

Results and discussion

smirnov V.P. believes that «the principle of competitiveness of criminal proceedings lies in such a construction of the procedural order of the trial and the study of evidence in it, in which the parties are provided with the opportunity to actively defend their or protected (represented) rights and interests» [2, 61].

Strogovich M.S. described the principle of competition as «the principle of competition is of decisive and decisive importance for the entire system of the criminal process, since it determines the position of the subjects of the process, their rights and obligations and relationships with each other and with the court. The competitive process, at its core, is an oral, open and direct process» [3, 122].

We agree with Bozhev V.P. «An insufficiently clear idea of the essence of adversarial nature makes it difficult to understand the tasks of criminal proceedings and its individual stages, the powers of participants in criminal proceedings» [4, 318].

Aleksandrov A.S. argues that since the purpose of modern criminal proceedings is to ensure the rights and freedoms of man and citizen, and since the principles of the adversarial model of the process are reflected in the current procedural legislation, the principles of this model prevail over the principles of the investigative model [5, 174-180].

The supremacy of some principles of criminal proceedings over others is unacceptable, since all the principles form a common system. In the context of improving legislation, one cannot talk about the development of certain principles specifically to the detriment of others, but only about a gradual departure from those

[6] *Замечание общего порядка № 32, CCPR/C/GC/32, 23 августа 2007 г. http://hrlibrary.umn.edu/russian/gencomm/Rhrcom32.html*

in accordance with the trends in improving the modern criminal process.

The Kazakh criminal procedural legislation has retained some elements of the inquisitorial process. If we talk about the full implementation of the adversarial nature of the defense, then, unlike foreign legal proceedings, these elements in the Code of Criminal Procedure of the Republic of Kazakhstan are presented in a truncated form.

In our opinion, one of these problems is the application of preventive measures by the decision of the prosecution without judicial control.

Thus, in accordance with Article 136 of the Code of Criminal Procedure of the Republic of Kazakhstan, the body conducting the criminal procedure, within its powers, has the right to apply one of the preventive measures provided for in Article 137 of the Code of Criminal Procedure of the Republic of Kazakhstan to suspects, accused persons.

Along with this, such preventive measures and additional restrictions as a written undertaking not to leave and proper behavior, personal guarantee, transfer of a serviceman under the supervision of the command of a military unit, transfer of a minor under supervision, use of electronic surveillance tools are applied on the basis of a decision of the body conducting the criminal process.

One of the measures of criminal procedural coercion provided for by law is the drive, regulated by Article 157 of the Code of Criminal Procedure of the Republic of Kazakhstan. In accordance with this provision, the person conducting the pre-trial investigation, the court may subject the suspect, the accused, the defendant, as well as the witness who has suffered to be brought.

In other words, the prosecution decides to restrict the rights and freedoms of the defense, which is fundamentally at odds with the adversarial principle, which implies that all preventive measures, regardless of their severity and degree of interference with human rights and freedoms, must be subject to judicial control.

It should be noted that the drive, in its essence, is the same preventive measure as the additional restrictions specified in Article 137 of the CPC of RK.

It is required to fix at the legislative level that the application of all preventive measures, electronic means of tracking to suspects, accused persons and bringing to other persons, solely on the basis of the decision of the investigating judge, court.

The functions of the prosecutor's office and competitiveness are closely related to each other, and their analysis is impossible separately. Indeed, the position of the prosecutor's office, which is called upon to protect the state, public interest, depending on the legislator's assessment of its significance, can both almost completely neutralize the competitiveness, so as not to be approved in the official scientific literature of the Soviet period, and create conditions for its consistent implementation. Similarly, the development of competitiveness inevitably entails not just a quantitative change in the powers of the prosecutor in the process, it forms a qualitatively new approach to understanding the tasks that are set for the prosecutor's office as a state institution [6].

Touching upon the activities of the prosecutor's office, I would like to note that our country is on the verge of grandiose reforms of the law enforcement bloc. Evidence of this is the development of new constitutional acts «On the Constitutional Court of the Republic of Kazakhstan», «On the Commissioner for Human Rights in the Republic of Kazakhstan», «On the Prosecutor's Office», etc.

Therefore, before implementing them, it is necessary that past mistakes are not repeated in the future.

In the Regulatory Policy Advisory Document «Draft Constitutional Act of the Republic of Kazakhstan «On the Prosecutor's Office»[7], the developer states that «It is necessary in the new Constitutional Law «On the Prosecutor's Office» to consolidate effective tools and mechanisms that will ***more effectively*** enforce the rule of law, protect and restore the rights and freedoms of citizens, the ***interests of business***, society and the state».

In general, agreeing with this proposal, it is necessary to note the tautology of the phrase «more efficiently», as well as the incorrect use of «business interests».

Thus, the phrase «more effectively» is a pleonasm, that is, words similar in meaning were used in a sentence or text, creating semantic redundancy.

For reference: Typical examples of non-normative pleonasm are phrases in which the meaning of one word repeats the meaning of another: more important (more redundant,

[7] Официальный сайт «Электронное правительство Республики Казахстан». Открытые НПА *https://legalacts.egov.kz/*

because more important means «more important»), first premiere (premier is enough – «the first performance of a play, film or performance of a musical work»), atmospheric air (enough air – «a mixture of gases that forms the Earth's atmosphere»), eventually (correctly in the end or enough in the end), return back (the verb return indicates movement back, in the opposite direction), import from - abroad (it is enough to import – «to import from abroad») [7].

Thus, one of the complaints is the provisions relating to the activities of the prosecutor's office, namely the amended article 83 of the Constitution of the Republic of Kazakhstan.

The Act of the Republic of Kazakhstan dated March 10, 2017 No. 51-VI ZRK «On Amendments and Additions to the Constitution of the Republic of Kazakhstan» changed the wording of part one «The Prosecutor's Office, on behalf of the state, exercises, within the limits and forms established by law, the highest supervision over the observance of the rule of law in the territory of the Republic of Kazakhstan represents the interests of the state in court and, on behalf of the state, carries out criminal prosecution».

At the same time, the old version was as follows: «The Prosecutor's Office, on behalf of the state, exercises supreme supervision over the precise and uniform application of laws, decrees of the President of the Republic of Kazakhstan and other regulatory legal acts on the territory of the Republic, over the legality of operational-search activities, inquiry and investigation, administrative and enforcement proceedings, takes measures to identify and eliminate any violations of the law, and also protests laws and other legal acts that are contrary to the Constitution and laws of the Republic. The prosecutor's office represents the interests of the state in court, and also in cases, in the manner and within the limits established by law, carries out criminal prosecution».

In our opinion, in the current wording, the highest supervision of legality has been replaced in the direction of criminal prosecution. Which does not in any way benefit the strengthening of the competitiveness of the parties in the criminal process.

Based on the foregoing, earlier the prosecutor's office, on behalf of the state, exercised supreme supervision over the precise and uniform application of laws, decrees of the President of the Republic of Kazakhstan and other regulatory legal acts on the territory of the Republic, over the legality of operational-search activities, inquiry and investigation, administrative and enforcement proceedings, took measures to identify and eliminate any violations of the law, represented the interests of the state in court, and also in cases, in the manner and within the limits established by law, carried out criminal prosecution.

Currently, the prosecution authorities, within the limits and forms established by law, exercise the highest supervision over the observance of the rule of law in the territory of the Republic of Kazakhstan, represent the interests of the state in court, at the same time, without any restrictions and limits, on behalf of the state, carry out criminal prosecution.

Quantitative indicators, not qualitative ones, are still decisive in evaluating the activities of law enforcement agencies.

We agree with G.Kh. Fetkulov's statement that «the conceptual provision of the transition from quantity to quality is the cornerstone in assessing the activities of law enforcement agencies, which will create conditions for the law enforcement agencies themselves to prevent violations of the rights of citizens participating in criminal proceedings on the one hand and strengthen guarantees observance of the rights of a citizen involved in the sphere of criminal proceedings on the other. Therefore, it is necessary to define new criteria for evaluating the work of law enforcement agencies in legislative acts focused on the qualitative indicator of their work, i.e. their work should be evaluated by local governments (akimats and maslikhats) at all levels and civil society. Thus, we will move away from the notorious «detection rate» and focus our attention on identifying the causes and conditions that contribute to the violation of the rights of citizens in criminal proceedings» [8].

The structure of the General Prosecutor's Office of the Republic includes an independent subdivision of the Criminal Prosecution Service (hereinafter referred to as the Service). The name of this Service already speaks for itself, where its main task is the persecution.

In general, the General Prosecutor's Office consists of 4 main services: 1st service - the Criminal Prosecution Service; 2nd service - Service for the supervision of the legality of sentences that have entered into force and their execution; 3rd service - Service for the protection of public interests; 4th Service - Service of Special Prosecutors.

All activities of the prosecutor's office are «impregnated» with the function of criminal prosecution. At the same time, the profile Law «On the Prosecutor's Office» does not

contain a definition of the concept of «criminal prosecution», but only describes the list of powers of the prosecutor to carry out this area of prosecutorial activity.

At the same time, attention should be paid to the fact that this list does not cover his powers to carry out criminal prosecution at the judicial stages of the criminal process, which seems to be a significant gap in the law and does not correspond to the definition given by the criminal procedure law [9].

And where are the tasks to exclude the conviction of the innocent, unlawful criminal prosecution, causing harm in the course of criminal proceedings?

One cannot but agree with A. Kussainova, who notes that the work of the Service of the General Prosecutor's Office, and with it all lower divisions, is completely aimed at persecution. A person fell into the orbit of criminal prosecution, ended up in the wrong place, at the wrong time or with the wrong person, or looked at some law enforcement officer in the wrong way, that's all, in fact, he is doomed, at least to a long struggle with the whole system of criminal authorities persecution [10].

Thus, from a supervisory body, the prosecutor's office has turned into a criminal prosecution body, where punitive functions have become dominant.

Previously, there was supervision over the legality of the preliminary investigation, inquiry and operational-search activities, within the framework of which the prosecutor, at the stage of bringing the case to court, made a decision to send the case to court. Along with this, the legality of judicial decisions in criminal cases that have not entered into force was supervised by the relevant division of the prosecutor's office.

This system of supervision over the legality of the preliminary investigation, inquiry and operational-search activities and the legality of judicial decisions in criminal cases was a kind of system of checks and balances.

In addition, the gaps in resolving the issue of appointing the main trial and preparatory actions for the court session indicate the presence of problems of competition between the parties and the equality of participants in the criminal process, not only in legislative, but also in law enforcement practice.

Thus, in the first part of Article 321 of the Code of Criminal Procedure of the Republic of Kazakhstan, the obligatory holding of a preliminary hearing in cases of especially grave crimes is enshrined. In other cases, such a hearing is held if it is necessary to make a decision to refer the case to jurisdiction, refer the case to the prosecutor, terminate the case, suspend the proceedings, join and separate criminal cases, as well as consider the petitions of the parties.

We insist that in order to exclude the privileges of the prosecution, the preliminary hearing procedure should be extended not only to cases of especially serious, but also to small and medium-gravity crimes.

To establish the truth in a criminal case, it is necessary to have competition and equality among parties with opposing interests at the stage of pre-trial investigation, in court and when challenging judicial decisions.

The issues of criminal proceedings in cases of judicial control outlined in the subsection under consideration demonstrate the specifics and originality of the manifestation of adversarial nature in judicial proceedings in order to further develop and improve the efficiency of judicial control both at the level of legislative regulation of judicial control procedures and in the course of their practical implementation.

It is proposed to hold a preliminary hearing by the judge in cases of all categories, due to the fact that it is held at the stage of preparation for the simplification of proceedings and even the issuance of a court decision at this stage.

Concerning the Draft Act «On the Prosecutor's Office». There is no justification for enshrining the law at the constitutional level, since Constitutional laws are adopted on issues provided for by the Constitution by a majority of at least two-thirds of the total number of deputies of each of the Chambers (paragraph 4 of Article 62 of the Act «On Legal Acts»).

The Head of State, in his Message dated March 16, 2022 «New Kazakhstan: the path of renewal and modernization», indicated that «In general, in order to increase the rule of law and systematically strengthen human rights activities, I consider it appropriate to adopt separate constitutional acts on the prosecutor's office and on the Commissioner for Human Rights». At the same time, this proposal was most likely sent to raise the status of the prosecutor's office. But the status of the prosecutor's office is already overestimated, in connection with the implementation of higher supervision over the observance of the rule of law in the territory of the Republic of Kazakhstan.

If the Act «On the Prosecutor's Office» is adopted at the constitutional level, then it is necessary to consider the application of this condition, for example, in relation to the Act

«On Advocacy and Legal Assistance», «On Act Enforcement Service» and others whose activities are aimed at supplementing and development of provisions in accordance with the direct instructions of the norms of the Basic Act.

The current Code of Criminal Procedure of the Republic of Kazakhstan in Article 193 stipulates that the prosecutor during the pre-trial investigation «12) withdraws cases from the body conducting the pre-trial investigation and transfers them to another pre-trial investigation body in accordance with the investigative jurisdiction established by this Code; in exceptional cases related to the need to ensure the objectivity and sufficiency of the investigation, at the written request of the criminal prosecution body or a participant in the criminal process, transfers cases from one body to another or accepts for its own proceedings and investigates them, regardless of the investigative jurisdiction established by this Code;

12-1) has the right to carry out pre-trial investigation in cases of torture, criminal offenses provided for by Chapter 17 of the Criminal Code of the Republic of Kazakhstan.

The Prosecutor General has the right, in exceptional cases, on his own initiative, to entrust the conduct of a pre-trial investigation to a prosecutor, regardless of the investigative jurisdiction established by this Code;

At the same time, investigative jurisdiction is not defined in Article 187 of the Code of Criminal Procedure of the Republic of Kazakhstan, which is a violation of the criminal procedure legislation».

We propose to introduce the investigative apparatus into the prosecutor's office and determine in Art. 187 of the Code of Criminal Procedure, the jurisdiction of investigators of the prosecutor's office, as it was in the old days. The investigative divisions of the prosecutor's office were liquidated in connection with the creation of an independent Investigative Committee, which lasted only 2 years. The exclusion of the investigative divisions of the prosecutor's office and the closure of the Investigative Committee has sharply reduced the level of pre-trial investigation, which is beneficial for criminal elements, since the shortcomings of the pre-trial investigation are always used by their lawyers to return criminal cases to the prosecutor, most of which are then terminated.

When Kazakhstan was a part of the USSR for more than 70 years, the best investigators of the country worked in the investigative divisions of the prosecutor's offices, who were under investigation of the most complex cases of economic, official crimes, murders, and sexual crimes. Therefore, it is necessary to restore the investigative apparatus of the prosecutor's office.

Instead of conclusion

Without insisting on the indisputability and unconditionality, the syllogisms of the study deserve further discussion and critical feedback. The author's conclusions about the adversarial nature in criminal proceedings allow us to pay attention to this principle in order to build equal participation in legal proceedings.

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