ENSURING THE PROCEDURAL EQUALITY OF THE PARTIES IN A COURT HEARING IS A FUNDAMENTAL CONDITION OF THE ADVERSARIAL PRINCIPLE

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Abstract. *This article discusses the issues of strengthening the mutual competitiveness of the parties in criminal proceedings, ensuring equality of procedural capabilities of the parties, which is an important component, as well as determining the position of the court in legal proceedings. The process of establishing the truth, determining the level of its activity during the period of collecting, verifying and evaluating evidence, the experience of some developed foreign countries and analysis were carried out on the basis of the scientific views of procedural scientists who conducted scientific research on this problem. The article also discusses the specific role of the judicial investigation stage when considering criminal cases in a court hearing of the first instance, as well as issues of improving the judicial investigation process based on the arguments of the parties. The article also analyzes the experience of foreign countries in developing the stage of judicial investigation in criminal proceedings. The opinions of procedural scientists from foreign countries on increasing the role of the court in the process of proof, the results of research conducted in practice, and the uniqueness of the principle of dispute in a judicial investigation are described. At the same time, recommendations and proposals for amending the criminal procedural legislation regarding improving the stage of judicial investigation when considering a criminal case were discussed.*

Keywords: *dispute, truth-finding, court, prosecution, defense, proof, equality.*

Аннотация. *В данной статье рассматриваются вопросы усиления взаимной состязательности сторон при судебном разбирательстве по уголовным делам, обеспечения равенства процессуальных возможностей сторон, что является важной его составляющей, а также определения позиции суда в судебном разбирательстве. Процесс установления истины, определение уровня его активности в период сбора, проверки и оценки доказательств, опыт некоторых развитых зарубежных стран и анализ проводились на основе научных взглядов учёных-процессуалистов, проводивших научные исследования по этой проблеме. Также в статье рассматривается конкретная роль стадии судебного следствия при рассмотрении уголовных дел в судебном заседании первой*

инстанции, а также вопросы совершенствования процесса судебного следствия на основе доводов сторон. Также в статье анализируется опыт зарубежных стран по развитию стадии судебного расследования в уголовном судопроизводстве. Описаны мнения учёных-процессуалистов зарубежных стран о повышении роли суда в процессе доказывания, результаты исследований, проведённых на практике, своеобразие принципа состязательности в судебном расследовании. Вместе с тем были обсуждены рекомендации и предложения по внесению изменений в уголовно-процессуальное законодательство относительно совершенствования стадии судебного следствия при рассмотрении уголовного дела.

***Ключевые слова**: состязательность, установление истины, суд, обвинение, защита, доказывание, равенство*

***Annotatsiya.** Mazkur maqolada jinoyat ishlari bo‘yicha sud muhokamasi jarayonida taraflarning o‘zaro tortishuvini kuchaytirish, uning muhim tarkibiy qismi bo‘lgan taraflar protsessual imkoniyatlaridagi tengligini ta’minlash, shuningdek, haqiqatni aniqlash jarayonida sudning o‘rnini aniqlash, uning dalillarni to‘plash, tekshirish va baholash davrida faollik darajasini belgilash masalalari ayrim rivojlangan xorijiy mamlakatlar tajribasi hamda aynan shu masalada ilmiy tadqiqot ishlarini olib borgan protsessualist olimlarning ilmiy qarashlari asosida tahlil etildi. Shuningdek, birinchi instansiya sud majlisida jinoyat ishlarini ko‘rib chiqishda sud tergovi bosqichining o‘ziga xos o‘rni, aynan taraflarning tortishuviga asoslangan sud tergovi jarayonini takomillashtirish masalalari muhokama qilingan. Maqolada jinoyat protsessida sud tergovi bosqichini rivojlantirish yuzasidan xorijiy davlatlar tajribasi ham o‘rganildi. Xorijiy mamlakatlardagi protsessualist olimlarining bu jarayonda sudning isbot qilish jarayonidagi o‘rnini takomillashtirish borasidagi fikrlari, amaliyotda o‘tkazilgan so‘rovnomalar natijalari, sud tergovida tortishuv prinsipining o‘ziga xosligi bayon etilgan. Shu bilan birga, jinoyat ishini ko‘rib chiqishda sud tergovi bosqichini takomillashtirish bo‘yicha jinoyat-protsessual qonunchilikka o‘zgartirish kiritish yuzasidan tavsiya va takliflar haqida so‘z yuritilgan.*

***Kalit so‘zlar:** tortishuv, haqiqatni aniqlash, sud, ayblov taraf, himoya taraf, isbotlash, tenglik.*

Introduction: In criminal proceedings, equality of parties is an important condition for the implementation of the principle of adversarial proceedings. In order for the proceedings to be considered adversarial, the parties must actively present their arguments, argue about the

circumstances and evidence in the case, express their attitude towards them, and present evidence. It is in this process that the court, as an independent party, performs the task of resolving the case.

Equality of parties, which is an important component of the principle of adversarial proceedings, is an important guarantee that the defendant will be protected by the court.

The fact that the prosecution and defense parties participate in the process of presenting evidence, participating in the hearing of the case, and studying the evidence on the basis of equal procedural opportunities, that is, having equal rights and fulfilling equal obligations, serves to ensure the effective implementation of constitutional principles.

The argument, along with being a source of procedural principles, is also a special model of criminal proceedings. In this regard, it should be noted that the criminal proceedings are built on the basis of two historically formed legal systems - the Anglo-Saxon and Romano-Germanic (continental) models. From this, the Anglo-Saxon model of proceedings is based entirely on adversarial proceedings, and the greatest burden in the process of proof falls on the parties.

There is no single approach among scholars regarding the level of judicial activity in the adversarial process. Even the legislation of the countries of the Commonwealth of Independent States has different aspects on this issue. In general, in the theory of modern criminal procedural law, the adversarial form of proceedings is recognized as the most effective model for ensuring justice.

Materials and methods: The study used the legal norms and scientific and theoretical views of legal scholars on strengthening the adversarial procedure in criminal proceedings, and the comparative legal method, analysis, synthesis, observation, generalization, induction and deduction methods were used.

Research results: Another problem arises in the process of establishing the truth in a criminal case: the requirements for a comprehensive, complete and impartial examination of evidence can turn the court into the only state body responsible for this process. The court's active participation in the study of evidence can lead to the release of the remaining participants from the responsibility for a full study of the circumstances of the case. This undermines the essence of the dispute and threatens the court's ability to perform its role as an impartial arbitrator. Because the dispute must essentially meet the following requirements:

first, the existence of a court that is completely independent of the parties. Because without ensuring the participation of an impartial person, the fairness of the dispute between the parties cannot be guaranteed;

second, the existence of parties with opposing interests:

the prosecution and the defense;

thirdly, the procedural equality of the parties is ensured. Without sufficient procedural rights, the parties cannot fully fulfill their duties and protect their legitimate interests; fourthly, the parties have different views on the dispute or issue. These conditions are constituent elements of the concept of a dispute, and their combination ensures that the proceedings are based on a dispute. Failure to comply with at least one of them is a gross procedural error. The results of the analysis of criminal procedural legislation show that the participation of the presiding judge, prosecutor and a number of other persons in the court session is indicated as general conditions for the trial. However, the procedural aspects of the participation of the defense attorney are not sufficiently regulated. In our opinion, this situation should be eliminated and the legal basis for the defense attorney's participation in the trial should be strengthened. It is appropriate to strengthen the defense attorney's right to present evidence, participate in the examination of evidence, express his/her opinion on the charges, on the circumstances mitigating the defendant's liability, on the applied preventive measure and on other arising issues. At the same time, if the defense attorney is unable to attend the trial and it is not possible to replace him/her, the trial should be postponed. In this case, the newly joined defense attorney is given the necessary time to prepare for the trial, but this situation should not be a reason to repeat the procedural actions that have been carried out up to that point. However, if a motion is filed by the defense in this matter, the court may re-conduct a number of court proceedings.

Analysis of the results of the study

The importance of this legal institution was explained by the scientist F.M. Muhitdinov, who studied it, as the need to provide both parties with equal rights and obligations in order for the “struggle” or “contest” to lead to the establishment of the truth in a criminal case and a fair resolution of the case [1].

A number of scientists interpret the content of the dispute as the court’s decision based solely on the evidence presented by the parties, even though the circumstances of the case have not been fully and comprehensively studied.

From this point of view, the court is not responsible for establishing the truth: [2] it creates an opportunity for the parties to study the circumstances of the case from different positions. The Azerbaijani proceduralist scientist F.M. Abbasova expressed a different opinion on this issue [3]. In his opinion, the ultimate goal of adversarial criminal proceedings is to establish the truth in a criminal case. To do this, the court must ensure that the truth is established using all available means and means within its jurisdiction. In order for adversarial proceedings to take place, it is

important to create equal procedural opportunities for the parties. This does not apply to all participants in the proceedings, but to the prosecution and defense. In some foreign countries, this issue is enshrined at the level of the code, and it can be defined as one of the important conditions for a trial. In particular, Article 315 of the Moldovan Criminal Procedure Code states that the prosecutor, the victim, the civil plaintiff, the defense counsel, the defendant, the civil defendant and their representatives have equal rights before the court in presenting evidence, participating in the investigation and formulating motions [4]. Article 23 of the Kazakhstani Criminal Procedure Code [5] states that the court must base its decision on the evidence examined in a manner that provides equal opportunities for the parties. A similar provision is reflected in Article 18 of the Kyrgyz Criminal Procedure Code. In addition, Article 283 establishes equality of rights of the parties in court proceedings as a general condition of court proceedings [6].

According to it, the accuser, the defense, the victim, and the persons responsible for compensation for material and moral damage have equal rights in filing and rejecting petitions, in presenting evidence and participating in its examination, in entering into negotiations and resolving other issues arising during the consideration of the case. A similar norm can also be found in the procedural legislation of Ukraine and Georgia.

The legal basis for the organization of adversarial proceedings is reflected in generally recognized international instruments. In particular, according to Article 10 of the Universal Declaration of Human Rights, everyone is entitled in full equality to a fair and impartial hearing by an independent and impartial tribunal in the determination of the validity of any charge against him [7]. Other international human rights standards also provide that there shall be no discrimination against the parties to the proceedings and that they shall be granted equal procedural rights [8]. The legislation of most countries stipulates that criminal proceedings shall be conducted on the basis of equality of the parties and adversarial proceedings.

For example, Article 23 of the Criminal Procedure Code of the Republic of Kazakhstan is entitled “Conduct of criminal proceedings based on equality of parties and adversarial proceedings”, and its paragraph 7 stipulates that the parties participating in criminal proceedings have equal opportunities to exercise their rights, using the opportunities provided for by the Constitution of the Republic and the Criminal Procedure Code. This article also establishes that the court shall make its procedural decision only on the basis of the evidence studied, provided that the parties are provided with equal participation in the process of studying the evidence.

A similar provision is found in Article 18 of the Kyrgyz Republic’s Criminal Procedure Code (“Principle of Equality and Adversity of the Parties”)

[10] and Article 24 of the Moldovan Criminal Procedure Code [11]. Article 9 of the Georgian Criminal Procedure Code [12]

("Adversity and Equality of the Parties") also provides for the criminal procedure to be based on the equality of the parties.

The peculiarity of the experience of these countries is that the principle of equality of the parties is applied to the entire period of criminal proceedings. However, given the specifics of the legal system, this provision cannot be applied to the pre-trial stage. Because the investigation is carried out under the clear dominance of the law enforcement officer responsible for the case. In addition, unlike the above countries, our national criminal procedural legislation does not divide the participants in the preliminary investigation and inquiry into parties, therefore, during the investigation period, neither parties nor their equality per se exist. Therefore, the rule providing for the equality of parties covers the period of proceedings in court. In addition, Article 14, Part 3, Subparagraph "d" of the International Covenant on Civil and Political Rights stipulates that a person charged with a crime has the right to be tried in his own case [13]. However, Article 410 of the Code of Criminal Procedure of the Republic of Uzbekistan regulates the participation of the defendant in the court session, according to which, if the defendant is outside the territory of the Republic of Uzbekistan and this circumstance does not prevent the establishment of the truth in the case or is removed from the courtroom for violating the order, the case may be considered without his participation. In such cases, special attention should be paid to the observance of the rights of a person who, although not participating in the court session, is participating in the case as a defendant.

The question of who should ensure the rights of a defendant who is not participating in the case at the court hearing remains open in our legislation. A number of scholars insist that the participation of a defense attorney should be mandatory in order to ensure adversarial proceedings and equality of parties in this case [14]. According to them, the defense attorney should not only participate, but also actively participate. In this situation, the defendant's position is known to the defense attorney only from the criminal case materials. A similar proposal can be found in other research works [15]. It is noteworthy that by not participating in the court hearing, the defendant is deprived of only the right to participate in the court hearing. In this case, the participation of the defense attorney serves as an additional guarantee aimed at ensuring a fair verdict. Therefore, based on the legitimate interests of the parties, it is necessary to ensure equality of procedural opportunities between them. In a number of foreign countries, in particular, Moldova, Ukraine,

Azerbaijan, and the Russian Federation, the participation of a defense lawyer in a court hearing held without the participation of the defendant in criminal cases is mandatory.

In our opinion, ensuring equality of parties during court proceedings should be a component of the principle of adversarial proceedings and there is no need to establish it as a separate principle in criminal procedural law. Conclusions Based on the above, it would be appropriate to supplement Part 3 of Article 410 of the Code of Criminal Procedure with a norm stating that "In such cases, the defense lawyer must participate." In addition, taking into account the importance of the issue under analysis for the conduct of criminal cases, we consider it necessary to establish in our national procedural legislation the equality of rights of the parties in court proceedings as a condition of judicial proceedings. In our opinion, it is necessary to introduce a new Article 4091 into the Code of Criminal Procedure, which will include the above-mentioned issues.

At the same time, it is proposed to develop Article 25 of the Code of Criminal Procedure in a new wording with the following content:

Article 25. Dispute in the conduct of cases in court

In the court session of the court of first instance, as well as when considering cases in higher courts, the proceedings are carried out on the basis of mutual dispute and equality of the parties.

When considering a case in court, the functions of prosecution, defense and resolution of the case cannot be performed separately from each other and assigned to the same body or the same official.

Proceedings in the court of first instance may only commence when there is an indictment or a statement of charges or a decision to refer the case to court for the application of compulsory medical measures. The court shall make a decision based on the evidence examined, ensuring the equal participation of the parties in the process of examining the evidence. The state and public prosecutors, the defendant, the legal representative of the minor defendant, the defense attorney, the public defender, as well as the victim, the civil plaintiff, the civil defendant and their representatives shall participate in the court session as parties and shall enjoy equal rights to present evidence, participate in its examination, make requests, and express their opinions on any issue important for the proper resolution of the case. The court shall not take sides with the prosecution or the defense and shall not represent any of their interests.

The court, while maintaining impartiality and impartiality, shall create the necessary conditions for the parties to fulfill their procedural obligations and exercise their rights.

The parties shall independently choose the methods and means of exercising their rights, independent of the court, other state bodies and officials. The court shall, at the request of the parties, assist them in obtaining the necessary information in the manner established by this Code.

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