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The legal nature of the principle of openness in criminal proceedings

Abstract. The article examines the legal nature of the principle of transparency as a fundamental guideline and start the criminal process of the Republic of Kazakhstan. Actualized the need for further improvement of the legislation defining the basic elements of a mechanism for implementing public. The questions of the need to identify ways to increase openness in criminal proceedings.

Key words: the principle of transparency, prosecuting function accusations protection function, the administration of justice.

Introduction

In many countries of the world, “the right to a public hearing” in court cases raised to the level of constitutional principle. This is not surprising, because international experience shows us that the transparent and public trial – is an effective means of social control over the judicial activities. The public nature of court proceedings contributes to the objectives of Article 6 § 1 European Convention on Human Rights, namely a fair trial [1].

Publicity and go through the secret history of the world of criminal justice. It is no coincidence these two procedural institute remain in the focus of the international law. So, on the basis of Article 6 § 1 European Convention on Human Rights to claim 1 or Article 14 of the International Covenant on Civil and Political Rights, the court may consider the case in closed session [2]. At the same time press and public may be excluded from all judicial proceedings or a part thereof for reasons of morals, public order or national security in a democratic society, and where the interests of juveniles or the protection of the private life of the parties, or – to the extent that in the opinion of the court, is strictly necessary – in special circumstances where publicity would prejudice the interests of justice.

In addition, the court may consider a criminal case in a closed session in order to protect the

interests of any minor whose rights may be violated in the case of an open trial in which the minor is a victim or a witness.

Methods

The form of the proceedings of cases of crimes committed by persons under 18 years of age, shall be considered and the UN Standard Minimum Rules relating to the administration of juvenile justice (The Beijing Rules) [3], clause 8.1 which provides that the right of a minor to confidentiality must be respected at all stages in order to avoid causing harm to her or him by undue publicity or by the possibility of damage to reputation. These rules of international law in accordance with Art. 4 of the Constitution are binding for the Kazakh justice.

The principle of transparency, enshrined Art. 29 Code of Criminal Procedure is constitutional provision that everyone has the right to be heard in court. However, this provision can not fully reveal the contents of the principle of openness in criminal proceedings.

Publicity of the trial is one of the most important constitutional guarantees of human and civil rights in criminal proceedings. Given the importance attached by the international publicity – legal acts, it must be enshrined in the basic documents as a fundamental principle, that would be a fundamental guarantee of its strict compliance enforcer.

According to the decision of the Supreme Court of the Republic of Kazakhstan “On the observance of the principle of publicity of legal proceedings on criminal cases” under the publicity of proceedings is to be understood not only for an open trial, but also to ensure participation of the parties, the possibility of the presence of other persons not involved in the case. Transparency requires access to participants in the process to all materials of the case, including, obtained in the course of search operations, to the instructions of the prosecutor, according to the preliminary investigation (except as provided by law). In addition, the guidelines include public proclamation of judgment, notice and familiarize parties with the received complaints of other participants in the process, the awareness of time and place of the hearing in any court, the creation of a single database entered into force verdicts and decisions of courts and free access to them, the availability of information on the performance of judicial acts.

It is interesting ratio of the principle of transparency and integrity of the individual in criminal proceedings. On the one hand the publicity of the trial requires the openness and transparency of the actions of the judges and the entire judicial system, on the other hand “excessive publicity” leads to a violation of privacy of the defendant. Thus, good compliance with the principle of openness in criminal proceedings and contributes to the implementation of the principle of inviolability of the person, because It provides safety, non-disclosure of personal and family life of the defendant. For example, the balance of this ratio emphasized norm Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated December 6, 2002 N 25 “On the observance of the principle of transparency of proceedings in criminal matters” [4] according to which “insubordinate presiding entails application of the measures under Art. 346 Code of Criminal Procedure, and in cases of violations of constitutional rights to privacy, personal and family secrets of the perpetrators can be brought to justice established by law. “

Main body

In Art. 29 The CPC found that the trial of criminal cases in all courts and in all courts occurs openly. Limitation of trial publicity is allowed:

- 1) to non-disclosure of state secrets;
- 2) in cases of minor offenses;
- 3) in cases of sexual offenses, other cases in order to prevent the disclosure of information about the private life of the persons involved in the case;
- 4) in cases where this is required by the security

interests of the victim, witness or other persons participating in business, as well as members of their families or close relatives;

5) when considering complaints against actions and decisions of the body conducting the criminal proceedings [5].

Limitation of trial publicity can spread to the entire period of court proceedings or that part, which investigates the above mentioned circumstances, as shall be specified in the decision. If in respect of the individual defendants are the reasons for holding a closed trial in connection with the protection of state secrets, but these circumstances do not apply to the other defendants, the court may allocate from the criminal case into separate proceedings another criminal case, which is to be examined in a closed court session. If the allocation of the case will affect the comprehensiveness, fullness of his studies and permits the production of such action, in accordance with Part. 4 Art. 49 Code of Criminal Procedure is not allowed. In this case, the court, in accordance with Part 1 of Art. 29 Code of Criminal Procedure, decide whether to hold a closed trial on the whole case. In accordance with Art. 403 Criminal Procedure Code the court decision on the publicity of the trial, taken during the trial, a separate appeal and protest are not subject to objections against them can be summarized in the appeal or protest filed against the verdict (ruling) of the court rendered on the merits.

The verdict of the court and the decision taken in the case, in all cases, be announced publicly.

The Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated December 6, 2002 N 25 “On the observance of the principle of publicity of legal proceedings in criminal cases,” found that “violation of the criminal process principles, including openness, depending on its nature and materiality, entails recognition held manufacturing invalid, the abolition of the decisions made or the recognition of materials collected at the same time do not have evidence of strength. “ In this regard, the courts ordered to prevent cases of illegal restrictions of transparency, to provide free access to the courtrooms of all stakeholders and members of the media. The Supreme Court has fixed that transparency ensures the availability of participants in the process to all materials of the case, the publicity of the proclamation of the court decision, notice and familiarize parties with the received complaints of other participants in the process, the awareness of time and place of the proceedings in any court, and on the performance of judicial acts.

The limits of transparency in the pre-trial stage of the proceedings in accordance with Art.

205 Code of Criminal Procedure defines the body conducting the criminal proceedings, and in the hearing – the court. The Court, at the request of a party or on its own initiative, the appointment of the main trial, with reduction in the resolution of the relevant reasons, must decide whether a public or private hearing.

Submit petitions to limit the publicity of the trial at the stage of the main purpose of the trial (preliminary hearing), and during the main trial may only actors. Other persons, including representatives of the media, are deprived of this right.

Conclusion

With regard to the media in the Plenum of the Supreme Court of the Republic of Kazakhstan Decree of May 14, 1998 N 1 “On some issues of application of the legislation on the judiciary in the Republic of Kazakhstan” [6] found that courts should bear in mind that the principle of

publicity of the trial is to provide opportunities all citizens, including non-parties to the process of the subject to judicial proceedings, to be present at its proceedings. It should therefore be deleted as contrary to the principle of transparency cases of unjustified refusal to media representatives present in the courtroom. The media should not prejudice in their reports the results of the trial before the entry decision or sentence in force or otherwise influence the court. Failure to do so shall result in liability of those responsible for interference in judicial activity, or contempt of court. By prejudging the results of the trial in relation to the said provision of law to be understood as media reports, directly or indirectly, to the creation of public opinion about the correctness of the position of one of the parties to the trial and about the legality and fairness of the forthcoming judicial decision only in the case of the court’s specific solutions.

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