

# Definition of Guarantees of Personal Rights Ensuring in Criminal Proceedings

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## **Abstract:**

The article examines the theoretical and legal basis of the procedural guarantees of individual rights in criminal proceedings on the basis of theoretical and practical analytical data. The article also provides a detailed analysis of the scientific views of scholars and legislation on the theoretical aspects of the procedural guarantees of individual rights in criminal proceedings.

**Key words:** crime, criminal procedure, investigation, person, state, legislation.

## **1. INTRODUCTION**

In studying the content of the theoretical basis of the procedural guarantees of individual rights in criminal proceedings, it is expedient to describe the category of "individual rights".

Accordingly, in the research work, theoretical approaches have been put forward by scholars and experts on the individual, his rights and freedoms.

As for the analysis of some literature in the category of "individual rights", the encyclopedic dictionary of legal terms, although not the same concept, defines the concept of "personal rights and freedoms" as "basic human rights from birth, regardless of social and legal status" [1]. described.

## **2. THE MAIN PART.**

At the stages of criminal proceedings, in particular, from the initiation of a criminal case to its investigation, appointment to court, consideration of the case in court and the adoption of court documents (verdict, ruling), enforcement of the sentence (ruling, decision) procedural safeguards are important.

It should be noted that criminal procedural guarantees are a practical confirmation of the legitimacy and humanity of justice in criminal proceedings, and the practical protection of the rights of the person established by law in criminal proceedings.

The concepts of individual rights and their procedural guarantees in criminal proceedings have been legally described by foreign procedural researchers as follows.

According to LD Kokoreva, criminal procedural guarantee is a system of legal instruments aimed at justice and established by law to protect human rights and freedoms in criminal proceedings [2].

According to KF Gutsenko, criminal procedural guarantees are the conditions, means and methods of ensuring the clear and uniform observance of the law in the activities of participants in criminal proceedings, the realization of their rights and obligations to achieve and resolve goals [3].

The theoretical definition given to the concept of procedural guarantees by P.A. Lupinskoy is more precise, according to which these are the legal means available in the legal norms, which allow all subjects of criminal procedural activity to perform obligations and exercise the rights granted [4].

S.Yu.Fransiforova defined the concept of procedural guarantees as "a system of legal means established by law, which ensures the implementation of the tasks of judicial proceedings in criminal cases" [5].

In addition to the legal definitions given to the concept of criminal procedural guarantees by these scholars, it can be understood as a set of all legal norms and legal means aimed at ensuring the rights and freedoms of participants in criminal proceedings.

In each criminal case, it is necessary to distinguish between procedural guarantees in the form of tools that ensure the implementation of the tasks of justice and guarantees of the rights and legitimate interests of the individual, ie guarantees through which participants can protect their rights and legitimate interests. These guarantees are inextricably linked and cannot be contrasted or equated, they are a type of legal guarantees of legality in criminal proceedings. The interests of the state in relation to an individual may not be compatible with each other, but the state ensures the protection of these interests by determining the legal nature of this or that interest of the individual. In the broadest sense, the guarantee of legality is the whole criminal process, as well as the procedural form. The form is aimed at ensuring the achievement of procedural tasks in compliance with the rights and legitimate interests of the participants in the process [6].

In order to achieve the goals of criminal procedure legislation and effectively address the tasks facing it, it is necessary, first of all, to create a system of special procedural guarantees aimed at protecting the rights and legitimate interests of persons involved in criminal proceedings [7].

Thus, it is necessary to understand the combination of two components under the criminal procedural guarantees of the participants in the criminal proceedings: first, it is the sum (system) of procedural norms (legal instruments) established by the criminal procedure law, ie allowing the participant to protect and exercise their rights, legitimate interests to achieve the fulfillment of obligations, regardless of the will of the subjects who give or oppose it; secondly, the legal activity of state bodies and officials in the implementation of these legal means to ensure clear and uniform observance of the law in the activities of all participants in the criminal proceedings [8].

According to some authors, criminal procedural guarantees are a "system of legal remedies." Another sees this definition as "legal means". Someone else is convinced that these are "tools, methods and conditions". Fourth, it concludes that "all criminal procedural law" must be understood under criminal procedural safeguards.

Procedural guarantees are divided into two main types: 1) guarantees of the rights and legitimate interests of an individual in criminal proceedings (guarantees of individual rights; guarantees of the rights of individual subjects; guarantees of human rights); 2) guarantees of justice [9].

L.A. Krotova also divides them into two groups according to the scope of criminal procedural norms: 1) procedural guarantees provided by norms that contain the whole system of criminal procedure, the basic conditions of justice or the interpretation of procedural concepts and institutions (principles). in a criminal case); 2) procedural safeguards provided for in the rules covering certain typical procedural situations that have a regulatory effect [10].

According to the theoretical conclusions given in the definition of procedural guarantees of the rights of the person, procedural guarantees include the following elements: 1) principles of criminal procedure; 2) the rights and obligations of the participants in the process; 3) the duties of officials in ensuring the rights of the individual.

Thus, despite the conflicting views in science regarding the system of guarantees, we emphasize once again that procedural guarantees are not an independent procedural means, but a system of legal means of security. The social significance of this system is that it directs officials conducting

criminal proceedings to reject declaration, to change the center of gravity, rather than the actual provision of individual rights provided for in the criminal procedure law [11].

Legal bases of procedural guarantees of the rights of the person. Over the past period, a legal system for ensuring the rights of the individual in the field of criminal procedure has been created, on which more than 10 pieces of legislation have been adopted.

It should be noted that the criminal procedure legislation states "respect for the honor and dignity of the individual", "protection of the rights and freedoms of citizens" as the principles of criminal procedure. As a legal measure to ensure these principles, a number of laws have been developed in our country and international documents have been ratified.

On August 31, 1995, the Republic of Uzbekistan acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, December 10, 1984).

According to Article 13 of the Constitution of the Republic of Uzbekistan, democracy in the Republic of Uzbekistan is based on universal principles, according to which a person, his life, freedom, honor, dignity and other inalienable rights are the highest value.

Based on this norm of the Basic Law, a number of laws have been adopted to guarantee the rights of the individual in criminal proceedings, as well as in other areas of law.

The Code of Criminal Procedure contains a number of norms aimed at ensuring the rights and freedoms of the individual.

In particular, Article 18 of the Code stipulates that all state bodies and officials responsible for criminal proceedings must protect the rights and freedoms of citizens participating in criminal proceedings.

Article 23 of the Code of Criminal Procedure, known as the "presumption of innocence," stipulates that a suspect, accused, or defendant shall be presumed innocent until proven guilty in accordance with the law and entered into force by a court judgment.

In order to ensure the unconditional observance of constitutional principles such as the rule of law, equality of citizens before the law, the presumption of humanity, justice and innocence, observance of the rights and freedoms of citizens in judicial proceedings, further improvement of criminal procedure and criminal law Decree "On additional measures to strengthen the guarantees of the rights and freedoms of citizens in investigative activities."

According to the decree, "the use of testimony of a witness, victim, suspect, accused, defendant, expert opinion, material evidence, audio and video recordings and other materials obtained in violation of the rules of procedural law as evidence is prohibited.

This law also provides for the intentional inclusion of false information and other distorted facts in documents or items that lead to illegal detention, arrest, criminal prosecution or conviction, coercion to give false testimony, distortion of the facts of the case. It is planned to introduce criminal liability for falsification of evidence, false testimony and misrepresentation.

According to these norms, the Law of the Republic of Uzbekistan No. LRU-470, adopted on April 4, 2018, supplemented the Criminal Code with Articles 230<sup>1</sup> and 230<sup>2</sup>, ie falsification of evidence and falsification of search results.

The Decree stipulates that a detainee who has been subjected to a measure of restraint in absentia has the right to appeal in court against the ruling on the application of this measure of restraint within seventy-two hours from the date of delivery to the relevant competent authority.

In order to regulate relations in the field of protection of victims, witnesses and other participants in

criminal proceedings, on January 14, 2019 the Law of the Republic of Uzbekistan "On Protection of Victims, Witnesses and Other Participants in Criminal Proceedings" was adopted.

This Law provides a clear list of protected persons, ie the victim and his legal representative, witness, public prosecutor and public defender, suspect, accused, defendant, their lawyers and legal representatives, convict, acquitted person, person against whom the criminal case is terminated, civil plaintiff, civil defendant and their representatives, expert, specialist, translator and impartial, as well as family members and close relatives of these persons may also be protected persons.

Ensuring the confidentiality of information about the person protected by law; protection of person, house and other property; provision of special individual protective equipment and technical means to the protected person; temporary safe placement; relocation, change of place of work (service) or study; exchange of documents; restricting the use of information about the protected person; the provision of additional security measures in respect of a protected person detained in custody or in a penitentiary institution.

In addition, the Law of December 6, 2019 "On amendments and additions to some legislative acts of the Republic of Uzbekistan in connection with the further strengthening of guarantees of the rights of the child" supplemented the Criminal Procedure Code with the following norm: at the request, one of his close adult relatives or another person he trusts may be allowed to participate in the case as a legal representative, in addition to the persons provided for in this norm.

This Law was supplemented by an article entitled "Guarantees for the Protection of the Rights of the Child Participating in Criminal Proceedings" of the Law on Guarantees of the Rights of the Child.

According to the amendments, the State will take measures to ensure that all procedural rights of children established by law are observed and guaranteed at all stages of pre-trial proceedings and court proceedings.

It is forbidden to make any mental or physical impact on the child, to force him to give instructions or to admit guilt.

During pre-trial proceedings and court proceedings, it is prohibited to take procedural actions against children without the participation of their legal representatives. In cases stipulated by the legislation, procedural actions against a minor may be carried out in the presence of his close adult relative, teacher or other legal representative of this person.

A defense counsel must be present at all stages of the pre-trial proceedings and trial in juvenile delinquency cases. It is considered unrealistic for a child and his or her legal representatives to waive protection.

Also, the Law of the Republic of Uzbekistan No. LRU-617 of May 14, 2020 introduced amendments and additions to the Criminal Procedure Code of the Republic of Uzbekistan aimed at strengthening the protection of the rights and freedoms of citizens participating in criminal proceedings.

The law introduced a number of amendments to Article 91, Part 4 of the Criminal Procedure Code, aimed at ensuring the rights of the individual, including personal search and seizure of a person in the process of arrest and renunciation of a lawyer, arrest, search, investigative experiment, examination of testimony at the scene. , procedural actions, such as reviewing the scene of a serious crime, should be recorded on video.

Article 217 of the Code of Criminal Procedure stipulates that when an inquiry officer, investigator, or prosecutor applies a coercive measure of restraint against a suspect or accused, and a court imposes a coercive measure of restraint, house arrest, or medical examination, he / she must immediately inform one of his / her family members about the place of detention, and in their absence, other

relatives or close friends, as well as inform the place of work or study.

According to the amendments to the first part of Article 225 of the Code of Criminal Procedure, after the detainee is brought to the police or another law enforcement agency, the duty officer or other law enforcement officer must immediately draw up a detention report on the instructions of the chief.

As a logical continuation of the legislation on further strengthening the guarantees of protection of human rights and freedoms, on August 10, 2020 the Decree of the President of the Republic of Uzbekistan "On measures to further strengthen the guarantees of protection of human rights and freedoms in judicial proceedings."

The decree was adopted in order to improve the investigation of criminal cases in accordance with international standards and best international practices, to implement the principles of the rule of law and the inevitability of liability, to further improve the criminal procedure legislation.

Encouraging a person to commit an illegal act by decree and accusing him of a crime committed as a result of such incitement; summon and interrogate law enforcement agencies in the absence of grounds for involving close relatives of the detained suspect or accused as participants in the proceedings; it is prohibited to summon or interrogate a defendant, victim, witness, civil plaintiff, civil defendant and other participants in the proceedings to law enforcement agencies as part of a criminal case sent to the court for review by the staff of the inquiry and preliminary investigation bodies.

However, the Decree stipulates the following:

to receive applications, explanations or testimonies from suspects, accused or defendants by officers of law enforcement agencies with the written permission of the inquiry officer, investigator, prosecutor or judge in the criminal case and only in the presence of defense counsel (in cases of refusal of defense counsel) mustasno);

to calculate the period of detention of a person suspected of committing a crime from the moment of his actual arrest;

to determine that a person must be provided with an independent meeting with a lawyer before the procedural actions related to his arrest are carried out from the moment of notification of the decision on the fact that the operative measure on arrest or de-criminalization has been completed or recognized as a suspect;

the introduction of the institution of conciliation on confession. In this case, a written agreement with the bodies of inquiry and preliminary investigation in cases of a person pleading guilty to certain categories of crimes, sincere remorse, active assistance in solving the crime and reparation of the damage, and the Special Part of the Criminal Code of the Republic of Uzbekistan. imposition of a sentence not exceeding half of the maximum penalty and (or) the term provided for in the relevant article;

in case of impossibility to interrogate the witness and the victim at the pre-trial stage due to serious illness or the need to leave the country for a long time, their testimony shall be confirmed by the court at the request of the suspect, accused, victim, witness, prosecutor or lawyer introduction of (deponirovanie) procedure;

to establish the requirement for the participation of a defense counsel in cases involving persons suspected or accused of a very serious crime, as well as in the case of detention or house arrest.

### 3. CONCLUSION.

In conclusion, it should be noted that the procedural guarantees of the rights of the individual in the

proper administration of justice are aimed at the integral connection between the rights and freedoms of the individual. In other words, the importance of criminal procedural guarantees cannot be linked to the protection of justice alone or only to the protection of the interests of the individual and cannot be contradictory.

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