SAFEGUARDS FOR PROTECTING THE RIGHTS AND LAWFUL INTERESTS OF SUSPECTS IN THE CRIMINAL PROCEEDINGS IN THE REPUBLIC OF KAZAKHSTAN

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Abstract - The article deals with the issues of balancing the interests of the individual and the state, which are most clearly manifested in the criminal process, by the example of the realization of the rights of the suspect, the issues of private detective activity in the Republic of Kazakhstan and the USA. In this regard, the authors actualize the essence, importance and role of private detective activity, which acts as a guarantee of the realization of the rights of a suspect in criminal proceedings. For this purpose, the paper explores the legal foundations of private detective activity as an activity related to the protection of the rights of the suspect; the norms of the legislation of the Republic of Kazakhstan, the range of homogeneous public relations regulated by them on the implementation of the rights of a suspect in criminal proceedings; the practice of applying the said legislation, based on the study of which proposals for improving legislation are being developed, as well as studies of the practice of law enforcement on the issues under consideration in the Republic of Kazakhstan. As a result of the study, it was determined that the participation of a private detective in a pre-trial investigation not only increases its objectivity, but also allows suspects, including with the help of private detectives, to defend their interests, also meets the main task of private detective activity, which is to protect the rights and legitimate interests of the individual.

Keywords - Criminal Process, Suspect, Suspect's Rights, Guarantees, Private Detective Activity.

I. INTRODUCTION

In the Republic of Kazakhstan, as in many post-Soviet states, the establishment of the institution of human and civil rights and freedoms takes place according to the formula: the priority of individual rights and freedoms over other political and legal institutions in the state. This norm is enshrined in Article 1 of the Constitution of the Republic of Kazakhstan "The Republic of Kazakhstan asserts itself as a democratic, secular, legal and social state, the highest values of which are a person, his life, rights and freedoms" [1].

Human rights and interests determine the entire state–legal concept of the country. Speaking in the language of democracy, a person simply became free. However, it is necessary to recognize the indisputable fact that in any social organism, which we call the state, its freedoms are not unlimited - they are limited by national law. At the same time, it is very important that both restrictions and responsibility as a response measure for violations are established from the position of equality. This criterion defines the essence of the rule of law, in which law is a common and equal "measure" for the life of society. An example is the norm of the Constitution, which establishes: "Everyone is equal before the law and the court" (part 1 of Article 14). Also, the Concept of the Legal Policy of the Republic of Kazakhstan until 2030 emphasizes the need for "... further improvement of the legislative framework for the comprehensive development of civil society institutions, including through strengthening public control over the activities of public administration bodies" [2].

The status of an individual is determined through the totality of his legal rights, freedoms and duties in the state, which relate to his interests in security, social security, cultural, political, economic self-expression, etc. Part of the rights of the individual belongs to her from birth, they are inalienable, absolute and inviolable for any encroachments, both from the state, its organs, and other individuals, its collective entities. Thus, inviolability is identified with such concepts as "it is impossible to encroach", "it is impossible to violate" [3]. Literally, inviolability means: "it is impossible to touch," but to touch in the sense that, as a result of such a touch, in any way infringe on the scope of rights and freedoms outlined by law. If a person has a constitutional right to inviolability, then the State is obliged to guarantee its implementation in relation to each individual. This issue is particularly acute at the stages of pre-trial criminal proceedings. The problem of restricting an individual's freedom becomes acute in conditions when he becomes a participant in criminal proceedings and falls under the restrictions provided for by the regulatory rules of procedural coercion. So, one of the participants involved in the orbit of criminal proceedings and defending their rights is a suspect. A suspect is a participant in the criminal process, who is a representative of the defense and enters into criminal procedural relations, primarily at the stage of pre-trial investigation (paragraph 18 of Article 7 of the CPC) [4].

According to Article 64 of the Criminal Procedure Code of the Republic of Kazakhstan, a suspect is a person:

1) against whom a decision on recognition as a suspect has been made, agreed with the prosecutor;
   1-1) interrogatedas a suspect in accordance with the procedureprovided for in part 1-2 of Article 202 of the CPC, until the prosecutorrefuses to approve the decision to recognize the personas a suspect;
2) detained in accordance with Article 131 of the CPC;
3) againstwhom a decisionhasbeenmade on the qualification of the suspect'sact by the prosecutor or a personconducting a pre-trialinvestigation, agreed with the prosecutor;
4) interrogated in connection with the suspicion of committing a criminaloffense or criminaloffensesspecified in parts two – 11-1 of Article 191 of the CPC.

Limiting ourselves to the definition of a suspect approved by law, we will analyze the rights of a suspect enshrined in the Criminal Procedure Code (Part 9 of Article 64 of the CPC), and consider private detective activity as one of the guarantees for the effective implementation of some of them. According to Article 1 of the Draft Law of the Republic of Kazakhstan "On Private Detective Activity", private detective activity is a licensed type of activity for rendering detective services on a paid contractual basis related to the protection of the legitimate rights and interests of the customer [5].

The suspecthas the right to:
1) to receive from the person who carried out the detention an explanation of the rightsbelonging to him;
2) know what he is suspected of;
3) independently or throughtheirrelatives or trustedpersons to invite a defender. If the defender is not invited by the suspect, hisrelatives or trustedpersons, the criminalprosecutionbody is obliged to ensurehisparticipation in accordance with the procedureprovided for in partthree of Article 67 of the CPC;
4) to enjoy the rights of a civil defendant in case he is recognizedassuch in connection with the presentation of a civil claim in the case;
5) have a meeting with the chosen or appointeddefender in private and confidentially, includingbefore the start of the interrogation;
6) to giveevidenceonly in the presence of a defender, except in cases of refusal from him;
7) obtaincopies of resolutions on recognitionas a suspect, civil defendant, qualification of the act, protocol of detention, petition and resolution on the election and extension of the term of the preventivemeasure, resolution on termination of the criminal case;
8) refuse to testify;
9) receive an explanation from the personconducting the pre-trialinvestigation on the procedure and conditions for the application of a preventivemeasure in the form of bail and othermeasures not related to detention;
10) presentevidence;
11) submitpetitions, including for the adoption of securitymeasures, and challenges;
12) to giveevidence in hisnativelanguage or the language he speaks;
13) use the free help of an interpreter;
14) 13-1) contact the probation service to conduct a pre-trialprobationagainst him;
15) participate, with the permission of the criminalprosecutionauthority, in investigativeactionscarried out at itsrequest or at the request of a defender or legalrepresentative, etc.

II. METHODS

In the study of the issues raised, logical, formal – legal, analytical, as well as functional methods are used to identify the qualitative characteristics of the subject of research, which allows to determine the essence of the institution under study, the possibility of regulatory impact of constitutional and sectoral legislation on the state of law and order in the Republic of Kazakhstan.

In the scientific analysis undertaken by the authors, the principles of complexity and consistency are consistently implemented and productively combined, which made it possible to more fully, scientifically actualize the issues of improving criminal procedural capabilities for the realization of the rights and legitimate interests of the suspect.

III. DISCUSSION

In accordance with Part 3 of Article 14 of the CPC of the Republic of Kazakhstan, each detainee is immediately informed of the grounds for detention, as well as of what act, provided for by criminal law, he is suspected of committing. The criminal prosecution body at the time of detention, immediately before the start of any investigative actions involving the suspect, is obliged to explain to the suspect his rights provided for by the CPC, which is noted in the protocol of detention, the protocol of interrogation of the suspect and the decisions on the recognition of a person as a suspect and the qualification of the suspect's act (part 2 of Article 64 of the CPC). The basis of this guarantee is the norm of Part 3 of Article

18 of the Constitution of the Republic of Kazakhstan, which establishes that state bodies, public associations, officials, and mass media are obliged to provide every citizen with the opportunity to familiarize himself with documents, decisions, and sources of information affecting his rights and interests.

The criminal prosecution body at the time of detention, immediately before the start of any investigative actions involving the suspect, is obliged to explain to the suspect his rights provided for by the CPC, which is noted in the protocol of detention, the protocol of interrogation of the suspect, and the decisions on the recognition of a person as a suspect and the qualification of the suspect's act (part 2 of Article 64 of the CPC).

The presence of an indictment in the criminal process requires the opposition of a defense to it. A principled approach to ensuring the right to protection follows from the norm of Part 2 of Article 13 of the Constitution of the Republic of Kazakhstan, according to which "Everyone has the right to receive qualified legal assistance...". The right to protection is enshrined in Articles 26 and 28 of the Criminal Procedure Code of the Republic of Kazakhstan. The right to defense allows the suspect both personally and with the help of a defender to prove his innocence or to bring mitigating circumstances.

From the moment of admission to participate in the case, the defender is endowed with a block of rights that are, in fact, certain guarantors in his protective activities. Such rights and guarantees include provisions providing for the right of a suspect to meet privately and confidentially, without restrictions on their number and duration before the first interrogation with a lawyer chosen by him or appointed by him. In addition, the defender has the right to collect and present items, documents, and information necessary for the provision of legal assistance, to participate in the interrogation of the suspect, as well as in other investigative actions carried out with their participation or at their request. In order to guarantee the protection of the rights of the suspect, the accused, it was proposed and included in the powers of the defender, a provision on the right of the latter to participate in investigative actions regardless of whether they are carried out at the request of the defender, the defendant, or not [11, 127].

Thus, in using the opportunities provided by the law to defend himself, both by himself and with the help of a professional defender, an individual in the criminal process has a guarantee of observance and protection of his rights and legitimate interests.

In this case, we mentioned the rights of suspects, whichcorrespond to the numerousduties of the investigation and inquirybodies, the scope and content of whichpredetermines the guarantee of the rights and freedoms of thesepersons. Here, citizens getinto the bodies with state powers and, in case the investigatorfails to fulfillhisproceduralduties, theybecome "victims" of officialarbitrariness.

Here, the guarantees of ensuring the specified rights of the suspect are:

1) legality;
2) the procedure for the production of proceduralactionsregulated by the norms of law;
3) appealagainstactions and decisions of criminalprosecutionbodies;
4) prosecutor'ssupervision of the investigation and inquiry;
5) responsibility of officials for violation of the rights and legitimateinterests of the individual, etc.

The participation of a private detective in the life of a suspect as a participant in the criminal process is, perhaps, the most important guarantee of ensuring the rights of a suspect, also meets the main task of private detective activity, which is to protect the rights and legitimate interests of the individual. Earlier, we proposed to regulate in the CPC the collection of information by a private detective on a criminal case as a participant in the criminal process. Retired officers are also confident that if the law came into force, detectives would already be helping the police in solving serious crimes [6]. To receive not only from the person who carried out the detention, an explanation of the rights belonging to him, but also from a private detective would contribute to the worthy realization of the constitutional right to access to justice.

So, in the United States, the requirements for the profession of a private detective vary based on the state. And in almost all states (with the exception of Alaska, Idaho, Mississippi, Wyoming and South Dakota), the main condition for working as a private investigator in the United States is the availability of a state license. Detective, in particular, includes the work of both an operative and an investigator.

Private detective in the USA Dmitry Zhurba identifies several reasons why people turn to a private detective:

- Distrust of state structures.
- The police don't do everything.
- Confidentiality of information provided by the client.
- Lack of bureaucracy [7].

Private investigators in the United States of America have a widefield of activity. In manyothercountries of the world you wouldcallthem "private detectives", but not in the USA. Because the detective in the US lair

is part of the police. The work of a private investigator in the USA - from California to New York - is verydiverse [8]. The work of private detectives in the United States is especially important for the defense, for lawyers. A private detective conducts a parallel investigation and collects evidence for defenders in the case, He verifies the official investigation conducted by law enforcement officers and agencies, whose representatives sometimes tend to conceal information inconvenient for the prosecution. To do this, witnesses are repeatedly interviewed to identify new facts and contradictions, the crime scene is investigated, examinations are conducted, all evidence in the case (verbal, photo, video, etc.) is checked [9].

IV. CONCLUSION

Thus, the participation of a private detective in a pre-trialinvestigation not onlyincreasesitsobjectivity, butalsoallowssuspects, including with the help of private detectives, to defendtheirinterests. The main task of a private detectiveparticipating in a pre-trialinvestigationwill be to establish the facts of compliance with all procedural rules and clarify the circumstancesjustifying the suspect or mitigatinghisguilt.Defining the system of guarantees as the most important link in the Kazakh criminal process and their role in the realization of the rights and legitimate interests of citizens involved in criminal proceedings, we can say that legal guarantees are the most important legal instrument for the implementation of norms and principles of law. The basic guarantees are established in the Constitution of the Republic of Kazakhstan. The absence of such legal guarantees gives the legislation only a declarative character, the implementation of which has very deplorable consequences, which we know firsthand.

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