INTERNATIONAL EXPERIENCE IN ENSURING THE RIGHTS OF THE INDIVIDUAL IN THE PRE-TRIAL PROCEEDINGS OF THE CASE

Saidov Bahrom Anvarovich
Head of the master's degree of the Academy of MIA,
doctor of legal sciences, professor
https://doi.org/10.5281/zenodo.10893584

Annotation: in the new Uzbekistan, special attention is paid to such important tasks as improving and liberalizing criminal and criminal procedural legislation, improving the effectiveness and quality of the implementation of Justice, strengthening the procedural foundations of criminal proceedings, ensuring guarantees of reliable protection of the rights and freedoms of citizens in the activities of judicial and investigative bodies. The article put forward a number of proposals and recommendations aimed at studying international experience in ensuring the rights and freedoms of the individual in criminal procedural relations, adhering to humanitarian principles in determining the criminal liability of criminal legal institutions recognized in international law and foreign practice, including the individual.

Keywords: Constitution, concept, law, international law, foreign experience, lawyer, defender, human rights, freedoms, Justice, bail, protection, criminal proceedings, liability, punishment, court, investigation, reform, justice, human, humanitarian, suspect, accused, victim, interrogator, investigator, prosecutor.

Approved by the decree of the president of the Republic of Uzbekistan dated May 14, 2018 "on measures to radically improve the system of criminal and criminal-procedural legislation"PQ-3723, in the concept of improvement of criminal and criminal-procedural legislation of the Republic of Uzbekistan, in international law and foreign practice, it was noted that the recognized criminal-legal institutions were not sufficiently implemented,

Therefore, it is important to study the international experience in ensuring the rights and freedoms of the individual in criminal-procedural relations.

In developed foreign countries, the position of the court in this regard is high, it can be observed that judicial control over inquiry and preliminary investigation is enhanced in the pre-trial proceedings of the case, the field of application of the "Xabeas Corpus" institution in criminal proceedings is widely applied.

"Nabeas sogris ad sujciendum", meaning "you are obliged to bring a person to court", originated as early as the 15th century, and was first practised by the Parliament of England from 1679. This document was further enhanced with additions in 1689, 1766, and 1816. Currently, it is improving, above all, as the most reliable guarantee of the right to human freedom and personal immunity in the countries of the Anglo-Saxon system of law, as well as in the countries of Latin America.

Most developed countries place great emphasis on the observance of universal values in criminal proceedings. For example, in France, criminal liability measures against illegal detention are strengthened. As part of the two-stage reforms in the United States, Poor Law was improved, according to which financially disadvantaged defendants were able to use the services of a lawyer for free.

Judicial control over investigative work in many countries is one of the principles of preliminary investigation. Under amendment IV of the U.S. Constitution, the court does not issue a warrant for imprisonment without sufficient grounds confirmed by Oath or solemn promise.[1] in the U.S., procedural-coercive measures severely restrict a person's rights to the Constitution, so it is allowed only with the permission of the court.[2]

When a person is arrested as a precaution in the United Kingdom, Under the provisions of the habeas corpus act, which has been in force for centuries, he is immediately brought before a judge[3].

In German Criminal Procedural Law, special attention is paid to judicial control over the investigation, [4] to conduct cases in a quick, simplified manner, the operation of the principle of tort and issues of protection of the individual's constitutional rights and freedoms.

Under French law, the power to apply procedural coercion measures is vested in the Special Chamber of inquiry under the courts.

In Japan, the investigation and inquiry are overseen by prosecutors.[5] if a suspect in the case is caught, he will be brought before the prosecutor within 48 hours and the issue of the procedural coercion measure applied to him will be resolved. All completed cases are referred to the prosecutor by the police authority that carried out the investigation, while minor cases are handled independently by the police itself. Actions such as searches and seizures are carried out by Justice officers on the basis of a separate order of the court[6].

In the United States, France and Germany, it was by the decision of the judge that it was established that conditional removal from temporary office would be allowed. In these states, removal from office and placement of a person in a medical institution is carried out not on the basis of the decision of the Inquirer, investigator, prosecutor, but precisely on the basis of the sanction of the judge.

Since the measure of coercion of placing a person in a medical institution applies to the freedoms of a person, this measure is also applied by the sanction of the court.

In parts of French Criminal-Procedural Law devoted to enquiry and incitement to criminal prosecution, the processual status of a suspect is unregulated, not even the term "suspect". For example, Article 70 of the jpk mentions "a person who is suspected of participating in a crime", Article 63 mentions "a person who has information against him" [7].

The inquiry stage in the French criminal process is slightly closer to the stage of initiating a criminal case in the criminal process of the Republic of Uzbekistan. But at the same time there are different aspects of its own. For example, such as the conduct of investigative actions such as seizure, search, interrogation, facilitation at the interrogation stage, the incitement of criminal harassment only by the prosecutor, the transfer of the preliminary investigation by judicial investigators are included.

UK criminal proceedings do not include stages such as inquiry and preliminary investigation. Pretrial criminal proceedings are associated with the activities of the police, and when opening a crime and exposing the person who committed it, compulsion measures are naturally applied[8].

Many states have passed separate laws to ensure the safety of prosess participants, listing the security measures they use.

Under the U.S. Anti-Crime Act of 1970, the court grants "immunity"under certain conditions to prosess participants participating in a state-for-profit case. Through this law, for the first time in the world, a state-funded program was launched to ensure the safety of persons who

contribute to the disclosure of criminal offenses in court. The law "on the protection of victims and witnesses of crime", passed by Congress on October 12, 1982, states that criminal justice cannot operate without the protection of victims and witnesses[9]. Under the federal law "on the rights and restitution of victims of crime", passed by Congress in 1990, control is exercised by the Minister of Justice over the implementation of the program to ensure the safety of victims of crime.[10] according to the law, security measures can be established in relation to participants, such as having a bodyguard, changing work, place of residence, name and name, providing new documents, helping to find a new job, allocating the necessary subsistence minimum [11].

In developed foreign countries, such issues as the protection, safety of persons affected by a crime, compensation for the damage caused to it are of priority in the course of a fair trial.

In Germany, the Victims ' Protection Act of December 10, 1986, and the witness protection concepts of December 1990 were among the first steps towards ensuring the safety of those affected by the crime and their family in the conduct of criminal justice. In these documents, the tasks of the bodies that ensure the safety of persons assisting in criminal justice are clearly defined. Additional measures relating to witness protection in the" main witness act "of 1993, the"endangered witnesses protection issues Regulation Act "of 1998 (including the" privileged " procedure for interviewing witnesses in certain categories, etc.) defined[12].

The GFR's Anti-Crime Act of 1994 placed great importance on the anonymity of witnesses and victims[13]. In addition to long-term police protection against minor victims and security measures in the manner of keeping the minor's whereabouts a secret Apply[14].

In Belgium and the Netherlands, when a person confesses to his guilt and voluntarily compensates for the damage caused, he is provided with an exemption from liability and punishment, even if the law prescribes a sentence of imprisonment for up to six years. Similar forms of decriminalization in the pre-trial stages of proceedings are also widely used in Italy, Greece, Norway and Turkey[15].

The provision of assistance to persons affected by crime in the UK is an important and integral part of the state criminal justice policy, and the "Charter of the rights of victims" is the largest document on the matter. Ensuring the safety of prosess participants in this state is among the tasks of the ordinary police, and there are no separate departments operating in this area[16].

In France, a whole system of laws applies that govern the protection of the rights of victims and compensation for them for damage caused by a crime. For example, in 1977, through laws No. 77-5 of January 3 "on compensation for damage to the body of a victim of a crime", No. 81-82 of February 2, 1981 "on protection of individual freedom and increased security", No. 83-608 of June 8, 1983 "on strengthening the protection of victims from crime", the right of victims to receive compensation for legal, psychological, social assistance[17].

In the criminal process of foreign countries, public control, including non-governmental human rights organizations, the media, is important in ensuring the constitutional rights and freedoms of the individual.

In the legislation of most CIS countries, a separate law "on public control" does not exist, public control over the activities of state authorities and administration, courts and law enforcement bodies is carried out on the basis of other legislative acts. For example, there is the law of the Russian Federation "on public control over the observance of human rights in places of detention and assistance to persons in places of detention", adopted on June 10, 2008.

According to it, the legal framework for the implementation of public control over the observance of human rights and the support of these individuals is established. The code of administrative offenses of the Russian Federation, on the other hand, defines norms that provide for liability for violations of legislation on public control over the observance of human rights in places of detention.

In the Ukrainian state, however, public control over the activities of state authorities and governing bodies was regulated by the legislative acts of the Republic of Ukraine "on citizens 'Appeals", "on the legal status of foreigners", "on refugees"and others.

The concept of improving the criminal and criminal-procedural legislation of the Republic of Uzbekistan[18] defines a further improvement of the system of criminal-procedural principles, taking into account modern approaches, advanced international standards and foreign practice.

The study and analysis of criminal procedural legislation of foreign countries on the provision of the individual's constitutional rights and freedoms in the pre-trial proceedings of the case caused the following conclusions to be drawn:

first, in most developed democratic states, procedural actions that may limit the rights and freedoms of an individual in the pre-trial proceedings of a case are carried out with the permission of the court. Therefore, it makes it possible to apply this positive experience to our national legislation, transfer a certain part of the powers of the subjects conducting the case to the judicial authorities, strengthen judicial control in the process of inquiry and preliminary investigation, expand the field of application of the "Xabeas Corpus" institution in criminal proceedings;

secondly, when proceeding the case before the court, an attempt is made to apply at a minimum the procedural actions that can limit the rights and freedoms of the individual;

thirdly, most of the evidence that serves to prove an individual's guilt is collected until a precautionary measure is applied to the individual (i.e., at the time he or she is walking in freedom;

fourth, incentive norms regarding a suspect or defendant are widely used in the pre-trial proceedings of a case. According to him, the person who committed the crime sincerely regrets his act, and in cases where he actively participated in the rapid and full opening of the crime, certain reliefs are created. For example, a person being held in custody as a precaution is exchanged for bail or another lighter precaution. In addition, a lighter sentence is imposed by the court on the defendant, or he may be released from punishment based on the severity of the act he committed.

Both in the concept of improving the criminal and criminal-procedural legislation of the Republic of Uzbekistan, it is noted that sanctions for special types of crimes are incompatible with the nature and level of social danger, including alternative types of punishment, stimulating norms and measures of public influence are not sufficiently applied and ineffective.

Therefore, a person suspected or accused of committing a serious or very serious crime, which is recorded in the Criminal Code, was sincerely remorseful to take the blame for it, in cases that actively contributed to the opening of the crime and eliminated the damage caused, it is advisable to draw up a written agreement with the authorities of inquiry and preliminary investigation and to introduce in relation to it an institution that provides for no more than half of the maximum penalty provided for by the court in the relevant article of

Already, such an experience has instructive provisions related to decriminalization in countries such as Germany, Belgium, Spain, The Netherlands, France, Scotland and Russia[19].

The analysis of the stages of development of the fundamentals of decriminalization shows that the emergence and practical application of these foundations is not accidental. It is not an exaggeration to say that the grounds for the release of a criminal from liability by means of forgiveness, without punishment, have been formed for several hundred, perhaps thousands of years. This process has developed and developed directly on the basis of the social structures that existed in history, the structure of the state, its ideology, its policies against crime and many other factors. Let's not look at what period of history, these grounds are: the reconciliation of the person who committed the crime and the victim who suffered from the crime; the confession of the guilty persons; their forgiveness by the relevant officials; as well as the release from liability at the expense of compensating for the damage caused by his criminal actions, and other

We also witness that the words of sahibqiron Amir Temur, "if dushma comes to your refuge with a head kick, show mercy and kindness", also describe the meaning of forgiveness. It is known that Sharia norms were followed during the reign of Amir Temur. It can be said from this that achieving a reconciliation between the parties, which is one of the most fundamental types of release from responsibility, has always and has been one of the important issues in each period[21].

Such important laws created during the reign of the great poet Amir Temur are widely used by all states to this day. For example, in the United States, a plea agreement can also be concluded with those accused of committing all types of crimes[22]. This institute is a component of the US criminal process and has been used in practice for more than 150 years[23].

The agreement to confess to the crime committed by the institute was first expressed in the United States, and later in the legislation of Western European states[24].

In the legislation of some foreign countries, in particular the Russian Federation, the Republic of Kazakhstan and a number of other countries, according to criminal-procedural legislation[25], the Institute of conciliation agreement of the parties is prescribed to apply to suspects, in addition to the accused.

To date, more than 90% of cases in proceedings in the United States, and more than 70% in Germany, are finding their solution under the agreement of the parties[26]. Countries such as Germany, the United States, Spain and Italy are widely used in criminal proceedings to conclude a fair trial agreement[27].

In foreign countries, in particular in the United States, an agreement can be made not only in the form of a contract, but also in oral form[28]. Since in our national legislation it is established that procedural actions are formalized in the relevant documents, it is desirable that we have this agreement in writing.

As a conclusion, it is worth noting that the application of this progressive experience of developed countries to our national legislation corresponds to the goal of the judicial reforms carried out in our country today.

References:

1.Пешков М. А. Арест и обыск в уголовном процессе США. – Москва: Спарк, 1998. – Б. 84.
2.Американская конвенция о правах человека // Международные акты о правах человека. Сборник документов. – Москва: Норма, 2000. – Б. 722.
3.Jodie Blackstock. European Union Criminal Procedure: A general defense practitioner's guide. – London: Justice, 2011. – P.134.

4.Абдурасулова Қ. Р. Хорижий давлатлар жиноят-процессуал қонунчилигида дастлабки тергов ҳаракатлари ва суд назорати / Қ. Р. Абдурасулова, С. Ниёзова // Дастлабки терговда суд назоратини ташкил қилиш муаммолари: Илмий-амалий анжуман материаллари. – Т.: ТДЮИ, 2005. – Б. 71.
5.Олимов Б. Хорижда санкция ва тергов // Қонун ҳимоясида. – 2005. – № 6. – Б. 23.
6.Абдурасулова Қ. Р. Хорижий давлатлар жиноят-процессуал қонунчилигида дастлабки тергов ҳаракатлари ва суд назорати / Қ. Р. Абдурасулова, С. Ниёзова // Дастлабки терговда суд назоратини ташкил қилиш муаммолари: Илмий-амалий анжуман материаллари. – Т.: ТДЮИ, 2005. – Б. 72–73.
7.Головко Л. В. Дознание и предварительное следствие в уголовном процессе Франции. – Москва: Спарк, 1995. – Б. 19.
8.Гуценко К. Ф. Уголовный процесс западных государств / К.Ф. Гуценко, Л.В. Головко, Б.А. Филимонов. – Москва: Зеркало-М, 2001. – Б. 238.
9.Фитцжеральд Д. Программа обеспечения безопасности свидетелей // Правоохранительная деятельность в США. – Москва, 1998. – Б. 174–177.
10.Воробьев И. А. Защита свидетелей как одно из ключевых условий эффективной борьбы с организованной преступностью // Журнал российского права. – 1999. – № 2. – Б. 134.
11.Тулаганова Г. З. Жиноят процессида процессуал мажбурлов ва унинг ўзига хос хусусиятлари: Юрид. фан. д-ри ... дис. – Тошкент, 2009. – Б. 279.
12.Новикова М. Н. Обеспечение безопасности участников уголовного судопроизводства как гарантия осуществления правосудия в современных условиях: автореф. дис. ... канд. юрид. наук. – Екатеринбург: Уральский юридический институт МВД России, 2006. – Б. 23.
13.Брусницын Л. Как обезопасить лиц, содействующих уголовному правосудию // Российская юстиция. -1996. – № 9. – Б. 48.
14.Жўрабоев А. Вояга етмаган жабрланувчиларнинг шахсий хавфсизлигини таъминлашга оид хориж қонунчилиги таҳлили // Фалсафа ва ҳуқуқ. – 2006. – № 4. – Б. 45.
15.Лапасов Т. Чин кўнгилдан пушаймон бўлишнинг моҳияти ва ижтимоий-ҳуқуқий аҳамияти // Давлат ва ҳуқуқ. – 2004. – № 2. – Б. 29.
16.Вавилова Л. В. Организационно-правовые проблемы жертв преступлений (по материалам зарубежной практики): дис. … канд. юрид. наук. – Москва, 1995. – Б. 105–139.
17.Меньших А. А. О возмещении ущерба жертвам преступлений во Франции // Журнал российского права. – 1999. – № 9. – Б. 48.
18.Ўзбекистон Республикаси Президентининг қарори. Жиноят ва жиноят-процессуал қонунчилиги тизимини тубдан такомиллаштириш чора-тадбирлари тўғрисида. 2018 йил 14 май, ПҚ–3723-сон.
19.Бердиев Ш. Жиноий жавобгарлик ва ундан озод этиш масалалари: монография / Ўзбекистонда хизмат кўрсатган юрист, ю.ф.д, проф. М.Х.Рустамбаевнинг таҳрири остида. – Т.: Сано-стандарт, 2011. – Б. 5.
20.Муродов Б. Б. Жиноят ишини тугатиш институтини такомиллаштириш. – Тошкент, 2018. – Б. 30.
21.Муродов Б. Б. (2018). – Б. 31–32.

22.Саломов Б. Айбга иқрорлик виждон масаласидир // Адвокат. – 2006. – № 4–5. – Б. 9.
23.Crime and Justice in America 1975–2025. The University of Chicago Press. Issue Stable URL: http://www.jstor.org/stable.
24.Дубровин В. В. Сделки о признании вины по законолательству Франции // О некоторых вопросах и проблемах современной юриспруденции. 2017. – № 4. – С. 48–46; Каландаров Д. Национальное законодательство и зарубежный опыт в сфере упрощения уголовного судопроизводства. – http://www.minjust.uz/ru/press/ourpublications (Мурожаат вақти: 14.02.2018).
25.Қаранг: Уголовно-процессуальный кодекс Российской Федерации. – Москва, 2004. – С. 15; Уголовно-процессуальный кодекс Республики Казахстан. – Алматы, 2014. – С. 35.
26.Макаров А. П. Сделка о признании вины: новация УПК Украины // Ученые записки Таврического национального университета им. В.И.Вернадского. Сер. «Юридические науки». – Т. 26. – 2013. – № 1. – С. 414–418; Каландаров Д. Национальное законодательство и зарубежный опыт в сфере упрощения уголовного судопроизводства. – http://www.minjust.uz/ru/press/ourpublications (Мурожаат вақти: 14.02.2018).
27.Yerold H. Israel, Wayne R. La. Criminal Procedure. – Minessota. 1991. – P. 26–27.
28.Каландаров Д. Кўрсатиган асар.