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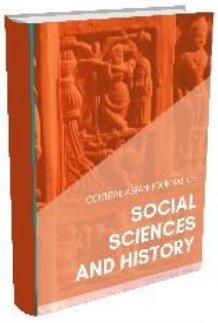

Strengthening the Importance of the Adversarial Principle of in Working in Courts of First Instance

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Abstract:
this article discusses the preparation of a criminal case for consideration in court, strengthening the mutual argumentation of the parties in the process of considering the content of the case, ensuring equality of procedural capabilities of the parties, which is an important component of it, as well as determining the position of the court in the process of establishing the truth, determining the level of its activity during the period of collecting, checking and evaluating evidence. The issues were analyzed based on the experience of some developed foreign countries and the scientific views of procedural scientists who conducted scientific research on this issue.

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Petitions are one of the important mechanisms that serve to ensure the adversarial nature of the parties in legal proceedings. It can be called a request in written or oral form given by the participants in a criminal proceeding to the person carrying out the work to perform certain procedural actions, clarify a situation relevant to the case, and make a procedural decision. Also, in our current criminal procedural legislation there is no clear mechanism regarding the procedure for filing petitions, the timing of their consideration, the grounds for granting and rejecting petitions..

Not only during the trial of a criminal case, but also during the investigation, the consideration and resolution of the requests made by the parties must be resolved immediately. Only in cases where it is not possible to solve it immediately is it correct to postpone it for a clearly defined period. In paragraph 12 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On judicial practice when considering criminal cases in the court of first instance" [1], in order to ensure the correct resolution of petitions received earlier before the start of the trial, the presiding judge in the case may postpone the consideration of the petition and take certain actions (certificates, requests for descriptions and other documents, etc.) Unfortunately, official statistics on the number and content of all requests from participants during criminal proceedings are not kept. This can only be found out by

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analyzing the transcript of the court hearing.

The court's decision on the parties' motions must be justified; it must be justified why the court came to this conclusion. The ruling must also indicate the parties' arguments confirming or refuting each other regarding the granting or rejection of the petition. In general, some procedural scientists argue that the court's refusal to satisfy petitions for one reason or another contradicts the principle of adversarial law [2]. In particular, failure to satisfy requests to obtain evidence is a direct violation of the right of the accused and his defense to present evidence [3]. Also, procedural scientists proposed to develop a list of requirements that must be satisfied by the court [4]. In particular, about calling a witness. In support of the opinion of these scientists, we consider it necessary to review the procedure for considering petitions by the court, especially the grounds for refusing to satisfy them.

Based on the experience of some developed countries, for example, Article 239 of the Criminal Procedure Code of Georgia clearly states the requirement to satisfy requests for the collection of evidence of completely new content. In this case, it should not have been possible to obtain it earlier for objective reasons. Another important point is that in Article 228, unless the parties ask the court to examine a person as a witness, the court cannot summon and examine him on its own initiative [5]. From this it is clear that the Georgian criminal process has comparatively more fully implemented the requirements of the adversarial principle. There are no strict requirements in this regard in the CPC of Kazakhstan and Kyrgyzstan. However, in Azerbaijan [6] the attitude to this issue is different. According to Article 323 of the Criminal Procedure Code of this country, the court can, on its own initiative, question witnesses, appoint experts and take other actions. This aspect is very similar to our national procedural law.

Based on the above, it is recommended to supplement Article 438 of the Criminal Procedure Code with the following proposals:

In case of refusal to satisfy the petition, the court must justify its decision, giving a separate assessment of each argument of the parties.

The court does not have the right to refuse requests to question witnesses and experts at the initiative of the parties.

As a result of the analysis of the norms of the Code of Criminal Procedure of the Republic of Uzbekistan regulating the process of judicial investigation (Chapter 52), we can conclude that the majority of cases encountered in judicial practice are not regulated by law. During a judicial investigation, the judge evaluates the evidence presented by the parties, guided by the principle of direct and oral examination of evidence. A judicial action not regulated by law, but carried out in every criminal case, is interrogation. In particular, the issue of interrogation of the defendant by the court is the cause of controversy among scientists and specialists in the theory of criminal procedure law.

In particular, A. S. Vinogradov and A. A. Khaidarov believe that the prosecution should first ask questions to the defendant, thereby giving the defense lawyer enough time to strengthen his position [7]. S.A. Alexandrova stated that the initial interrogation of the defense lawyer leads to knowledge of the tactics and range of interests of the defense, therefore the interrogation should begin with the prosecutor [8]. However, according to D.V. Sharapova, who opposes such opinions, if the defendant agrees to testify, the defense must first ask him questions. According to the scientist, this is due to the fact that the defendant is a participant in the defense [9]. Sh.N.Nuritdinov [10] proposed to present

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evidence presented by the prosecution first, and evidence presented by the defense to be examined after examining the evidence presented by the prosecutor.

In our opinion, even in such cases, defenders must take the initiative. However, in our current legislation, that is, in Article 442 of the Code of Criminal Procedure, the interrogation of the defendant begins with the proposal of the presiding officer to talk about the circumstances of the case, and initially he is visited by the state prosecutor. The interrogation of the state prosecutor, as well as the victim, the civil plaintiff and their representatives, the defense lawyer, and the public defender are scheduled , the civil defendant and his representative. The accused may then be asked questions by other accused and their lawyers.

Some developed foreign countries, including the Republic of Kazakhstan in Art. 367 of the Criminal Procedure Code of the Russian Federation, Art. 275 of the Criminal Procedure Code of the Russian Federation, Art. 367 Criminal Procedure Code of the Republic of Moldova [11], Art. 293 of the Criminal Procedure Code of the Republic of Estonia [12] requires that questions be asked of the defendant first by the defense and then by the prosecution, and it is established that the court can ask questions of the defendant only after he has been questioned by the parties.

In addition, it is important to determine the exact limits of the court's participation in the interrogation of the defendant. Article 442 of the Criminal Procedure Code provides that people's councilors presiding and participating in the meeting may ask questions at any time during the judicial investigation. Naturally, such a possibility exists in the courts due to the incompleteness of the judicial investigation or the need to fully study the circumstances of the case. However, when considering the principle of the parties' dispute, the court must create favorable conditions for their dispute; certain circumstances should be taken into account. The task of the court is to objectively examine the evidence and ensure equality of the parties.

According to this scientist, who analyzed the court record, courts in most cases change the direction of the process towards the prosecution, actively asking the defendant questions in front of the parties. However, they do not carry out criminal prosecution, do not take the side of the prosecution or defense, but only create the conditions for their dispute [13]. Therefore, the learned Court came to the conclusion that questions should be put to the defendant after the parties. According to O. M. Demchenko, this procedure serves to ensure that the judge does not become a "second prosecutor" when interrogating the defendant [14]. Unfortunately, the opinions of these procedural scientists cannot be called inappropriate. We consider it advisable to make changes to the current legislation when the issue is considered based on the requirements of the principle of a dispute between the parties.

Taking this into account, it is proposed to introduce a new article into the Code of Criminal Procedure, defining the procedure for interrogating the defendant:

Article 442^{1}. Interrogation of the defendant

Before questioning the defendant, the presiding officer explains to him that he has the right to give or not testify regarding the announced charges and other circumstances of the case.

If the defendant agrees to testify, he is first questioned by the lawyer and other participants on the defense side, then the prosecutor and participants on the prosecution side. The facilitator can remove leading, repetitive, and irrelevant questions.

The court will ask questions to the defendant only after he has been questioned by the parties. In this

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case, as an exception, clarifying questions may be asked by the court at any part of the interrogation.

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