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**Problems of ensuring of person's right
in criminal proceedings**

Abstract: The system of ensuring the rights of an individual at investigation of crimes is inextricably linked with judicial proceedings in the courts of first, appeal and cassation instances, since the provisions on their activities contain basic and final guarantees for protection and restoration of violated rights. Thus, we can affirm about the system of ensuring the rights of an individual, consisting of interrelated subsystems of ensuring the rights of an individual when investigating crimes and ensuring the rights of an individual in court productions.

Protection of an individual's rights at investigation of crimes is guaranteed by the absence of exceptions to the rules (procedures), a specific description and a clear regulation of their conduct.

Keywords: rights of an individual; criminal proceedings; protection; defence; informing; procedural actions; a record; an order.

Institute of Law and Human Rights of ANAS has conducted research on the problems of ensuring the rights of an individual in pre-trial proceedings, during which 500 criminal cases, which were investigated in 2008-2017 by various investigative subdivisions of the prosecutor's office and executive bodies of Azerbaijan Republic, has been examined on a special questionnaire, including cases of murders, terrorism, thefts, robberies, fraud, illegal traffic in narcotic drugs and psychotropic substances and other crimes.

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In course of research under protection of individual rights has been understood the system of all forms of favoring the participants in the criminal process in the exercise of their rights, which consist of the following interrelated elements: a) informing a person about possessing the rights and their explanation; b) protection of rights; c) defence and restoration of violated rights.

There is no common opinion in legal literature concerning a system ensuring the rights of an individual. So, some authors include in a notion of defence into the content of protection [6, p.162-164], other ones consider the protection on content wider than a defence [1, p. 47-48; 2, p. 3-12; 4, p. 65-66].

In our standpoint, protection of an individual's rights is a creation of the conditions for their full realization, and defence is a deterring of attempts of their violation. Protection and defence are interrelated concepts, since protection without defence is pointless. Upon ensuring of rights of an individual a protection can grow into a defence, and the violations identified will cause restoring of rights violated. An absence of violations of the rights of an individual excludes their defence and restoration, but protection is a permanent state.

According to V.S. Shadrin, creation of necessary conditions for full implementation of the rights is one of the forms of favoring of participants of a criminal process in exercising of their rights. Such he considers the right of participants of process to lodge petitions and the duty of officials to consider them, to satisfy or to refuse, with subsequent notification of a decision taken [5, p. 45-50].

From our point of view, creation of the conditions (situations) for the full implementation of the rights of participants of a process is a protection of rights - forcing the officials to observe certain procedures that guarantee a fulfillment of all elements of ensuring the rights of an individual.

Before presenting the results of the study, let us consider the elements of a system for ensuring the rights of an individual in criminal proceedings in their



interrelationship, which will allow understanding the existing problems in their totality.

Informing of a person on possessing the rights and their explanation provided by Article 120 of Code of Criminal Procedure of Azerbaijan Republic (hereinafter, the CCP of AR) “Explanation to participants of their rights and duties, and of the scope for exercising these, to the parties to criminal proceedings” says:

“... - any person to criminal proceedings shall be entitled to know his rights and duties, to know the legal consequences of his chosen position and to receive explanations about the contents of the documents presented to him, so that he may acquaint himself with the nature of the procedures in which he is to participate.

The prosecuting authority shall:

a) explain to every party to the criminal proceedings his rights and duties and make it possible for him to fulfill them (giving him the check list of his rights and duties as provided for in this Code shall not absolve the prosecuting authority from giving appropriate explanations at the person’s request);

b) provide the surnames of persons to whom objections may be raised, as well as any other information on those persons needed by the parties to criminal proceedings:

- the rights and duties of a person with the status of party to the criminal proceedings shall be explained before the start of the investigative or other procedures involving his participation and before the announcement of his position as a party to the criminal proceedings;

- the prosecuting authority and the person conducting the investigative or other procedure shall explain their rights and duties to the circumstantial witness, interpreter, specialist and expert before the start of any investigative or other procedure involving their participation. An expert's rights and duties may also be explained at the request of the prosecuting authority by the head of the office that



appointed the expert. A witness's rights and duties shall be explained firstly by the prosecuting authority before he is questioned and again at the court hearing;

- the parties to the criminal proceedings as well as other participants in the criminal proceedings shall have their rights and duties explained as appropriate to their level of intelligence, life experience, education and other circumstances. The prosecuting authority shall explain their rights and duties again whenever any participant so requests”.

Made analysis showed that despite positive nature of indicated provision, nevertheless they are contradictory, and this gives them declarative character.

So, how can a level of development of a participant of criminal process, his life experience, education etc. be clarified? It is possible, but it will take much time and efforts; and at production of investigative actions with participating of witnesses, it will be unproductive in most cases.

So, on 500 investigated criminal cases were appeared interrogated as witnesses more than 3000 men, i.e. 5-7 men on each criminal case. In average, an interrogation of one witness took about 2 hours, not taking into account second questionings and the time spent in explanation of their rights and duties. It has been experimentally established that a simple enumeration of rights and obligations takes 10-15 minutes, and their detailed explanation takes at least 20 minutes per person. Conversation and filling of a questionnaire part of the interrogation record, through which it is possible to establish a level of development, life experience, education and other circumstances, takes also at least 20-30 minutes.

Informing of a person about possessing of rights and their explanation provided also with other Articles of the CCP of Azerbaijan Republic. So, Article 156.3 of the CCP of Azerbaijan Republic says that the prosecuting authority shall immediately inform a suspect or accused (except a wanted person) of the restrictive measure chosen and present him with a copy of the decision.



According to Article 160.3 of the CCP of Azerbaijan Republic, the prosecuting authority shall without delay inform an arrested person or other interested parties of the measures taken for surveillance of his property or for arrangement of guardianship for the persons who have remained without supervision or means of subsistence.

In addition, in our standpoint, this article of the CCP contains a number of the gaps. So, according to a content of the Article 160.2 of the CCP of Azerbaijan Republic, person who are under age or unfit for work, and who, as a result of the arrest of a parent or the family breadwinner or other acts of the prosecuting authority, are without care and supervision and are deprived of the essentials of life shall have the right to be protected, and the authority concerned shall provide protection at the expense of the state budget.

It seems that protection of property unsupervised should be carried out for the expense of the state without any request. An arrested person may have no funds for protection payment and in addition this provision does not fit with provisions of Article 13 f the Constitution of Azerbaijan Republic [3, p. 5-6].

Article 220 of the CCP of Azerbaijan Republic says that during the preliminary investigation, an investigator or an inquiry officer shall explain to the suspect, accused, civil party, defendant to the civil claim and their representatives, and any other persons participating in the investigative actions, their rights and duties and the consequences of any failure to fulfill the duties imposed on them.

According to Article 224.3 of the CCP of Azerbaijan Republic, after announcing the charges, the investigator shall explain to the accused his rights and duties under Article 91 of the CCP. The accused shall be given a copy of the decision to prefer charges and written notification of his rights and duties. The investigator shall draw up a record of the formal announcement of charges, explanation of the accused his rights and duties and transmittal of a copy of the



decision. This record shall be signed by an investigator, accused and defence counsel if he presented at production of this action.

According to Article 227.4 of the CCP of Azerbaijan Republic, a witness shall be informed that he is not obliged to testify against himself or close relatives. Before interrogation of a minor witness his legal representative, teacher or doctor are explained their rights to participate in questioning and upon permission of an investigator to ask questions and introduce remarks (Article 228 of the CCP).

It is possible objections that the latter provision does not relate to informing of a person about possessing with rights as in this case explanations are given by other person. In our standpoint, since we are talking about interrogation of a minor then explanation of the rights to his legal representative is to the full related to also him.

Here, we would like to stop on provision of Article 228.4 of the CCP, according to which, to a witness not reached the age of 16 is explained his duty to tell only true, however he is not notified about liability for refusal or evasion of giving testimonies and for giving obviously false testimonies. It seems that this provision is illogic on essence and declarative on a form.

The laws of Azerbaijan Republic do not provide an obligation of a minor witness to tell only true therefore the explanation of nonexistent provisions, at least, will be incorrect, and in a number of cases might be regarded like a lie. In connection with stated, it seems reasonable to conduct appropriate alterations in Article 228.4 of the CCP of Azerbaijan Republic, having replaced word ‘obligation’ into word ‘necessity’.

Provisions on necessity to inform a person about possessing with certain rights and explain them in that or other extent are also contained in Article 231 (interrogation of a victim), Article 232 (interrogation of suspected), Article 233 (interrogation of accused), Article 234 (a record of interrogation of suspected or accused), Article 235 (confrontation), Article 236 (inspection) and others.



As noted above, under protection of individual rights in investigation of crimes we understand a creation of conditions for their full implementation through forcing officials to observe certain procedures.

Protection the rights of an individual at investigation of crimes based and determined by main provisions of the CCP of Azerbaijan Republic, concerning carrying out a production on criminal prosecution, evidence and proving. Here, a chain of interrelated conditions of criminal proceedings can be traced, non-observance of which excludes using of their results, but in some cases these conditions seem contrived.

So, according to Article 52 of the CCP of Azerbaijan Republic, the records of all investigative actions should be immediately or at least not later one working day registered in order established by appropriate bodies of executive authorities of Azerbaijan Republic together General Prosecutor. All procedural decisions are the documents of strict accountability and are compiled on numbered and special forms.

In our standpoint, indicated provisions on registration of the records of investigative actions and registration of procedural orders as forms of strict accountability are not justified.

Assertions about order of registration of the records and decisions, ostensibly developed by appropriate bodies of executive power and General Prosecutor of Azerbaijan Republic until now have a nature of declarative statements, confirmed neither scientific research nor economic developments.

According to the authors of these provisions, reflected in the CCP of the Republic, registration of records and numbering of decisions should have excluded their replacement. Currently an order established in the bodies of executive power, according of which the records of investigative actions are directly registered by their compiler in special journals; moreover the serial number is placed only on a first sheet. The same situation concerns numbering of the decisions, which is



conducted without any registration in unsystematic order with one automatic numerator used by 15-20 investigators.

Research made by us allow asserting that innovation in the part of registering records and strict accounting of the decisions do not give any positive, in any case, expected effect.

If registration of a record is produced only at first sheet, which contains, as rule, rights and duties of participants of process, then what can disturb to replacing of other sheets? Presently, a form of a decision of strict accounting is a standard page of a white paper. Decision is numbered only at first sheet and if a numerator is at those who compile the decision then if he wishes he can without any problems replace the decision.

This is one side of the question. Other one is concluded in the fact that according to results of the research nobody is going to change the records, and if an investigator is a long business trip then unnecessary problems are arisen.

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