

RIGHT TO DEFENSE IN CRIMINAL PROCEEDINGS

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The article is devoted to the issues of the right of the suspect and the accused to defense in criminal proceedings, its notion, content and importance. A comparative analysis of the concept of the right to defense in the Republic of Belarus and the USA is made, suggestions for the perfection of the national legislation are given.

Keywords: criminal procedure; right to defense; guarantees.

The main aim of the ruled by law state is to secure human rights, to prevent violation of person's freedom provided by law. However, while protecting the rights of some persons, criminal proceedings certainly affect the rights of others involved. The key point is to maintain a balance between private and public interests and to prevent abuse of procedural rights.

Criminal procedure law has provided participants of criminal proceedings with various mechanisms for maintaining such a balance. One of them is the right to defense.

The concept of the right to defense in criminal proceedings does not have the definition fixed by law.

According to the scientific sources there are several approaches to its understanding. The most classic one is the approach to the right to defense from the material and formal viewpoints. This concept was developed by German scientists and later borrowed by the native researchers [1, p.22].

The right to defense in the material sense is understood as a set of procedural rights that allow the suspect and the accused to defend themselves, as well as their guarantees, in other words, all procedural rights secured by the criminal procedure law. The right to defense in the formal sense is understood as the right to have a defense counsel.

At the same time, this theory is not the only one to define the essence of the right to defense. A Soviet researcher M. S. Strogovich defined the right to defense as «the complex of all procedural rights that the law grants to the accused to defend against the charge and which he uses to present arguments and evidence in his defense or mitigate his liability» [2, p.145]. Besides, this concept includes the following: the ability to defend the rights by any means and ways that do not contradict the law [3, p.30]; the provision that the accused is considered innocent until his guilt is established by the court [4, p.114]; the

right to defense from possible invasion on his honor, dignity, life, health, personal freedom and property [5, p.8].

The right to defense acquires special importance in the adversarial type of criminal proceedings, ensuring equality of the parties both for the prosecution and for the defense.

It is noteworthy that in the adversarial criminal proceedings in the USA there is no such concept as the right to defense. The rights of the accused providing him with an opportunity to defend himself from criminal prosecution, arise from the Sixth Amendment to the US Constitution and include the following: 1) right to a speedy trial; 2) right to a public trial; 3) right to a trial by jury; 4) notice of the accusation; 5) right to confront the opposing witnesses; 6) right to compulsory process for obtaining favorable witnesses; 7) the assistance of counsel or right to counsel [6].

Thus, in American criminal proceedings the abovementioned rights may be regarded as the right to defense. In order to perfect national legislation, it is reasonable, in our opinion, to fix the right of the accused to a speedy trial (the deadline for the preliminary investigation is currently limited by the statute of limitations), as well as the right to compulsory process for obtaining favorable witnesses.

Important issues related to the topic are the following: does the right to defense interfere with the normal course of the criminal proceedings? is it a means of delaying the proceedings? and does it provide the accused with an opportunity to avoid the punishment?

The position on these issues in the scientific community is unified. It is worth mentioning that the need for the defense in criminal proceedings is determined not by the desire to justify the guilty person, to mislead the investigation and to make it impossible to establish the truth, but on the contrary, the existence of the defense is an important guarantee of establishing the truth.

The defense serves the exercise of social justice and contributes to reaching the goals of the criminal proceedings. It can be explained by a simple example: if an innocent person is convicted, a real criminal will remain at large. Of course, judicial errors are rare, but they do exist. Even one mistake in justice may cause significant harm to the society and especially the rights of a person convicted for the crime he has not committed. In the ruled by law state there should be the mechanism to prevent illegal and unjustified infringement of individual rights. The defense in criminal proceedings can solve this problem.

As M. S. Strogovich notes, «the reason for a judicial error is often the prejudice that the accused and the guilty are one and the same thing» [7, p.21]. The existence of the defense, which means presenting a different point of view, helps to dispel this prejudice and reduce the chance of a judicial error.

However, the importance of the defense is not only in the acquittal of an innocent person. Those guilty of a crime deserve a fair trial and punishment adequate to the crime, the personality of the criminal and other circumstances.

Thus, the need for the defense in criminal proceedings is obvious. At the same time, it is important for the law not only to provide a person with the right to defense, but also to regulate means of its exercise. In this case we can be sure that the sentence passed by the court will be legitimate, reasonable and fair.

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