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RESEARCH ARTICLE

The principle of transparency and the future of a further development of its legal framework in criminal cases in the first instance hearing

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Abstract

This article describes how the principle of transparency and openness in criminal cases in the first instance court session, its content and meaning, the constituent elements of conducting a closed court session, as well as developed proposals for a further improvement of procedural law.

INTRODUCTION

Open trial of criminal cases in the courts has a huge legal, political and social significance. Open proceedings in criminal courts will create conditions for the education of citizens in the spirit of respect for the law and, establishing public control over the judiciary.

Transparency in the conduct of the proceedings - the development of a legal culture and the tasks to eliminate legal nihilism and effective way to strengthen public confidence in the judicial system. Recognition of publicity as a major and important rule in production of criminal proceedings follows from the basic principles of the Universal Declaration of Human Rights, European Convention on Human Rights, the International Covenant on Civil and Political Rights and the basic principles of the Constitution of the Republic of Uzbekistan.

In order to publicize the consideration of criminal cases in the first instance trial, in the Criminal Procedure Code (CPC) of the Republic of Uzbekistan (article 19) as a general rule, it is stated that criminal cases in all courts are open. Open trial of criminal cases in the court session of the court of first instance is the guarantor of the rights of participants in the process, especially the rights of the defendant.

Transparency and general principle of cases at a given time are fundamental legal safeguards to increase people's trust in justice, provision of its availability and constant maintenance of relationship with the public.

Comparing the transparency and openness of the judiciary, Professor A. Muhammadiyev writes: the trend of transparency of judiciary is examination of cases in all court proceedings in open court with the participation of any person under 16 years of age and public contents of judgments. The trend of transparency of the judiciary serves to improve the operation of the court, it strengthens relationships of a population, provides the public with information on the rights of judicial protection of the judiciary, gives an estimate of the quality of justice, puts the activities of the judiciary under control of morality of public opinion to ensure compliance with the rights of parties increases

trust to court decisions, in general provides the confidence and respect for the court. Restriction of publicity of judicial review is permitted in compliance with the legislature¹.

At this time, participation of the representatives of the mass media in the courts serves for transparency and openness of judiciary, thus ensuring the constitutional rights of the public to taking objective, complete and reliable information². Along with this, in order to prevent the mass media from violation of the rights of participants in the court process, the relationship between the media and the judiciary should be based on the principles of appropriateness, norms of ethics, relativity, and permission to information.

The publicity of the court session appears as a guarantee to candid thoughts and the right to declare wash without hindrance. Transparency makes it possible to control the various branches of power, and thus affect their activities. The universality of the proceedings gives opportunity to achieve justice³.

In general, publicity at a meaningful consideration of the criminal case as the general rules includes the following constituent elements:

- The right of interested parties to the information on the conduct of pre-trial cases of criminal proceedings;
- The right of interested parties to the information about the beginning of the criminal proceedings and the decisions of the criminal proceedings;
- The right to public participation, including participation of family members in the hearing proceedings.
- The right to public announcement of the sentence;
- The right to information to the public about the conduct and outcome of the trial.

As an exception to the general rule, it is stipulated in the Code of Criminal Procedure of the Republic of Uzbekistan that, in cases of acts contrary to the protection of the interests of State secrets, in criminal cases of sexual crimes, and criminal cases committed by persons under the age of eighteen, provided examination of cases in closed court session in order to prevent disclosure of personal data of citizens or information to humiliate or demean a person, the victim, a witness or the other person involved in the case as well as with purpose of protecting their families or close relatives. (article 19 of CPC RU)

The cases in closed court session is carried out in the reasonable determination of the court, on the basis of all the requirements of the criminal proceedings at the hearing of first instance. The court ruling on the proceedings in closed session may be issued in respect of all or parts of the proceedings, and the court must provide specific facts which were for the adoption of this decision.

Private litigation is not considered a violation of the principle of transparency, it only limits the process. In a democratic state, in terms of national security or of public order, as well as at the request of the interests of minors in order to protect the privacy or violations of the assumption of interests of justice, the media, as an exception may not be admitted to the trial. If it is considered that the open court violated the rights of minors to protect the rights of minors for consideration of criminal case litigation involving minors may be considered at a closed hearing.

Situations in which the examination of cases in private should be clearly defined in the legislature. This is an important condition for the proper determination of relationships between transparency and secrecy in the conduct of criminal cases.

However, due to the assumption of unlimited publicity it is not allowed to violate the rights of participants in criminal proceedings, especially personal, family or other secrets protected by the legislation.

In this sense, it is important to define the difference in the law with regard to criminal proceedings between openness and secrecy. On the basis of the above, in order to improve the legal basis of the principle of transparency in the first instance review of the criminal case, the following proposals can be offered:

Firstly, it would lead the appropriateness in relation to audio and video imeyushih personal information, both with regard to personal perpiskam and personal telegraphic communications, that is, the consent of the owner, otherwise they are shown and tested in a closed trial.

Secondly, the CPC also enshrined R.Uz that sentences and rulings in all cases made public (Article 19). Using the experience of the law in certain st.241 Code of Criminal Procedure, in cases in closed court session must be able to announce only the introduction and the decision of the sentence.

Thirdly, taking into account the social and legal significance of the principle of transparency, in order to avoid unjustified criminal trial in a closed court session, consideration of cases unreasonably and illegally in closed

¹ Muhammadiev A. Organization of the activity of courts. Textbook. - Tashkent: TSIL, 2010. - pp.202-203.

² Volkov O. Publicity of the trial - a guarantee of the rights of journalists to have access to judicial information // publicity of the trial. The Supreme Court of the Republic of Kazakhstan, the Friedrich Ebert Foundation. - Karaganda: MEDIALIFE, 2007. - p. 13.

³ Segal O.A. Problems of realization of publicity in criminal trial of the Russian Federation: Author. diss. ... Cand. jurid. Sciences. - Izhevsk, 2004. - p. 19.

hearings to evaluate a violation of criminal procedural law it would be appropriate to note in article 487 of the Criminal Procedure Code as one of the foundations to cancel the decision of the court.