
International Human Rights Standards And The Practice Of Ensuring The Right To Protection From Criminal Prosecution In Russia And Some Foreign Countries.

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ABSTRACT

The protection of the rights and freedoms of persons subject to criminal prosecution, participation of counsel in criminal proceedings are always the center of attention of the progressive world community and legislators. However, the practice of ensuring the right to protection of persons from suspicion or accusation in some countries, including taking into account the decisions of the European Court of Human Rights, indicates that not all issues of its legal regulation have been resolved to a degree that satisfies science and practice, and there are violations of human rights enshrined in international legal standards, the principle of adversarial parties in criminal proceedings is not fully implemented, so there is increasing scientific interest in problematic issues of protection from criminal prosecution.

Despite the great contribution of the conducted research to the development of the institute of protection from criminal prosecution, many issues related to the implementation of international standards in the field of human rights in the provision of this protection in the criminal proceedings of Russia and some foreign countries have not been fully covered and require a comprehensive study.

The purpose of the study is to analyze international standards in the field of human rights, as well as the experience of Russia and some foreign countries in the field of ensuring the right to protection from criminal prosecution in criminal proceedings, to identify problematic issues of a legal nature in this part and to formulate scientifically based recommendations for their solution (minimization).

Keywords: international standards in the field of human rights, protection, criminal prosecution, defender, suspect, accused.

INTRODUCTION

In any State governed by the rule of law, the highest value is the rights and freedoms of man and citizen. Their recognition, observance and protection are the responsibility of the State and its law enforcement agencies. Ensuring the rights and interests of the individual, the protection of persons subjected to criminal prosecution, is associated with the problems of implementing the principle of adversarial parties in pre-trial proceedings, ensuring a balance of legal capabilities of the defense and the prosecution, which meets the ideas of fair justice.

Analysis of the decisions of the European Court of Human Rights (ECHR) It shows that complaints about violations of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of

04.11.1950, which establishes the right to defend oneself personally or through the representation of a defender, are not uncommon among complaints against the Russian Federation. As a rule, the ECtHR finds violations of international law and concludes the consideration of complaints with a decision on the award of monetary compensation. Thus, the ECtHR identified violations related to the failure to ensure the right to use the help of a lawyer or with the late provision of this right[1], which indicates the need to study the issues of protection from criminal prosecution.

The main approach to the research is the dialectical method of scientific cognition of objective reality, from the position of which the object and subject of research are considered in a complex way, in the development and interrelation, interdependence, and interpenetration of social phenomena.

The methodological basis of the study is also the formal-logical and comparative-legal methods, taking into account the processes of development of the regulatory framework.

Generally recognized human rights and freedoms are recognized and protected by international legal acts. The vast majority of the legal norms contained in international instruments are aimed at protecting and ensuring the rights, freedoms and legitimate interests of the individual, especially in the implementation of criminal prosecution against him.

So, in the universal Declaration of human rights adopted by the UN General Assembly on 10.12.1948 States that all persons are equal before the law and are entitled without any discrimination to equal protection of the law (article 7), and every person charged with a criminal offence has the right to be presumed innocent until, until his guilt is established by law, by public trial at which he provided all the possibilities for protection (article 11). In the International Covenant on civil and political rights, predatorially 2200 A (XXI) of the General Assembly of the United Nations on 16.12.1966 (the Covenant), established that each participating in the Covenant, the State is obliged:

(1) To provide any person whose rights and freedoms recognized in the Covenant are violated with an effective remedy, even if the violation was committed by persons acting in an official capacity;

(2) To ensure that the right to a remedy for any person claiming such protection is established by the competent judicial, administrative or legislative authorities or by any other competent authority provided for by the State's legal system, and to develop judicial remedies;

(3) Ensure that the competent authorities apply remedies when they are provided (article 2).

Article 14 of the Covenant establishes, on the basis of full equality, guarantees of the rights of everyone in the consideration of any criminal charge brought against him:

1) be promptly and thoroughly informed, in a language that he understands, of the nature and basis of the criminal charge against him;

2) have sufficient time and opportunities to prepare their defense and have a connection with the defender of their choice;

3) to be tried in his presence and to defend himself personally or through a lawyer of his own choosing; if he does not have a lawyer, to be notified of this right and to have a lawyer assigned to him in any such case, when the interests of justice so require, free of charge for him in any such case, when he does not have sufficient funds to pay for this lawyer;

4) to question witnesses who testify against him or to have the right to have these witnesses questioned, and to have the right to call and question his witnesses under the same conditions as exist for witnesses who testify against him;

5) not to be forced to give evidence against himself or to plead guilty.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 stipulates that everyone accused of committing a criminal offence has at least the following rights::

1) be immediately and thoroughly informed, in a language that he understands, of the nature and basis of the charge against him;

2) have sufficient time and facilities to prepare your defense;

3) to defend himself personally or through a lawyer of his own choosing, or, if he lacks the means to pay for the services of a lawyer, to use the services of a lawyer assigned to him free of charge, when the interests of justice require it;

4) to interrogate witnesses who testify against him or to have the right to have these witnesses questioned, and to have the right to call and interrogate witnesses in his favor under the same conditions as for witnesses who testify against him;

The Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August 7 September 1990) state the following:

everyone has the right to turn to any lawyer for help in defending and defending their rights and defending them at all stages of criminal proceedings;

Governments shall ensure that the competent authorities immediately inform everyone of their right to seek the assistance of a lawyer of their choice when they are arrested or detained, or when they are charged with a criminal offence;

in all cases where the interests of justice so require, each such person who does not have a lawyer is entitled to the assistance of a lawyer whose experience and competence correspond to the nature of the offense, appointed to provide him with effective legal assistance free of charge, if he does not have sufficient funds to pay for the services of a lawyer.

Governments shall ensure that all persons arrested or detained, whether or not they are charged with a criminal offence, have immediate access to a lawyer and in any case;

All persons arrested, detained or imprisoned are provided with adequate facilities, time and facilities to visit, communicate and consult with a lawyer, without delay, interference or censorship, and in full confidentiality.

As the UN Congress noted, these principles should be respected and taken into account by Governments in their national legislation and practice, and should be brought to the attention of lawyers, as well as other persons, such as judges, prosecutors, representatives of the executive and legislative bodies, and the general population. Separately, it was emphasized that these principles, if necessary, also apply to persons who perform the functions of lawyers without having an official status as such.

International standards provide protection from prosecution embodied in the criminal procedural legislation of many countries, including countries of the Commonwealth of Independent States (CIS).

For example, in the Criminal procedure codes of the Russian Federation (CPC RF) [2], the Republic of Kazakhstan (CCP RK) [3], the Republic of Belarus (criminal code) [4], of the Republic of Uzbekistan (CPC PY)[5], Republic of Moldova (CPC RM)[6] contains rules of principles on ensuring the right to protection (article 16 of the code, 26 code of criminal procedure, 17 of the criminal code, criminal procedure code 24 RU, 17 of the CPC of the RM).

In these rules, we are talking about ensuring the right to protection of persons who are officially in the status of a suspect or accused, which they can exercise, both personally and with the help of a lawyer. The exception is the norms of the Criminal Procedure Code of Kazakhstan and Moldova, where the list of participants in the process who are guaranteed the right to defense is not limited to suspects and accused.

Thus, under article 26 of the criminal procedure code eligible and the witness, if it is specified in the statement and the report of a criminal offence as a perpetrator, or against him testifying witness involved in criminal proceedings, but it has not applied the procedural detention is either not issued a decision on the recognition him as a suspect.

In accordance with article 17 of the code of RM throughout the criminal proceedings, the parties (suspect, accused, defendant, victim, civil plaintiff, civil defendant) is entitled to be assisted by counsel or to be represented by a chosen defender or a lawyer who provides legal aid guaranteed by the state.

In addition, it should be noted that the Criminal Procedure Code of Kazakhstan and Belarus provides a broader concept of criminal prosecution that meets international standards than the Criminal Procedure Code of Russia.

Thus, in accordance with paragraph 22 of Article 7 of the Criminal Procedure Code of the Republic of Kazakhstan, criminal prosecution (prosecution) is a procedural activity carried out by the prosecution in order to establish an act prohibited by criminal law and the person who committed it, the guilt of the latter in committing a criminal offense, as well as to ensure the application of punishment or other measures of criminal legal influence to such a person. A similar definition is fixed in paragraph 48 of Article 6 of the Code of Criminal Procedure of the Republic of Belarus.

According to paragraph 55 of Article 5 of the Criminal Procedure Code of the Russian Federation, criminal prosecution is understood as a procedural activity carried out by the prosecution in order to expose a suspect accused of committing a crime.

The Russian legislator in article 16 of the criminal procedure code of the Russian Federation containing norms of the principle of the criminal process indicates that the suspect or defendant *obespechivaetsya* for protection, which they may exercise personally or through counsel and (or) legal representative, and in the first paragraph of article 49 of the criminal procedure code of the Russian Federation defines the protector as the person that carries out in established by the code of criminal procedure protection of the rights and interests of suspects and accused persons and provide them with legal assistance in criminal proceedings.

Taking into account the specified norms, the participation of counsel in a criminal case, Russian legislators associated with the presence of on criminal case official suspicion or charges fixed in accordance with legal procedural decision, that is, with criminal prosecution.

However, in paragraph 6 of part 3 of article 49 of the code of criminal procedure, the legislator provides for the possibility of participation of the defender since the start of the implementation of procedural actions, infringing upon the rights and freedoms of the person in respect of whom checks the message on a crime, that is, when a criminal case is not and criminal prosecution within the meaning of paragraph 55 of article 5 of the code of criminal procedure not yet performed.

The above rule does not correspond with the provisions of part 1.1 of article 144 of the criminal procedure code, which allows the person who is involved in the procedure when checking a crime report produced prior to the initiation of the criminal case, and, accordingly, do not have the procedural status of a suspect or accused subject to the provisions of articles 46 and 47 of the code of criminal procedure, to use the services of a lawyer, that is,

it is not about the lawyer-defender and the lawyer-the representative of the interests of the person participating in legal proceedings to the criminal case and provide him with legal assistance.

In addition, the code of criminal procedure distinguishes between the concept of «attorney» and «defender» provides for the decision of the court participate as a defender along with a lawyer, and during proceedings at the magistrate instead of a lawyer, one of the relatives of the accused or any other person on the admission which the accused seeks (part 1 of article 49), establishes the right of the defendant to be assisted by counsel, including free of charge (article 16, paragraph 3 of part 4 of article 46, paragraph 8, part 4 of article 47).

In this case, there is a natural question about the possibility of the participation of the defender until the moment of the official suspicion or accusation, fixed in the documents provided for by the criminal procedure legislation. On this issue, it is advisable to refer to the practice of the European Court of Human Rights, as well as the higher courts of the Russian Federation.

The European Court of Human Rights considers the concept of "accusation" as an autonomous concept and is used independently of the content that is put into it by national law. Under prosecution within the meaning of article 6 of the Convention for the protection of human rights and fundamental freedoms European Court of human rights understands not only the formal notification of the charges, but also other measures related to the suspected crimes that have serious consequences or significantly affect the position of the suspect (judgment of 27 February 1980 in the case of Deweer, Series A, no.35, para 42, 44, 46; judgment of 15 July 1982 in Eckerle case, Series A, no.51, para 73; judgment of 10 December 1982 on the case of Foti, Series A, no.56, para 52), ie considers it necessary to proceed from the s The classic judgment of the European Court in this matter is the decision in the case of «Deweer against Belgium» (of February 27, 1980 in the case of Deweer, Series A, no.35, para 42, 44, 46), which stated that the court should lean towards the choice in favor of «meaningful» and not «formal» concepts charges and «called to see what's beyond the outside of the case, and to explore the realities of the procedure» (para 44). Further, the concept of «accusation» is defined by the European Court of Justice as "official notification of a person by a competent public authority of the existence of an assumption that this person has committed a criminal offense», which has significantly affected the situation of this person (para46).

Thus, under the accused (suspects), the European Court understands not only those persons who are formally charged or who are formally recognized as accused or suspects, but also in respect of whom any actions are taken, substantive rather than merely formal understanding of the charges.

The Constitutional Court of the Russian Federation in 2000 made an attempt to expand the definitions of «suspicion and accusation». In a Resolution dated 27.06.2000, the constitutional Court indicated that in order to implement the constitutional right to the assistance of a lawyer (defender) must consider not only the formal procedural, but also the actual position of the person in respect of which the public prosecution. However, the fact of criminal prosecution and, therefore, directed against a specific person guilty activity can be confirmed by the holding in respect of his investigative actions (search, identification, interrogation etc.) and other measures undertaken for the purposes of exposing or disclosing the existence of a suspicion against him (in particular, an explanation in accordance with article 51 (part 1) of the Constitution the right not to testify against himself). Since such actions are aimed at identifying the facts and circumstances incriminating the person against whom the criminal prosecution is being conducted, he should be immediately given the opportunity to seek the help of a lawyer (defender). This ensures the conditions that allow this person to get a proper understanding of their rights and obligations, of the charges brought against them, and, consequently, to defend themselves effectively, and to guarantee in the future that the evidence obtained during the investigation is inadmissible (Article 50, part 2, of the Constitution of the Russian Federation) [7].

This position is reflected in further decisions of the Supreme Court and the constitutional Court of the Russian Federation, in which the concept of criminal prosecution, «charge» shall be interpreted wider than in the code of criminal procedure.

So, in the Resolution of Plenum of the Supreme Court 30.06.2015[8] indicated that ensuring the right to defense is one of the principles of criminal procedure in force in all its stages, and in accordance with the principle of the right to protection also have a person in respect of which are affecting his rights and freedoms procedural steps for verification of a crime report in the manner prescribed by article 144 of the code of criminal procedure, as well as any other person, rights and freedoms which significantly affected or can be affected significantly by the actions and measures attesting against him, prosecutorial activities, regardless of the formal procedural status of such person.

According to the Decree of the Plenum of the Supreme Court of 29.03.2016[9]and the Decision of the constitutional Court of the Russian Federation from 13.06.2019[10]under the criminal prosecution is understood to be the acceptance concerning one of the procedural decisions referred to in paragraph 1 of article 46 or paragraph 1 of article 47 of the code of criminal procedure, under which it recognizes the suspect or accused, or the point at which the person started the production of one of the proceedings in accordance with part 1.1 of article 144указанного Code or investigative actions directed on his conviction of a crime, prior to the recognition him as a suspect or accused.

Taking into account the above it seems necessary to adjust the concept of defender in the national legislation and consolidate the possibilities of its participation since the official nomination of the suspicion or accusation, but from the moment of implementation of procedural actions affecting the rights and freedoms of the person against whom it is made, and aimed at his denunciation of the crime.

Many disputes among the processualists are caused by the rule on the possible participation as a defense lawyer of a close relative or other person for whose admission the accused applies, as well as questions concerning the scope of the requirements imposed on such persons, the criteria by which the court decides on the application for admission as a defense lawyer of a person who does not have the status of a lawyer.

The criminal procedure legislation of Kazakhstan, Belarus, and Uzbekistan provides for the possibility of admitting close relatives as defense lawyers along with a lawyer.

Thus, in accordance with paragraph 2 of article 66 of the criminal procedure code in criminal proceedings as a defender along with attorney a written statement of the witness entitled to the protection of the suspect, accused, defendant, convict, acquitted person, their defense may exercise one of the following persons: spouse (wife) or close relative, guardian, conservator or a representative of the organization in the custody of or which is dependent client.

On the basis of part 3 of Article 44 of the Criminal Procedure Code of the Republic of Belarus, at the request of the accused, one of the close relatives or legal representatives of the accused may be admitted as a defense lawyer in court.

Article 49 of the Code of Criminal Procedure of the Republic of Uzbekistan stipulates that, upon the decision of an inquirer, investigator, or court ruling, one of the close relatives or legal representatives of the suspect, accused, or defendant may be admitted as a defense lawyer at the request of a suspect, accused, or defendant.

In addition, in accordance with articles 42 and 44 of the Criminal Procedure Code of the Republic of Uzbekistan, public defenders sent by public associations and collectives can participate in court proceedings.

In accordance with article 47 of the Criminal Procedure Code of the Republic of Moldova, other persons who are granted the powers of a defender by law may participate as a defender from the moment of assuming the obligation to protect the interests of the person in the case and with his consent.

In accordance with part 2 of article 49 of the code of criminal procedure protection in criminal proceedings can realize not only a lawyer, but one of the relatives of the accused as well as any other person on the admission which he makes intercession, but such participation is only possible along with the lawyer, but the production of the world judges the person can be admitted and instead of a lawyer. The participation of a close relative or other person is allowed by a court decision.

This provision of the law has an ambiguous interpretation and contains a number of controversial issues.

According to part 1 of Article 48 of the Constitution of the Russian Federation, everyone is guaranteed the right to receive qualified legal assistance. Further, Part 2 of the above-mentioned norm establishes the right to use the assistance of a lawyer (defender) from the moment of detention, detention or indictment, respectively. I would like to note that in part 2 of Article 48 of the Constitution of the Russian Federation there are two concepts "lawyer" and "defender". Thus, the Basic Law does not prohibit a person who does not have the status of a lawyer from providing legal assistance.

The legislation contains no clear definition of «qualified legal assistance», so perhaps for fear of a conflict between part 1 of article 48 of the Constitution of the Russian Federation and part 2 of article 49 of the code of criminal procedure, the legislator has envisaged that other persons and close relatives may participate in criminal proceedings as defenders only along with the lawyer, not in every case, a person or a close relative will have a set of qualities that fit the concept of «qualified legal assistance».

According to the judges of the constitutional Court of the Russian Federation E. M. Ametistov, qualified legal aid is the constitutional duty of the state to provide to everyone a fairly high level of legal assistance, however this does not mean the duty of a citizen to use only such a level, of course, if it does not violated the constitutional principles of justice, and the rights and interests of other persons [1].

The Code of Criminal Procedure of the RSFSR of 1960, before it was amended by Federal Law No. 73-FZ of 15.06.1996, allowed, in addition to lawyers, representatives of trade unions and other public organizations in cases of members of these organizations, as well as other persons in cases provided for by law. However, after the entry into force of the above changes, lawyers and representatives of trade unions or other public associations were allowed to act as defense lawyers. Close relatives, legal representatives of the accused, and other persons were admitted by a court order or a judge's order.

It is important to note that in accordance with part 2 of Article 49 of the Code of Criminal Procedure, the participation of close relatives and other persons is possible only along with a lawyer, except in cases of criminal proceedings before a justice of the peace, while the Code of Criminal Procedure of the RSFSR of 1960 provided for the possibility of their independent participation in criminal proceedings.

Modern law enforcement practice develops in such a way that in pre-trial proceedings, as a rule, only a lawyer acts as a defender, and the participation of "another person" is extremely rare.

However, the accused may see in the defense lawyer not only a lawyer, sometimes psychological assistance, as well as moral support, which do not depend on the monetary payment for the provision of services, are more significant for the person. In addition, the quality of protection, for example, by a person who has an economic education, in cases of an economic orientation, in some aspects may be more effective than persons with a legal education. The participation of such persons, along with a lawyer, will strengthen the quality of the defense, by attracting specialists from certain fields of activity, and will also help ensure the participation of persons in the case, regardless of the monetary remuneration.

The constitutional Court of the Russian Federation (1997) considered the complaints in which the applicants were asked to check the constitutionality of provisions of the criminal procedure code of the RSFSR, according to which as defenders in the criminal proceedings is allowed only lawyers and representatives of trade unions and other public associations (part 4 of article 47 UPK RSFSR). The applicants, who are in the status of accused persons, wanted to involve lawyers who do not have the status of a lawyer as defense lawyers during the preliminary investigation, which the investigators who carried out criminal proceedings refused, arguing that the participation of such persons is not provided for by law. The court and the prosecutor's office recognized this opinion of the bodies that carried out the preliminary investigation as legitimate. The Constitutional Court of the Russian Federation in its Ruling stated that the content of the right to choose an independent lawyer (defender) does not mean the right to choose as a defender any person at the discretion of the suspect or accused and does not imply the possibility of participation in the criminal process of any person as a defender. Participation as a defense lawyer in the preliminary investigation of the case of any person chosen by the suspect or accused may lead to the fact that the defense lawyer will be a person who does not have the necessary professional skills, which is incompatible with the tasks of justice and the duty of the state to guarantee everyone qualified legal assistance [11].

4 judges of the Constitutional Court of the Russian Federation, who participated in the consideration of these complaints, expressed their dissenting opinion.

Judge V. O. Luchin in his dissenting opinion recognized that the provisions of Part 4 of Article 47 of the Criminal Procedure Code of the RSFSR restrict the right of suspects and accused persons to use qualified legal assistance of persons who are not members of bar associations and do not comply with the Constitution of the Russian Federation [11].

Judge E. M. Ametistov in his dissenting opinion stressed that the admission of lawyers who do not have the status of lawyers to the defense of suspects and accused persons does not contradict the goals of the defense. Taking into account the position of the legislator, allowing for the protection of persons who are not required to confirm their qualifications at all, and even allowing the accused to refuse to defend themselves and defend themselves independently, does not contradict the basics of legal proceedings, enshrined in Part 3 of Article 123 of the Constitution of the Russian Federation [1].

The dissenting opinions of judges N. T. Vedernikov and V. I. Oleynik also confirm that the admission of a person who does not have the status of a lawyer to participate does not harm the quality of the defense [11].

In addition, the above-mentioned international legal acts do not restrict the right of a suspect or accused to choose a defense lawyer, including another person who does not have the status of a lawyer.

Taking into account the above, it seems that the admission of close relatives and other persons as defenders along with a lawyer at the request of the accused is very justified from the point of view of strengthening the protection, but the legislation does not clearly establish the procedural procedures for admitting such persons, the requirements imposed on them, which creates certain problems in law enforcement practice.

RESULTS

The analysis of international standards, norms of the criminal procedure legislation of Russia and some foreign ones in the field of ensuring the right to protection from criminal prosecution allowed us to formulate proposals for improving the institution of protection and making changes to the Code of Criminal Procedure of the Russian Federation.

In order to expand the use of the assistance of counsel, and strengthening the adversarial principle at the pre-trial stages of criminal process, it is appropriate to amend the code of criminal procedure the following changes. State in part 1 of article 49 the concept of a defender in the following wording:

«Defender – a person who, in accordance with the procedure established by this Code, protects the rights and interests of suspects and accused persons, as well as persons against whom proceedings have been initiated in the course of verifying a report on a crime affecting their rights and freedoms, or persons against whom an investigative action has been initiated aimed at exposing them in the commission of a crime and preceding recognition as suspects or accused persons, and provides them with legal assistance».

Paragraph 6 of Part 3 of Article 49 of the Code of Criminal Procedure of the Russian Federation should be worded as follows:

"6) since the beginning of the implementation of procedural actions affecting the rights and liberty of a person against whom an inspection is carried out of a crime report in the manner prescribed by article 144 of this Code, or investigative actions, aimed at exposing persons to commit a crime."

Add Article 49.1 of the Code of Criminal Procedure of the Russian Federation «The procedure for considering the application of the accused, suspect for admission of a close relative or other person as a defender in criminal proceedings» in the following wording:

«1. Admission as a defense lawyer, along with a lawyer, of one of the close relatives or another person, is carried out at the request of the accused, the suspect by the investigator, the investigator or the court in which the criminal case is being conducted.

2. The application of the accused or suspect for admission as a defense lawyer, along with a lawyer, of one of the close relatives or another person, shall be considered within the time limits established by Article 121 of this Code.

3. The consideration and resolution of the petition for admission as counsel, along with counsel for one of the next of kin or other person to the investigator, the investigator and the court should consider the possibility of participation in the case of the defender, the presence or absence of the obstacles under article 72 of the criminal procedure code of the Russian Federation, as well as other possible barriers to the participation of such counsel in the criminal process, including health status, age, employment on the main job, education, the legal capacity of such person and other.

4. The inquirer, investigator, judge make the decision about satisfaction of the petition for admission as advocate along with the lawyer of one of the relatives or other person, or the refusal of its satisfaction, and the court determination, which is communicated to the person who filed the petition.

5. Persons may not participate in the work of a defense lawyer along with a lawyer.:

1) under the age of 18 years;

2) recognized by the court as incompetent or limited by the court in their legal capacity;

3) registered in a narcological or neuropsychiatric dispensary in connection with treatment for alcoholism, drug addiction, substance abuse, chronic and prolonged mental disorders;

4) suspected or accused of committing crimes, convicted persons;

5) do not speak the language in which the proceedings are conducted;

6) having physical or mental disabilities that prevent full participation in the consideration of a criminal case by the court.

6. The decision on the application may be appealed in accordance with the procedure established by Chapter 16 of this Code».

CONCLUSION

Analysis of international standards in the field of ensuring the right to protection from criminal prosecution, decisions of the ECHR, the higher courts of the Russian Federation shows that in them the concept of "charge" is interpreted wider than in national criminal procedural law, and is not associated directly with the official nomination of the suspicion or charges fixed in certain court documents, but depends on the real situation of persons involved in criminal proceedings and the measures applicable to him in connection with suspicion of committing a crime that can result in serious consequences or substantially affect the procedural position.

Given the above, it seems appropriate to include in national legislation the possibility of participation of the defender not only from the time of nomination of official suspicion or accusation, but from the moment of implementation of procedural actions affecting the rights and freedoms of the person against whom it is made, and aimed at his denunciation of the crime.

The criminal procedure legislation of Russia and some foreign countries (members of the CIS) allows the participation of other persons, most often close relatives who do not have the status of a lawyer, as defenders, along with a lawyer, but does not specify in detail the procedural procedure for such admission, the requirements imposed on such persons, which prevents the implementation of this provision in practice.

Given the fact that the international legal acts, the right of the suspect or accused to choose counsel, including a person not having the status of a lawyer is limited, it seems appropriate recognition in national criminal procedure legislation detailed procedures for the admission of such person as a defender and criteria for it.

The recommendations made can help to improve the institution of protection from criminal prosecution, strengthen the adversarial nature of the parties in pre-trial proceedings and implement the purpose of criminal proceedings, which is not only to protect individuals and organizations who have suffered from crimes, but also to protect the individual from illegal and unfounded charges, convictions, restrictions on their rights and freedoms.

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