PRINCIPLE OF CRIMINAL PROCEDURE IN PRE-TRIAL PROCEEDINGS

Khidoyatov Bakhtiyor Botirovich

The associate professor of the

department criminal procedural law

of Tashkent state university of law

E-mail: Baht_mag@mail.ru

Introduction. The word "principle" comes from Latin "principium" which meaning is "basis", "the fundamental beginning". The principles of criminal procedure are the fundamental beginnings which establish the most general and essential properties of criminal procedure. The principles regulate the legal relations arising in criminal procedure and serve as the starting, fundamental positions defining creation of all stages, forms and institutes of criminal procedure and providing realization of its purpose. The principles work within integrated system where the nature and value of each principle is caused not only by its own content, but also by functioning of the whole system where violation of any principle leads usually to violation of other principles and, consequently, to violation of legality of criminal proceedings [1].

In science of criminal procedure an opinion exists, that the general, leading ideas reflecting the objective regularities of social development formulated in scientific works become principles even if they are not set in any statutory act [2].

We agree with those authors who consider that the ideas which are not fixed in the law remain the beginnings of sense of justice, scientific conclusions while being fixed in law- the most important feature of the principles, inseparable from the nature of criminal procedure as special type of legal activity [3].

In fact, fixation in the law allows the principles to directly regulate legal relations arising in criminal procedure therefore the Criminal procedure law, by developing provisions of the Constitution of the Republic of Uzbekistan, contains chapter 2 in which articles relating to the principles of criminal procedure are provided. Thus, the regulation of the principles in the Code of penal procedure has to resolve finally a theoretical dispute on a character of these provisions.

The principles have real value as on their basis criminal procedure in general is based, powers and the functions of the bodies and public officials which are carrying out criminal trial, and also participating in business of other persons, etc. are defined. Proceeding from the legal instructions established in the law, it is possible to judge, how widely in criminal procedure the rights of the victim, defendant and other persons are presented and protected.

The principles of criminal procedure are characterized by the certain criteria allowing to distinguish them from other instructions of the law. First, indispensable feature of the principles

– they are fixed in the Constitution and the criminal procedure law that means their legal character and gives them binding force, imperative character, security by the state. Secondly, the principle is not any, but the basic, in other words, the rule reflecting essence of criminal procedure. The principles provide unity of criminal procedure on all criminal cases and serve as one of the guarantees the legality of activity of its participants. Thirdly, the principles of criminal procedure operate on all stages of criminal procedure. Fourthly, more fully the principles of criminal procedure are implemented at a stage of judicial proceedings therefore at the same time they are also the principles of justice. Fifthly, non-compliance with requirements of one principle of criminal procedure inevitably leads to violation of any other principle of the same body of law, violation of the principles of criminal trial always considered as the violation of the criminal procedure law resulting in cancellation of the decision as importance of such violations contradicts the purpose of criminal procedure. Sixthly, the principles of criminal procedure always reflect its democratism. The principles of criminal trial are closely connected among themselves, their interpenetration and complementarity forms system. Certainly, the principles are not just summarized in system, they form it as certain unit which has special, integrative quality. Only the system of principles guarantees realization of purpose of criminal trial what its the new quality which is not possessed by any of the principles taken separately.

According to V. Protsenko the principles of criminal procedure are the criminal procedure ideas which found reflection in the criminal procedure right, and in criminal procedure activity which have qualities of generality of action, imperativeness, backbone properties for norms of criminal procedure branch of the right, an axiomatic. The theoretical provisions fixed in standards of the criminal procedure cannot be the principles of criminal procedure in situations as follows :

• have numerous exceptions or are an exception itself from the rules;

• work for one participant of criminal procedure and guarantee only his interests (at multisubjectivity of branch of the law which is in fact the law of criminal procedure);

• mediate realization of one function at multifunctionality of criminal procedure activity (protection, charge, permission of business);

• treat a part of the phenomenon but not all phenomenon (therefore cannot be the principles of separate stages of criminal procedure, separate institutes of the criminal procedure right and, naturally, separate standards and structural parts of norms – hypotheses, dispositions, sanctions); (as the principles represent generalized, concentrated expressions of the procedural ideas which, of course, proceeding from general communication of the phenomena of the material and ideal world, are reflected both in separate stages of criminal procedure, and at separate institutes, standards of the criminal procedure right. It is not acceptable, logically and

dialectically, to mistakenly identify the phenomenon which is the part of the unit with its refraction and reflection in parts);

• are implemented during criminal trial not on each criminal case;

• awkward positions.

In procedural literature as marks out G.P.Khimichev along with the principles which are basic for criminal trial in general, sometimes consider systems of the principles in relation to activity of particular bodies of the state, performing criminal proceeding, or to separate stages of process. For example, M. S. Strogovich marks out the principles of preliminary inquiry, A.P.Gulyaev designs system of the principles of activity of interrogator, S. V. Bazhanov - the block of the principles of state policy of law in sphere of crime control. It is represented that general, uniform for criminal procedure principles are found realization on pre-judicial proceedings. The majority of them are addressed directly to the investigator, as for such principles like justice implementation only by court and competitiveness of proceedings in court, they also define activity of bodies of preliminary investigation and form their relationship with court.

Probably, owing to absence of separate chapter in the Code of Criminal Procedure of 1959 realted to the principles of criminal procedure, in the theory there was no uniform point of view concerning a circle of provisions, referred to the principles. It allowed not only to expand infinitely their number, but also to differently call each of them. In this regard combination of all principles of criminal procedure in chapter 2 of the Code of Penal Procedure of the Republic of Uzbekistan is represented extremely important.

The principles of criminal procedure are objective and subjective categories in which the ratio of an objective and subjective factor throughout history of mankind and history of the right continuously and constantly changes.

The system of the principles of criminal procedure underwent essential changes. If the following provisions were enshrined in the Code of Criminal Procedure of 1959:

1) duty of initiation of legal proceedings and disclosure of a crime (article 3);

2) integrity of human beings (article 6);

3) inviolability of home, protection of private life of citizens and mystery of correspondence (article 61);

4) implementation of justice only by court (article 7);

5) implementation of justice on the basis of equality of citizens before the law and court (article 8);

6) participation of jurymen and collective nature in hearing of cases (article 9);

7) independence of judges and submission only to their law (article 10);

8) language in which legal proceedings (article 11) are conducted;

9) publicity of judicial proceedings (article 12);

10) providing to the defendant right of defense (article 13);

11) comprehensive, full and objective investigation of the facts of the case (article 14);

12) the right of the appeal of actions and judgments, the prosecutor, the investigator and the person making inquiry (article 21).

Thus, within a course of democratization and a humanization of criminal procedure the structure of the principles of the Code of Criminal Procedure of the Republic of Uzbekistan of 1994 included also such principles as: legality (article 11); respect of honor and dignity of the personality (article 17); protection of the rights and freedoms of citizens (article 18); participation of the public in production on criminal cases (article 21); presumption of innocence (article 23); competitiveness of production in court (article 25); a spontaneity and oral research of proofs (article 26) which werent related to those earlier.

The question of pre-trial principles is thorougly developed in criminal procedure literature, i.e. the guidelines defining specific conditions, character and forms of pretrial investigation in criminal procedure. However, the uniform point of view on the matter does not exist. Moreover, certain scientists in general deny existence of the special principles of pretrial investigation. For example, M. A. Cheltsov considers that the stage of pretrial investigation is regulated by the general procedural principles which are been the basis for the criminal procedure right. The legislator, specifies that it wasnt incidentally use, in relation to pretrial investigation, of the term "general conditions", but not the principles, having emphasized with that unity of system of the principles of criminal procedure. M. A. Cheltsov calls twelve general conditions which have to be observed by proceedings of pretrial investigation. Conditions are as follows: 1) all course of pretrial investigation is subordinated to public prosecutor's supervision; 2) by production of pretrial investigation the investigator is obliged to proceed from the general procedural principle of comprehensive, full and objective research of the facts of the case; 3) speed of the investigation; 4) involvement of the public to participation in disclosure of crimes; 5) secrecy of the investigation (inadmissibility of disclosure of data of pretrial investigation); 6) obligatory documenting of each investigative action; 7) possibility of production of investigation by group of investigators (application of a brigade method); 8) participation in process of pretrial investigation of the victim, civil claimant and civil defendant; 9) individualization (isolation) of pretrial investigation; 10) possibility of attraction by the investigator to participation in investigation of bodies of inquiry; 11) obligatory participation of witnesses in production of a number of investigative actions; 12) the right of the investigator for giving personal errands about production of certain investigative or search actions by investigation authorities or

inquiries, being out of the site or the area of its service. N. V. Zhogin and F. N. Fatkulin call ten principles which at the same time consider also the general conditions: 1) principle of legality; 2) broad participation in pretrial investigation of the public and the victim from a crime; 3) completeness, comprehensiveness and objectivity of the investigation; 4) publicity of pretrial investigation; 5) planning of investigation on business; 6) speed of pretrial investigation; 7) one-man management in investigation; 8) individualization of pretrial investigation; 9) inadmissibility of disclosure of data of pretrial investigation; 10) providing to the defendant the right of defense and participation in pretrial investigation of the defender.

In our opinion it is impossible to agree that the general conditions of pretrial investigation and the principles of pretrial investigation are the same. The general conditions of pretrial investigation are specifically specified in chapter 43 of criminal procedure law of the Republic of Uzbekistan, they are 1) the public officials authorized to hold pretrial investigation (Art. 344); 2) competence of criminal cases (Art. 345-346); 3) obligatory performance of orders of the investigator (Art. 347); 4) transfer of criminal case (Art. 348); 5) restoration of the lost criminal case or its materials (Art. 348 [1]) 6) participation of the public in pretrial investigation (Art. 349); 7) beginning and terms of pretrial investigation (st.st.350-351); 8) participation of witnesses in investigative actions (Art. 352); 9) the obligation not to disclose the data which are contained in criminal case (Art. 353); 10) production of pretrial investigation or one investigative action by group of investigators (st.st.354-357); 11) appeal of actions and decisions of the investigator and prosecutor (Art. 358). And the principles of pretrial investigation proceed from the general principles of criminal procedure the Code of Criminal Procedure of the Republic of Uzbekistan specified in chapter 2. The principles of criminal procedure are the basic legal statuses (standard of the general and leading value) which define creation of all its stages, forms and institutes and provide performance of the tasks facing it. If in a procedural law problems are found or contradictions arise between separate norms, then a key to solve emerged difficulties are the principles. Not all principles are implemented at all stages of proceeedings. Limits of implementation of this or that principle are defined by the general problems of criminal trial and direct problems of a particular stage. It should be noted that among scientists there is no uniform approach to the list of the principles of criminal pre-judicial proceedings. According to Danshina L. I. the following principles belong to the principles of pretrial investigation: 1) legality; 2) presumption of innocence; 3) protection of the rights and freedoms of the person and citizen; 4) principle of language of legal proceedings; 5) principle of competitiveness and equality of participants. A bigger amount of the principles of pretrial investigation is called by Yu. K. Yakimovich, etc. Pan: 1) legality; 2) publicity (officiality); 3) comprehensiveness, completeness and objectivity of preliminary investigation; 4) integrity of human beings; 5) respect of honor and

dignity of the personality; 6) protection of the rights and freedoms of the person and citizen in criminal trial; 7) inviolability of home; 8) mystery of correspondence, telephone and other negotiations, post, cable and other messages; 9) freedom of assessment of proofs; 10) competitiveness of the parties; 11) providing to the suspect and defendant of a right of defense; 12) presumption of innocence; 13) speed of preliminary investigation, terms of pretrial investigation; 14) individualization of preliminary investigation, connection and allocation of criminal cases; 15) individual conducting investigation; 16) inadmissibility of disclosure of data of preliminary investigation. I. F. Demidov divides the principles of pretrial investigation on all-procedural and specific. Following refer to all-procedural: a) publicity of criminal procedure; b) process language; c) implementation of justice on the basis of equality of citizens before the law and court; d) establishment of the truth in criminal procedure; e) comprehensiveness, completeness and objectivity; e) presumption of innocence; g) the right of accused (suspect) for protection, and the specific principles are: a) speed and efficiency of investigation; b) independence of the investigator; c) inadmissibility of disclosure of data of pretrial investigation.

In our opinion, based on general principles of criminal procedure it is possible to mark out the following principles of pre-judicial production in criminal procedure of the Republic of Uzbekistan:

1) legality;

2) obligation of initiation of legal proceedings;

3) respect of honor and dignity of the personality;

4) protection of the rights and freedoms of citizens;

5) language in which criminal proceeding is conducted;

6) participation of the public in proceedings on criminal cases;

7) establishment of the truth;

8) presumption of innocence;

9) providing to the suspect and defendant of a right of defense;

10) spontaneity and oral research of proofs;

11) the right to appeal legal proceedings and decisions.

Legality – all-legal principle which is based on instructions of article 15 of the Constitution of the Republic of Uzbekistan and article 11 of the Code of Criminal Procedure is all-legal requirement for any activity of all public authorities, public officials, and also all persons participating in criminal cases proceedings has to comply with. In relation to pre-judicial production this principle demands that it was conducted only in the legal way on the basis of existing criminal case and by the body authorised for it, with respect for all procedural rules

defining conditions and an order of the corresponding actions of the investigator, investigator and prosecutor.

Obligation of initiation of legal proceedings. According to this principle the prosecutor, the investigator are obliged within the competence in the presence of an occasion and the basis to bring criminal case, to take all measures necessary to establishment of an event of a crime, persons guilty of crime execution, and to their punishment. Exceptions are made only for the proceedings of private and public charge initiated precisely according to the complaint of the victim.

Respect of honor and dignity of the personality. In criminal procedure where for the benefit of providing the correct course and the outcome of the case it is necessary to apply coercive measures in the relation not only to defendant and the suspect, but also to the victim, to the witness and other persons, to find out circumstances of private life of citizens, especially strong mechanism of guarantees from superficial constraint of these valuable personal benefits is necessary. Such guarding function is performed by the principle which is based on a complex of precepts of law and expresses an obligation of court, the prosecutor, investigator and investigator during the performing of legal proceedings and pronouncement of decisions not to allow humiliation of honor and dignity of the persons participating in business and to apply to them measures of procedural coercion only in cases of the valid need and precisely on the basis, in the order and limits provided by the law.

Protection of the rights and freedoms of citizens. According to this principle, all public authorities and public officials responsible for criminal proceeding are obliged to protect the rights and freedoms of the citizens participating in criminal procedure. A prerequisite of realization of the rights by the citizen involved in the sphere of criminal trial is knowledge of procedural laws and duties. Need of an explanation to participants of criminal procedure of their procedural laws and duties by proceeding of preliminary investigation is assigned to the investigator and the investigator.

Language in which criminal proceeding is conducted. This principle is manifestation in criminal procedure of the state guarantees of national equality of citizens in all spheres of life and the free use of national languages by them. Criminal proceeding is conducted in the Uzbek, Karakalpak languages or in language of most of the population of this area. Ignorance of language on which production of process by participants is conducted does not and obstacle for them to participate in business: carrying out the activity, each participant of process can use the help of the translator. To participants of process who do not own or know insufficiently language in which production is conducted the right orally or in writing to make statements, to give evidences and explanations, to declare petitions and complaints in the native language or

other language which they know is provided. The investigative documents which are subject to delivery to the suspect, the defendant or other participants of process have to be translated into their native language or other language which they know.

Participation of the public in production on criminal cases. Effective crime control is impossible in modern conditions without broad participation of representatives of the public as only with their help it is possible to provide full disclosure of all crimes, exposure and fair punishment of all guilty persons, to remove the causes and conditions promoting commission of crimes. According to this principle, the investigator and the prosecutor by production of preliminary investigation has the right within the competence, to use the help of the public for establishment of circumstances of crime execution, search and exposure of guilty persons, and also for identification of the causes of offense and conditions promoting its commission.

Establishment of the truth (article 22 Code of Criminal Procedure). The truth is the property of our knowledge of objective reality defining compliance to the events which were really taking place in the past. The truth cannot be got in any ways. For establishment in the matter of the truth only those data which are found, checked and estimated in the order provided by the criminal procedure legislation can be used. The essence of this principle is that it is forbidden to solicit testimonies of the suspect, defendant, victim, witness and other persons participating in business by violence, threats, infringement of their rights and other illegal measures.

Presumption of innocence (article 23). According to this principle the suspect or the defendant is considered innocent until his guilt in crime n is proved in the order provided by the law and is established by the court verdict (part 1 of article 23 Code of Criminal Procedure Republic of Uzbekistan.).

Providing to the suspect and defendant of a right of defense (article 24). The right of defense is inseparable from guarantees of its implementation. The investigator and the prosecutor are obliged to explain to the suspect and the defendant the rights granted to him and to take measures to that he had the actual opportunity to use all means and ways provided by the law for protection against the brought charge. One of important elements in structure of the requirement of providing to suspected (defendant) of a right of defense is providing to it an opportunity to be protected from criminal prosecution and to advocate the interests by means of the defender. The defender according to the Code of Criminal Procedure of Republic of Uzbekistan. There can be a lawyer, also under the resolution of the investigator, the investigator by production of investigation as the defender according to the petition of the suspect and defendant along with the lawyer can be allowed one of close relatives or lawful representatives of the suspect and the defendant.

Spontaneity and oral research of proofs. Carrying out criminal proceeding, the investigator and the prosecutor are obliged to investigate proofs directly: to interrogate suspects, defendants, the victims and witnesses, to listen to expert opinions, to examine physical evidences. Content of the principle of a spontaneity includes two elements: the requirement of personal perception of proofs by the persons investigating them and the requirement to base the decision on the proofs investigated personally.

The right to appeal for legal proceedings and decisions (article 27). Participants of process and other persons, and also the representatives of the enterprises, institutions and organizations interested in the criminal proceeding having the right in an order and in the terms established by the Code of penal procedure to appeal against procedural action and the decision of the investigator, investigator, prosecutor and court in any stage of process.

Conclusions. Two more principles of criminal procedure such as, collective nature and an edinolichnost of consideration of criminal cases (article 13) and open trial of criminal cases in courts (article 19) though directly do not belong to pre-judicial production, but with changes in the legislation in connection with establishment of a legal process of application of a measure of restraint in the form of detention, are subjects to scientific research and in pre-judicial production. So in our opinion because the order of application of a measure of restraint in the form of detention is considered in the closed judicial session by the judge individually (article 243 Code of Criminal Procedure) it is necessary to fix these conditions in the principles of criminal procedure.

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