



PROBLEMS RELATED TO THE APPLICATION OF THE PRESUMPTION OF INNOCENCE IN THE PROCESS OF ARREST

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<https://doi.org/10.5281/zenodo.17142768>

Abstract: this article reveals the current problems in law enforcement practice of adhering to the principle of the presumption of innocence during the pre-trial investigation and detention of a person, as well as scientifically substantiated proposals and recommendations aimed at eliminating them.

Keywords: presumption of innocence, detention, obtaining explanations, involvement of a defense lawyer, primary evidence, main evidence.

In his speech at the 46th session of the UN Human Rights Council on February 22, 2021, our Honorable President Sh.M. Mirziyoyev emphasized that the Sustainable Development Goals, set for 2030, will be implemented in our country on the basis of the principle of "leaving no one behind," which aims to ensure the rights and legitimate interests of every person¹. This, in turn, shows that a number of reforms should be implemented in the judiciary.

A full and comprehensive investigation of a criminal case is inextricably linked to the quality of the pre-trial investigation. Therefore, it is necessary to fully comply with the requirements of the principle of the presumption of innocence when collecting evidence at this stage of the pre-trial investigation. However, the study revealed that in law enforcement practice there are a number of problematic situations related to the implementation of the presumption of innocence in the conduct of investigative and procedural actions during the pre-trial investigation, the application of procedural coercive measures, and other similar processes.

A known person of the current Criminal Procedure Code According to Article 224, he can be detained before the initiation of a criminal case and explanations can be demanded from him at this stage of the case. By the way, according to the fourth part of Article 91 of the current JPK, it is established that the process of arresting a person must be recorded on a video recording². However, according to analyses of law enforcement practice, in some cases, negative situations still persist, such as not videotaping the arrest of a person and taking statements under various pressures without explaining the rights and interests of individuals as stipulated by law³.

In particular, when practitioners were asked the question "Do you explain to a person their rights and obligations under the law during the detention of a person in the act of committing a crime?", 75% of respondents said that they are explained to them when they are taken to the detention center and receive a letter of explanation from them, 15% said that

¹ <https://president.uz/uz/lists/view/4179>. (The date of application is 22.10.2023.).

² Criminal Procedure Code of the Republic of Uzbekistan – T. 2023. <https://lex.uz/docs/111460> Date of access 22.10.2022).

³ Analysis of criminal cases studied during the research work.

they are only explained by name, and 10% said that they are limited to explaining certain rights, such as informing a lawyer or close relative⁴. In addition, according to the pre-investigation materials studied, in 90 percent of cases, it was found that during the pre-investigation period, statements were taken from individuals without the presence of their defense attorney⁵.

The need to ensure the participation of a defense attorney during the pre-investigation period, including obtaining explanations from individuals, ordering an expert examination, detention, and other investigative and procedural actions, directly serves to effectively apply the principle of the presumption of innocence at this stage of the case.

Because it is natural for a person to be mentally depressed, unable to fully understand the situation, and to be in a state of stress when being arrested, such as giving evidence against himself, of course.

In particular, on November 21, 2020, E.T. filed a complaint with the Internal Affairs Department, stating that his sister K.T., born in 1993, in collusion with other persons, sold apartment 55, 49th house, Aviasozlar 2, Yashnabad district, belonging to citizen T.T., on the basis of forged documents. In this criminal case, K.T. stated that he gave his first testimony in the trial without the participation of a lawyer, and also based on other unacceptable evidence, on February 1, 2022, by the verdict of the Tashkent City Court of Appeal, due to the violation of the rules for ensuring the right of a person to defense, he was acquitted in accordance with Article 83, Paragraph 3, of the Criminal Procedure Code⁶.

It is no secret that today the detention of a person is carried out mainly by inquiry officers, investigators, preventive inspectors, and operative representatives. However, the presence of employees without legal education among preventive inspectors can negatively affect the quality and validity of the legal measures applied by them, and ultimately lead to shortcomings in ensuring the legal protection of citizens.

According to B.A. Saidov, today the following violations of the law are allowed during the detention of a person:

firstly, failure to inform close relatives of the person about the detention;

secondly, failure to explain to the detained person his rights established by law (at the required level);

thirdly, conducting a personal search of a person suspected of committing a crime without the participation of witnesses;

fourthly, failure to provide the detained person with a copy of the protocol on the conduct of a personal search;

fifthly, not taking into account the objections or suggestions of the suspect during the detention and personal search, not recording this in the protocols drawn up on the conduct of these procedural actions;

sixthly, not properly ensuring the suspect's right to defense, including not taking measures to provide him with a lawyer in a timely manner to provide him with legal assistance;

seventhly, unjustifiably detaining a person suspected of committing a crime for a period exceeding the period established by law;

⁴ Results of the interview method conducted during the research work.

⁵ Analysis of data obtained through the interview method during the research work.

⁶ Criminal case documents No. 262901/2020-360 in the archives of the appellate court of the Tashkent City Court of Internal Affairs.

*eightly, exerting mental or physical pressure on a person suspected of committing a crime*⁷.

Indeed, there are many problematic situations, such as the fact that the accused person's close relatives are informed by phone, and the inability to contact their family members or provide them with complete information about this process. As a rule, a person may use the services of a defense attorney during the pre-trial investigation at his own discretion. Also, before taking a person's testimony for the first time, the pre-trial investigation official, inquiry officer, and investigator must explain to him his rights, such as the right to testify at his own discretion, not to testify against himself, and the right to use the services of a defense attorney. Although Part 4 of Article 91 of the current Criminal Procedure Code states that the detention must be videotaped, this process is interpreted differently in law enforcement practice. In particular, in some places the process of reading out the decision to detain a person and introducing him to them is videotaped, and in some places the process of explaining to the person his rights and obligations specified in Article 48 of the Criminal Procedure Code is videotaped. This violates the principle of the presumption of innocence due to the fact that the person's rights are not explained to him immediately after his arrest, and as a result, various statements are taken from the person without the participation of a lawyer.

Ensuring the rights of a person arrested from foreign countries under the legislation of the Republic of Azerbaijan are two regulatory documents, namely the Criminal Procedure Code of the Republic of Azerbaijan⁸ and the Law "On Ensuring Rights and Freedoms of Detained Persons"⁹ regulated by. Article 153 of the Criminal Procedure Code of the Republic of Azerbaijan is called the right to protection of a detained person. It stipulates that a person's right not to testify against himself or his close relatives shall be explained to him immediately upon his arrest.

According to Article 26 of the Criminal Procedure Code of the Republic of Kazakhstan, if a detained person is intoxicated due to the consumption of alcohol or narcotic drugs or if he shows signs of mental insanity, his rights shall be explained to him in the presence of a lawyer and an interpreter¹⁰.

During the initial interrogation of a person, he is likely to give self-incriminating or confessional statements under pressure, as he is in a state of mental stress. It is important to note that the person's initial statements are close to the truth and there have been no attempts to change his statements through external pressure or requests.

For example, when law enforcement practitioners were asked the question "What is the significance of a person's initial statement when he was arrested compared to his subsequent statements?", almost 82 percent of respondents indicated that their initial statements were reliable, while 18 percent indicated that their subsequent statements were almost the same¹¹.

⁷ B.A.Saidov's doctoral thesis "Constitutional rights and freedoms of the individual in the process of bringing the case to court". T-2020. 318 p.

⁸ Ugolovno-protsessualnyy kodeks Azerbaidjanskoy Respubliki (Po sostoyaniyu na 09.07.2021 g.) // URL: https://continent-online.com/Document/?doc_id=30420280#pos=6;-145 (Date of application: 25.02.2025.).

⁹ Law of the Republic of Azerbaijan on May 22, 2012 No. 352-IVQ "Ob obespechenii prav i svobod lits, soderjashchixsya v mestax soderjaniya pod strajey" // URL: http://continent-online.com/Document/?doc_id=31280150#pos=0;0 (Request date: 25.02.2025.).

¹⁰ Procedural Code of the Republic of Kazakhstan (amended and amended on March 2, 2022) / URL: <https://zakon.uchet.kz/rus/docs/K1400000231>.

¹¹ Results of the interview method conducted during the research work.

At the same time, O.D. Allanazarov pointed out that one of the distinctive features of conducting a pre-investigation investigation into crimes committed by minors is the expediency of ensuring the participation of a defense lawyer and a legal representative in the case, starting from the time of receiving initial explanations from them. It was noted that a defense lawyer is considered a participant in the process who participates only within the framework of the initiated criminal case, and his participation at the pre-investigation investigation stage is not legally regulated¹².

As is known, according to Article 51, Part 1, Clause 83 of the current Criminal Procedure Code, the mandatory participation of a defense lawyer is indicated in cases involving the application of a preventive measure in the form of arrest or house arrest. However, today, preventive measures in the form of arrest are applied to almost all persons in cases where the procedural coercive measure of detention is used.

This, in turn, indicates the need to make appropriate amendments and additions to the current legislation regarding the conditionality of the participation of a defense lawyer in all procedural actions related to a person detained during the pre-investigation investigation period, including obtaining explanations from him via video recording, notifying close relatives of his detention, ordering an examination, and inspecting the scene of the incident.

Based on the opinions and considerations of the above-mentioned scholars and the results of law enforcement practice, in order to prevent the continuation of negative situations such as the above, it is proposed to supplement the first part of *Article 51 of the current Criminal Procedure Code with paragraph 85*, which reads as follows:

“when carrying out all procedural actions related to the detained person”.

It is proposed to supplement the first part of Article 53 of this Law with the words “when carrying out procedural actions related to the detained person” before the words “participating in the interrogation of the suspect”.

It is proposed to supplement the fifth part of the fourth part of Article 91 of the Code of Criminal Procedure with the phrase “and receiving an explanatory letter from him” after the words “detention of a person”.

It is proposed to supplement the second part of Article 24 of the Code of Criminal Procedure with the phrase “official of the pre-investigation inspection body” before the words “inquiry officer, investigator”.

¹² O.D. Allanazarov doctoral dissertation "Improving the methodology of investigation of crimes committed by minors". T-2021. 209 p.



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