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PRESUMPTION OF INNOCENCE AND TERMINATION OF CRIMINAL CASES ON NON-REHABILITATING GROUNDS

The principle of the presumption of innocence enshrined in the Constitution of the Republic of Kazakhstan is the main guarantee of respect for individual rights and the implementation of the law. Compliance with this fundamental principle serves as an indicator of the state of legality in society.

Despite the significance and relevance of the topic of the presumption of innocence, it still raises many questions related to the interpretation and application of this principle.

The article provides a classification of the institution of termination of a criminal case, considers rehabilitative and non-rehabilitative grounds, and identifies the problem of the relationship between the institution of termination of a criminal case on non-rehabilitative grounds and the principle of the presumption of innocence.

Various points of view on the relationship between the principle of the presumption of innocence and the institution of termination of criminal cases on non-rehabilitative grounds are examined, and proposals are presented on the conformity of the principle under consideration and the institution of termination of criminal cases on non-rehabilitative grounds. As a result of the conducted research, the author comes to the conclusion that there is no contradiction between the presumption of innocence and the termination of a criminal case on non-rehabilitative grounds. When a criminal case is terminated on non-rehabilitative grounds, the guilt of the person is not established, but the refusal of the criminal prosecution authorities to continue criminal prosecution is established.

Keywords: presumption of innocence, principles of criminal procedure, rehabilitative and non-rehabilitative grounds, termination of criminal case, criminal prosecution, guilty verdict, pre-trial investigation.

Introduction

Article 35 of the Criminal Procedure Code of the Republic of Kazakhstan identifies 12 grounds that entail the termination of a criminal case by the bodies conducting criminal proceedings, within their competence, at the relevant stages of the criminal case [1].

A criminal case, if there are grounds, may be terminated both in cases of criminal misdemeanors and in cases of crimes. Unlike the criminal prosecution bodies, the court may terminate a criminal case at any stage of the criminal process.

All circumstances that exclude criminal prosecution of a person are usually divided into rehabilitating and non-rehabilitating grounds. Grounds are divided depending on the guilt of the person who committed the crime, released from criminal prosecution.

Rehabilitating grounds for termination of a criminal case and criminal prosecution presuppose the innocence of the person subjected to criminal prosecution and, as a consequence, the adoption of measures for his rehabilitation, compensation for damage caused as a result of the criminal prosecution of the rehabilitated person, restoration of his honor, good name, reputation. The question of the guilt of the accused in committing a crime due to non-rehabilitating grounds remains unresolved.

Materials and methods

The study is based on the dialectical method of understanding social and legal phenomena and concepts, their development and interdependence. General and specific scientific methods of historical, comparative legal, systemic-structural, sociological, statistical, logical research were used.

Results and discussions

Due to the fact that the termination of a criminal case on non-rehabilitating grounds establishes the fact of the commission of a crime by a person, without a guilty verdict by the court, there is a problem of the compliance of this institution with the principle of the presumption of innocence. The opinion that the termination of a criminal case on non-rehabilitating grounds contradicts the presumption of innocence was expressed back in the first half of the 1970s [2, p. 112].

In science, the question of whether a decision to terminate a criminal case replaces a court verdict is controversial. The use of non-rehabilitating grounds requires methodical and mandatory compliance with the requirements of the presumption of innocence.

«Termination of a criminal case on non-rehabilitating grounds is possible only upon establishing the fact that the person has committed a crime» [3, p. 71–78].

Termination of a case on non-rehabilitating grounds is permissible at pre-trial stages of criminal proceedings. In court, it is permitted (according to Article 327

of the Criminal Procedure Code of the Republic of Kazakhstan) at the stages of preparing the case for a court hearing, trial before a guilty verdict is rendered in the case. When a case is terminated on non-rehabilitating grounds, the person is not officially recognized as guilty on behalf of the state [4, p. 37–40].

Most authors believe that the guilt of a person against whom a criminal case is terminated on non-rehabilitating grounds is not precisely established, and accordingly, the person continues to be considered innocent by virtue of the principle of the presumption of innocence [5, p. 21–23].

Also in the literature there is an opinion that when a case is terminated on non-rehabilitating grounds, the prosecutor, investigator, and inquiry officer establish the guilt of the person against whom the case is terminated [6, pp. 56–57]. Considering that when formulating the concept of «non-rehabilitating» grounds for termination of criminal prosecution, the legislator refers to the person released from liability precisely as «the person who committed the crime, the opinion of scientists that when released from criminal liability, the person is found guilty of committing the crime seems rational.

The question naturally arises about the compliance of the decision to terminate a criminal case on non-rehabilitating grounds with the presumption of innocence. After all, due to the effect of this principle, guilt is established only by a court sentence that has entered into legal force.

However, if it is possible to achieve the goals of justice without transferring the case to court, then it is logical to use such an opportunity. In this regard, V. Z. Lukashevich quite rightly noted that «the implementation of a trial instead of a decision to terminate the case and the issuance of a guilty verdict against a person does not improve the legal status of this person» [7, p. 167].

The decision to terminate a criminal case is a procedural decision of the investigator and the inquiry officer, i.e. it is issued on behalf of the state. Until the investigator and the inquiry officer are convinced of the guilt of the person against whom the criminal case is being terminated, they will not be able to make such a decision. Also, the court's verdict and the ruling on the termination of the case entail different legal consequences. Thus, the ruling does not contain public censure, as in the court's verdict, and does not entail a criminal record. Accordingly, the ruling on the termination of a criminal case on non-rehabilitating grounds does not replace the court's verdict.

Next, we will consider what conditions must be observed when terminating criminal cases on non-rehabilitating grounds in order not to contradict the principle of the presumption of innocence:

- 1) The guilt of a person who committed an offense or crime, even if released from liability and punishment, is not an established fact.

The act of terminating a criminal case should not contain a direct indication of the fact of the commission of a crime by a specific person; it is necessary to abandon the wording that states that the person in respect of whom the decision to terminate the case was made committed a crime [8, h. 343 - 344].

In the theory of criminal law, it is recognized that the release from criminal liability of one of the accomplices to a crime does not prevent the liability and punishment of other accomplices; moreover, the act of others can be qualified on the basis of the commission of a crime by a group of persons, etc. [9, p. 14].

This provision does not contradict the presumption of innocence, due to the fact that the guilt of one of the accomplices must be established, even if the other persons with whom he committed the crime are unknown. In relation to this issue, the recommendations contained in paragraph 22 of the Supreme Court's Normative Resolution of April 20, 2018 No. 4 «On the Court Sentence» are of interest:

«The case is considered in court only in relation to the defendants; the court is not allowed to provide information in the sentence proving the guilt of other persons in committing a crime who have not been brought to trial. If individual participants in the crime are exempted from criminal liability on the grounds provided for by law, the court, in order to determine the degree of participation of the defendant in the crime, the qualification of his actions and other material circumstances of the case, may indicate in the sentence information about the participation of these persons in committing the crime, with an obligatory indication of the grounds for terminating the proceedings» [10]. It would be recommended that judges, when passing a sentence, not mention the personal data of a person released from criminal liability on the grounds provided for by law, in the event of a crime committed jointly with the defendant.

2) The right of a person against whom a case is terminated to appeal to the court the decision to terminate a criminal case.

Before the termination of a criminal case, the suspect or accused must be explained the grounds for terminating the case, its legal consequences and the right to object to its termination on this basis (Part 3 of Article 36 of the Criminal Procedure Code of the Republic of Kazakhstan).

It follows from the provisions of the Criminal Procedure Code of the Republic of Kazakhstan that a judicial act on the termination of a criminal case can also be appealed to a higher court. Thus, the criminal procedure legislation precisely corresponds to the condition under consideration.

3) Obtaining the consent of the person released from liability to terminate a criminal case. Termination of a criminal case, as a form of completing proceedings on the case, affects the legal capacity of the person it concerns, as well as the victim. Therefore, in the interests of the legality and validity of the act of termination

of a criminal case, Part 5 of Article 36 of the Criminal Procedure Code of the Republic of Kazakhstan provides for the right of a suspect, accused or victim to object to the termination of a criminal case (prosecution) on any grounds that do not rehabilitate the person. If there is an objection, further proceedings will be conducted in the usual manner. Accordingly, a citizen chooses for himself whether to use the presumption of innocence and wait for the case to be considered in court, or to admit his guilt and be released from criminal liability at the pre-trial stage of criminal proceedings.

Conclusion

The termination of a criminal case on non-rehabilitating grounds during the pre-trial investigation does not contradict the principle of the presumption of innocence.

The formation of this conclusion followed a detailed interpretation of the norms of international acts that enshrine human rights, Art. 77 of the Constitution of the Republic of Kazakhstan, which enshrines the principle of the presumption of innocence. The presumption of innocence is a human right, and its implementation depends on the will of the person, his consent to terminate the criminal case on non-rehabilitating grounds. The consent of a person released from criminal liability to terminate a criminal case on non-rehabilitating grounds means admitting guilt in committing a crime. The very fact of obtaining consent makes the institution of release from criminal liability consistent with the presumption of innocence.

Based on the fact that upon termination of a criminal case on the so-called «non-rehabilitating» grounds do not discuss and legally should not discuss the question of guilt or innocence of the person in question, then there can be no contradiction to the constitutional principle of the presumption of innocence. In the presence of appropriate grounds for termination of a criminal case, the question of guilt remains unresolved, since the case was not transferred and not considered in court. The presumption of innocence remains procedurally undeniable (no one has even tried to refute it), since it can only be refuted by a court verdict that has entered into legal force, that is, the person is still presumed innocent. As for the guarantees of the rights of the participants in the process, all concerns are in vain in the presence of judicial review. The court considers the case only when a legal dispute arises. Accordingly, there are no obstacles for the participants in the criminal process to appeal the actions or decisions that take place when the criminal case is terminated at the pre-trial stages. Consequently, having a body of evidence of the guilt of a person and his consent to the termination of a criminal case on non-rehabilitating grounds, release from criminal liability will contribute to the implementation of the principle of the presumption of innocence. The institution of termination of a criminal case on non-rehabilitating grounds at the

stage of pre-trial investigation allows to significantly reduce the amount of work in the courts, thereby giving the courts the opportunity to pay more attention to the consideration of serious and especially serious crimes.

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КІНӘСІЗДІК ПРЕЗУМПЦИЯСЫ ЖӘНЕ АҚТАЛМАЙТЫН НЕГІЗДЕР БОЙЫНША ҚЫЛМЫСТЫҚ ІСТЕРДІ ТОҚТАТУ

Қазақстан Республикасының Конституциясында бекітілген кінәсіздік презумпциясы қазіргі таңда әрбір адамның құқықтарын сақтаудың және заңның орындалуының негізгі кепілі болып табылады. Осы негізгі қазіргі таңда сақтау қозғалыстағы заңдылық жағдайының көрсеткіші болып табылады

Кінәсіздік презумпциясы тақырыбының маңыздылығы мен өзектілігіне қарамастан, ол әлі де осы қазіргі таңда түсіндіруге және қолдануға байланысты көптеген сұрақтар туғызады.

Мақалада қылмыстық істі тоқтату институтының жіктелуі келтірілген, ақтайтын және ақтамайтын негіздер қарастырылған, қылмыстық істі тоқтату институтының ақталмайтын негіздер бойынша кінәсіздік презумпциясы қазіргі таңдамен арақатынасы проблемасы көрсетілген.

Кінәсіздік презумпциясы қазіргі таңдамен ақталмайтын негіздер бойынша қылмыстық істерді тоқтату институтының арақатынасы туралы әртүрлі көзқарастар зерттелді, сондай-ақ қаралып отырған қазіргі таңдамен және ақталмайтын негіздер бойынша қылмыстық істерді тоқтату институтының сәйкестігі бойынша ұсыныстар ұсынылды.

Жүргізілген зерттеу нәтижесінде автор кінәсіздік презумпциясы мен ақталмайтын негіздер бойынша қылмыстық істі тоқтату арасындағы қайшылықтардың жоқтығы туралы қорытындыға келеді. Қылмыстық іс ақталмайтын негіздер бойынша тоқтатылған кезде адамның кінәсі көрсетілмейді, бірақ қылмыстық қудалау органдарының одан әрі қылмыстық қудалаудан бас тартуы белгіленеді.

Кілтті сөздер: кінәсіздік презумпциясы, қылмыстық процесінің қазіргі таңдамен, ақтайтын және ақтамайтын негіздер, қылмыстық істі тоқтату, қылмыстық қудалау, айыптау үкімі, сотқа дейінгі тергеу.

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ПРЕЗУМПЦИЯ НЕВИНОВНОСТИ И ПРЕКРАЩЕНИЕ УГОЛОВНЫХ ДЕЛ ПО НЕРЕАБИЛИТИРУЮЩИМ ОСНОВАНИЯМ

Принцип презумпции невиновности закрепленный в Конституции Республики Казахстан является основной гарантией соблюдения прав личности и исполнения закона. Соблюдение этого основополагающего принципа служит показателем состояния законности в обществе

Несмотря на значимость и актуальность темы презумпции невиновности, она по-прежнему вызывает много вопросов, связанных с толкованием и правоприменением данного принципа.

В статье приведена классификация института прекращения уголовного дела, рассмотрены реабилитирующие и нереабилитирующие основания, обозначена проблема соотношения института прекращения уголовного дела по нереабилитирующим основаниям с принципом презумпции невиновности.

Исследованы различные точки зрения по поводу соотношения принципа презумпции невиновности и института прекращения уголовных дел по нереабилитирующим основаниям, а также представлены предложения, по соответствию рассматриваемого принципа и института прекращения уголовных дел по нереабилитирующим основаниям.

В результате проведенного исследования автор приходит к выводу об отсутствии противоречий между презумпцией невиновности и прекращением уголовного дела по нереабилитирующим основаниям. При прекращении уголовного дела по нереабилитирующим основаниям не констатируется виновность лица, а устанавливается отказ органов уголовного преследования от дальнейшего уголовного преследования.

Ключевые слова: презумпция невиновности, принципы уголовного процесса, реабилитирующие и нереабилитирующие основания, прекращение уголовного дела, уголовное преследование, обвинительный приговор, досудебное расследование.

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