

ABSTRACT

**dissertations for the degree of Doctor of Philosophy (Ph.D.) in
the specialty «6D030200-International Law»**

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**On the topic: «International legal standards ensuring the rights of suspect
in criminal proceedings: problems of implementation of the legislation of the
Republic of Kazakhstan»**

General characteristics of the dissertation. The dissertation is devoted to analyzing international legal standards for ensuring a suspect's rights in criminal proceedings and their implementation in the Republic of Kazakhstan's legislation. The article presents the scientific analysis of the concept and types of the procedural status of the suspect, the proposals of theoretical and practical significance to optimize the support and implementation of the rights and legitimate interests of a suspect during pretrial investigations, the article analyses the peculiarities of rehabilitation of a suspect within the Criminal procedure code of the Republic of Kazakhstan, attempts to analyze the implementation of specific international legal standards in ensuring the rights of suspects at the pretrial stage.

The relevance of the research topic. Since gaining independence in the Kazakh science of criminal procedure law, the problem of protecting participants' rights and legitimate interests in criminal proceedings has become particularly acute due to the radical political, economic, and legal changes that have taken place in our society. Since the adoption of the new Criminal Procedure Code in 2014, this problem in some of its changes can be said to have found solutions to the axiom: sharp changes in the state's political and economic life and society inevitably lead to a peak increase in crime. In the history of Kazakhstan, this was, in particular, after gaining independence in the 90s.

The relevance of improving criminal proceedings in order to increase the effectiveness of protecting the rights of participants in criminal proceedings is due to the need for law enforcement practice to the problems of exercising the rights of citizens in criminal proceedings.

The ongoing judicial and legal reform in the Republic of Kazakhstan is designed to ensure the entire legal system's democratization and human rights' practical observance. That is why the new criminal procedure law recognized the purpose of criminal proceedings to protect the rights and legitimate interests of persons and organizations who have suffered from a crime, to protect the individual from illegal and unjustified charges, convictions, restrictions on their rights freedoms. In this regard, the emphasis is placed on strengthening the legal regulation of participants' rights in criminal proceedings, and primarily of persons whose constitutional rights may be restricted in the framework of criminal proceedings. A special place here is occupied by the suspect's procedural figure, since his involvement in the criminal process, the application of coercive measures.

Since the XVIII century's appearance in the Russian Empire's criminal proceedings (Kazakhstan was part of) such a participant as a suspect, the legislation on him has gone a long and challenging way from a simple term to the formation of a whole criminal procedure institution. The variety of ideas available in science about who is a suspect, the grounds for recognizing a person as such, the content of his procedural status explains the need for this dissertation research. Without considering and solving the scientific aspects of the problem, it is impossible not only to protect the individual from illegal and unjustified criminal prosecution, restrict his rights and freedoms but also to improve the investigation's quality significantly and ensure the legality of criminal proceedings.

The importance of studying this problem is also indicated by the fact that the time spent by a person as a suspect following the current criminal procedure legislation has increased. In pretrial proceedings, a person appears as a given participant in the criminal process for the entire duration of the investigation in the case. In this situation, the pretrial investigation bodies can significantly restrict the suspect's rights and freedoms to a much greater extent.

The study of criminal cases in the preparation of this thesis allows declaring permitted by interrogators violations of the rights of the suspects, expressed in delayed vesting status of the suspect and the explanation of the rights specified in article 64 of the code of criminal procedure, the recognition of inadmissible evidence obtained in the course of a criminal investigation, violation of the principles of criminal justice.

This situation harms the preliminary investigation bodies' authority, as it is an improper implementation of the law's requirements. Therefore, the study of the legality and validity of procedural decisions that lead to the appearance of a new participant in the process — a suspect in the commission of a crime in the light of improving the effectiveness of law enforcement agencies and ensuring the protection of the rights of citizens involved in criminal proceedings, becomes particularly relevant.

The practicality of studying the grounds for recognizing a person as a suspect is also due to the instability of the legislative regulation of these criminal procedural relations and the powers of officials who have the right to involve a person as a suspect in criminal proceedings.

The above indicates the theoretical and practical significance of this dissertation research and determines the dissertation topic's choice.

The degree of elaboration of the research topic. The problems of ensuring the suspect's rights during the preliminary investigation and inquest, specific grounds for recognizing a person as such were the subject of study by such scientists as S.K. Zhursimbaev, L. Sh. Bersugurova, E.T. Alimkulov, G.A. Kuanalieva, E.O. Alauhanov, M. Ch. Kogamov, B.Kh. Toleubekova, S.M. Apenov, A. Zh. Sadykov, E.E. Ereshev, Z.Z. Zinatullin, A.N. Akhpanov, S.T. Tynybekov, A.B. Sharipova, G.N. Mukhamadieva, V.N. Avdeev, F.N. Bagautdinov, V.P. Bozhiev, A.D. Boykov, B.B. Bulatov, M.G. Gaidysheva, L.I. Gerasimova, V.N. Grigoriev, O.S. Grechishnikova, E.P. Grigonis, E.V. Guselnikova, A.P. Gulyaev, M.P. Davydov, S.P. Efimichev, O.A. Zaitsev, L.M. Karneeva, N.I. Kapinus, K.B. Kalinovskiy, V.V.

Kalnitsky, H.H. Kovtun, Z.F. Kovriga, M.N. Klepov, O. L. Kuzmina, E.F. Kutsova, A.M. Larin, L.G. Lifanova, P.A. Lupinskaya, P.G. Marfitsin, V.M. Mikhailov, I.L. Petrukhin, V.M. Savitsky, E.V. Sopneva, Yu. I. Stetsovsky, P.A. Smirnov, V.V. Smirnov, D.K. Strigalev, M.S. Strogovich, M.A. Cheltsov, A.A. Chuvilev, B.C. Shadrin, C.A. Shafer et al. However, not all relevant questions have received due theoretical elaboration.

Object and subject of dissertation research.

The dissertation research object is criminal procedural relations, the content of which is the procedural status, the suspect's legal status in the era of globalization at the stage of pretrial proceedings.

The subject of the research is the norms of the current and invalidated criminal procedural legislation of the Republic of Kazakhstan, international agreements ratified by the Republic of Kazakhstan regulating the procedural status of a suspect, as well as the grounds for recognizing a person as a suspect in criminal proceedings and the practice of their application.

The purpose and objectives of the study. The work aims to carry out a scientific analysis of the concept and types of the procedural status of a suspect at the present stage of development of the criminal procedural doctrine, legislation, international legislation, and practice of its application, as well as the result of theoretically and practically meaningful recommendations aimed at optimizing the provision and implementation of the rights and legitimate interests of the suspect—stages of the preliminary investigation.

To achieve this goal, it was necessary to resolve many tasks:

- 1) Consider and analyze in the historical aspect the essence and concept of «suspicion»;
- 2) Define the concept and features of recognizing a person as a suspect in the framework of judicial and legal reform;
- 3) Determine guarantees of the rights and legal interests of the suspect in the current criminal procedure legislation;
- 4) Disclose the features of prosecutorial supervision and judicial control in protecting the rights of a suspect;
- 5) Analyze the features of the rehabilitation of a suspect within the framework of the Criminal Procedure Code of the Republic of Kazakhstan;
- 6) Analyze the implementation of specific international legal standards to ensure a suspect's rights at the stage of pretrial proceedings.

Research methodology and technique. The tool in obtaining theoretical and applied material was the general scientific dialectical method of cognizing objective reality and particular scientific methods: historical, comparative-legal, formal-logical, observation, analysis, synthesis, analogy, modeling, and generalization.

The study's regulatory framework was the Constitution of the Republic of Kazakhstan, the Criminal Procedure Code of the Republic of Kazakhstan, the Normative decisions of the Supreme Court of the Republic of Kazakhstan, and international treaties.

To substantiate the conclusions, the author personally and under his leadership in 2017 – 2018, more than 150 investigators and interrogators were questioned.

The scientific novelty of the dissertation research lies primarily in the fact that after the adoption of the new Criminal Procedure Code of July 4, 2014, for the first time at the monographic level, an attempt was made to comprehensively study the foundations of the legal status of suspects in their historical understanding and the current Criminal Procedure Code of the Republic of Kazakhstan.

The main provisions for the defense:

1) Based on the historical analysis of the essence and concept of «suspicion», its historical idea and the moment of its emergence in the science of criminal procedure were identified, as well as based on the analysis of legislation and data from law enforcement practice, four periods of development of the institution of the suspect were identified.

2) Having analyzed the legal status of the suspect in the modern period, as well as the currently existing theoretical and practical problems of the suspect's participation in criminal proceedings, in our opinion, the structure of the content of his legal status includes the following elements: citizenship in the criminal procedural sense; legal personality; legitimate interests; rights and obligations; guarantees of rights and legitimate interests allowed to identify the main components.

3) To protect the suspect's rights and interests, the most important is when the defense lawyer can participate in the case.

It seems necessary to impose on the inquiry officer, investigator, prosecutor, and the court the obligation to invite the suspect to ask another defense lawyer if the invitee fails to appear. Therefore, the word «has the right» in Part 3 of Art. Sixty-eight of the Code of Criminal Procedure of the Republic of Kazakhstan should be replaced with «must».

4) Having analyzed the positive foreign experience, as well as the principles of criminal proceedings, in particular the principles of the presumption of innocence, we concluded that at the moment Article 65 of the Code of Criminal Procedure of the Republic of Kazakhstan «The Accused» does not comply with international standards and the principle of the presumption of innocence, which states that "everyone is considered innocent until his guilt in committing a criminal offense is proved in the manner prescribed by this Code and established by a court verdict that has entered into legal force, and an analysis of practice has shown that a person in the legal status of «accused» is In this regard, we propose to combine Articles 64 and 65 of the Criminal Procedure Code of the Republic of Kazakhstan under the title «Suspect», removing the concept of «accused» from the criminal procedure legislation of the Republic of Kazakhstan.

This would be in line with the ongoing reforms that are being carried out recently.

5) In developed countries' procedural systems, protecting an individual from unlawful and unjustified restrictions on his rights and freedoms is guaranteed to a much greater extent. The legislation of these countries is the closest to international standards in human rights observance in the sphere of criminal proceedings. In this regard, within the framework of the judicial and legal reform being carried out in the Republic of Kazakhstan today, appropriate amendments and additions should be made to the Republic of Criminal Procedure of the Republic Kazakhstan to ensure the

human right to trial within a reasonable time. In particular, it is necessary to limit such long periods of pretrial detention by resorting to a clear foreign example; besides, and it is essential to think about the introduction (reduction) of the time limits for the application of other measures of criminal procedural coercion, which today can last the entire (far from small) period of investigation (for example, a recognizance not to leave, removal from office, etc.).

6) The Criminal Procedure Code of the Republic of Kazakhstan does not establish the time limits for the application of a preventive measure in the form of house arrest, which can operate while a preliminary investigation and trial are underway, i.e., theoretically until the expiration of the period of criminal prosecution. Meanwhile, house arrest, like detention, limits the right to liberty and security of a person, as a result of which its application is subject to a court decision. Hence follows the international legal requirement for a reasonable period of application of this preventive measure. Besides, under Art. 11.1 Tokyo Rules, the duration of a non-custodial step must not exceed the time limit for imprisonment. Therefore house arrest, like any other alternative measure of restraint, must not exceed the time of detention, and there must be an extensive procedure—application of alternative measures of condition.

The theoretical significance of the dissertation research.

The theoretical significance of the research was made up of works in the field of philosophy, sociology, general theory of law, international, criminal, criminal procedure, civil, criminalistics, operational investigative activities, general and legal psychology.

The generally recognized principles and norms of international law, the provisions enshrined in the Constitution of the Republic of Kazakhstan, the Criminal Code, the Criminal Procedure Code and other legislation, regulating the procedural status of the suspect as a subject of criminal procedural relations, as well as the grounds for recognizing a person were used as a regulatory framework for the dissertation research. suspects in the light of the new Criminal Procedure Code of the Republic of Kazakhstan and international standards for ensuring human rights.

The practical significance of the results obtained. The results of the work - the obtained conclusions, formulated definitions, proposals, recommendations, analysis of the state of the suspect's security, can be used in:

- legislative process;
- law enforcement activities of subjects conducting criminal proceedings to more effectively ensure the implementation of the rights and legitimate interests of the suspect;
- increasing the efficiency of teaching at the law faculties of universities and other legal educational institutions, as well as at advanced training courses for the discipline "Criminal Procedure Law" and corresponding special courses in criminal law specialization;
- carrying out further scientific research on this and related problems.

The empirical basis of the study was the results of studying the statistics of criminal offenses: minor, moderate, grave, especially grave, criminal offenses and criminal offenses committed by suspects, accused over the past five years (2016-

2020); familiarization with more than 50 documents disclosing the number of offenses registered in the ERDR, the number of persons recognized as suspects, the number of persons recognized as accused; questionnaires of competent officials, bodies of the Republic of Kazakhstan conducting criminal proceedings, namely, investigators, interrogators of the internal affairs bodies and employees of the prosecutor's office according to a program specially developed by the candidate for a degree.

Information about the completeness of publications. The main findings and results of the study were reflected in twelve scientific publications. Including six articles in journals recommended by the Committee for Quality Assurance in Education and Science of the Republic of Kazakhstan, five items in international scientific and practical conferences, and one article was published in a journal that included the Scopus database.

Approbation of research materials. The results of the study and the conclusions and recommendations based on them were discussed at an expanded meeting of the Department of International Law of the Al-Farabi Kazakh National University and used in the preparation of scientific publications.

The thesis's structure and volume are determined by the subject, goals, and objectives of the research and consist of definitions, notation and abbreviations, an introduction, three sections uniting eight subsections, a conclusion, and a list of references.