

GROUNDS FOR REFUSING TO ALLOW A DEFENSE ATTORNEY TO PARTICIPATE IN CRIMINAL PROCEEDINGS

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Abstract

This article examines the circumstances that prevent a defense attorney from participating in criminal proceedings and the grounds for refusing to participate in the proceedings in the event of these circumstances. It also discusses the issue of the defense attorney's impartiality, the concept and types of personal interest, the issue of kinship, and foreign experience on this topic.

Keywords: Criminal proceedings, defense attorney, judge, prosecutor, investigator, witness, refusal, circumstances that prevent, personal interest, kinship.

Introduction

Аннотация

В статье рассматриваются обстоятельства, препятствующие участию адвоката в уголовном судопроизводстве, и основания отказа от участия в судопроизводстве при наличии этих обстоятельств. Анализируется круг основных фигурантов этих дел, их процессуальный статус, право на отказ по делу, основания отказа, зарубежный опыт в этом направлении.

Ключевые слова: уголовный процесс адвокат, отвод в суде, судья, следователи, свидетели, обвиняемые, родственники.

Annotatsiya

Ushbu maqolada himoyachining jinoyat protsessida ishtirok etishga monelik qiladigan holatlar va ushbu holatlar mavjud bolganda protsessda ishtirok etishni rad etish asoslarini ko'rib chiqiladi. Shuningdek himoyachining xolisligi masalasi, shaxsiy manfaatdorlik tushunchasi va turlari, qarindoshlik masalasi va shu mavzuda chet el tajribasi organiladi.

Kalit so'zlar: Jinoyat protsessi, himoyachi, sudya, prokuror, surishtiruvchi, guvoh, rad etish, monelik qiluvchi holatlar, shaxsiy manfaatdorlik, qarindoshlik.

The protection of the rights and legitimate interests of the individual is the main task that determines the goals of criminal proceedings. One of the guarantees of an impartial, fair and objective criminal procedure is the introduction of the institution of denial and self-denial. It consists of measures for the comprehensive protection of the interests of individuals in the investigation and trial.

State bodies, officials, citizens, representatives of public associations, communities, participating in criminal procedural activities by exercising the rights granted to them and performing their duties, are considered participants in the criminal process, and each participant



performs a task corresponding to him, that is, a duty of service that expresses his area of activity. The nature of this task is determined depending on the tasks performed by these participants in the process and their protected interests. Depending on the tasks they perform, they can be divided into two groups:

- 1) Officials of state authorized bodies. These include: a judge, a prosecutor, an inquiry officer and an investigator, a secretary of the court session, and people's advisers.
- 2) The second group includes other participants in the proceedings who are not part of the authorized state bodies: a defense attorney, a legal representative, a specialist, an expert, a translator.

Among the participants in this group, persons who are not required to be impartial, objective and not to have an interest in the outcome of the case are considered defense attorneys and legal representatives. Because the purpose of the defense attorney or legal representative's participation in the investigation or trial of a criminal case is precisely to represent the interests of the party he is defending. His task is to protect the person under his protection, that is, the victim or the accused, in any case during the investigation or trial. However, it should be emphasized that some actions of the defense attorney and legal representative, to be more precise, their friendly or hostile attitude towards other participants in the proceedings may conflict with the legitimate interests of the person under his protection and affect the outcome of this process.

In accordance with the Criminal Procedure Code of the Republic of Uzbekistan, a defense attorney cannot participate in a case in the following cases:

1. Previously participated in another procedural capacity
If a person participated in this criminal case as a judge, prosecutor, investigator, inquiry officer, witness, expert, specialist, translator, or victim, he cannot perform the duties of a defense attorney. Since such a situation may lead to a conflict of interest and a violation of the principle of procedural impartiality.
2. If there is a kinship relationship with the participants
This norm is established in order to ensure an impartial consideration of the case.
3. If there is a conflict of interest, if the defense attorney previously provided legal assistance to another person whose interests in this case conflict, he cannot participate in this case as a defense attorney later.
For example, if the interests of two defendants in one criminal case conflict, one lawyer cannot defend both of them.
4. Other circumstances that cast doubt on impartiality.

The personal interest of the defense attorney in the outcome of the case or other circumstances that cast doubt on his impartiality are also grounds for refusal.

The issue of refusing a defense attorney is resolved differently depending on the stage of the criminal proceedings. For example: at the inquiry stage - by the inquiry officer; at the preliminary investigation stage - by the investigator; and at the trial - by the court.

This situation is approached in the same way not only in criminal proceedings, but also in civil, economic and administrative judicial proceedings. Our civil procedural legislation sets out the grounds for refusing to participate in civil judicial proceedings, but does not specify the grounds for refusing a defense attorney and a legal representative. Since civil proceedings are related to



property and non-property claims between individuals, we see the participation of a defense attorney or a legal representative in most civil judicial proceedings.

If we turn to foreign experience in this regard, under the Criminal Procedure Code of the Russian Federation, a defense attorney must participate in the pre-trial stage of a criminal case, while a legal representative participates only in the trial process. At the trial stage, close relatives of the victim or accused may also participate as defense attorneys by court decision or ruling.

The accused or suspect may voluntarily waive the defense attorney. However, there are also cases in which the participation of a defense attorney is mandatory in the legislation. In particular, in cases of minors; in cases of serious and extremely serious crimes; in cases of persons with mental or physical disabilities, the participation of a defense attorney is a prerequisite. In such cases, the waiver of a defense attorney may not be accepted.

Conclusion

The refusal of a defense attorney in criminal proceedings is one of the important guarantees of ensuring a fair trial. It serves to protect the rights and interests of the participants in the proceedings, prevent conflicts of interest, and ensure the impartial consideration of the case. Therefore, the clear definition of the grounds and procedure for refusing a defense attorney in the legislation is of great importance for the fair conduct of the criminal proceedings.

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