



ENSURING THE ADVERSARIAL PRINCIPLE DURING THE TRIAL STAGE OF THE CRIMINAL PROCESS AND THE SPECIFIC ASPECTS OF THE SPEECH BY DEFENCE

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Annotation

This article is devoted to the analysis of the essence of the adversarial principle and the importance of the direct participation of the lawyer in ensuring this principle. In addition, the article focuses on the specific aspects of the defense speech, its structural structure and the importance of the defense speech in ensuring the adversarial principle.

Keywords: the adversarial principle, the defense speech, introduction, justification or statement part, conclusion.

Introduction

The activity of the court is independent and relies only on principles such as obedience to the Constitution of the Republic of Uzbekistan and the laws adopted on its basis, transparency, contention and equal rights of the parties, presumption of innocence and other democratic bases of criminal proceedings[1].

The function of hearing and deciding a criminal case in court (in judicio – Latin) is performed only by the court[2]. This function, which is mainly related to the activity of the court of first instance, is expressed both in the appointment of a criminal case for hearing in court, as well as in the proceedings of the higher instance, that is, in all stages of the criminal process, which are determined and decided by the court.

The central idea of litigation is to consider and resolve a disputed issue[3]. U. Tokhtasheva also confirms these opinions: "The trial in the countries where the rule of law is practically ensured is a dispute held in order to determine the truth about the accusation" [4].

According to Yakimovich, the part of the trial based on the arguments of the parties can be described as its peak[5]. In this part of the trial, the struggle of opinions and conclusions of the parties is evident. It is at this stage of the court that the defense will





have the opportunity to justify its opinion on the inadmissibility of all the evidence presented by the prosecution, and the prosecution will have the opportunity to state before the court that the evidence of the prosecution is reasonable and superior to the evidence and objections of the defense[6].

Competency is recognized as a judicial method of ensuring the equality of prosecution and defense in a criminal case, and the "core" of competency is the handling of evidence by the parties and the court. "In the analysis of the evidence, in their presentation, in the application to demand or receive them, in their evaluation, it is the essence of the dispute"[7]. However, it is also known from the above that in pre-trial proceedings, the right to make a decision on the case is not the court, but the participants of the prosecution. According to our current procedural law, the court does not have the function of deciding the merits of the case at the initial stages of the criminal proceedings. The collection, examination and evaluation of evidence is mainly carried out by the prosecution before the trial, and the court makes a decision based on the prepared materials presented by them.

In this case, it becomes clear that the leading position of the court is somewhat limited. However, the leading position of the court in the process and the issue of giving only the court the right to make a decision on the case is one of the main elements of the principle of controversy. In addition, the content of the adversarial principle depends on the content of the defense speech read by the lawyer.

A number of procedural scientists have touched upon the defense speech in different ways, L.E. According to Vladimirov, the defense attorney should finally and fully reveal his defense system to the court in his speech. He must reject the impeachment clauses directed against the defense. If the very fact of committing a crime is denied, the main content of the speech should be to deny the grounds for accusing the defendant of committing a criminal act [8].

M.S. Strogovich, on the other hand, argues that the debate over how a lawyer should prepare his defense speech is not serious. Continuing his opinion, the defense speech should be prepared before the start of the process or only during the consideration of the case, it should be limited to complete writing, divided into conclusions, plans, theses - all of them are very conditional and largely depend on the nature and content of the case, its size, the lawyer's qualifications and states that it depends on ability. But Strogovich emphasizes that in all circumstances, the defender's speech should be well-thought-out and thorough[9]. "The main task of the defense speech is to help create the trust of the court, as well as its other tasks are very important"[10], says another expert, Larin.





The defense speech completes its large and complex work aimed at protecting the rights and legal interests of the defendant, ensuring the correct application of laws, and excluding the prosecution and trial of an innocent person in order to prevent a possible error in the question of a person's innocence. By defending the defendant, defending his innocence or lack of responsibility, subjecting the evidence collected in the case to a comprehensive and critical analysis, the lawyer helps the court to correctly assess the circumstances of the case, find the truth and make a legal and fair verdict.

Preparation of the defense speech is the final stage of the defense counsel's participation in the court session. According to the presumption of innocence established in Article 23 of the Criminal Code of the Republic of Uzbekistan, the defendant is not obliged to prove his innocence.

The main task of the defense attorney in criminal proceedings is to convince the judges of the correctness of the evidence presented by them. This task is very difficult. The main thing for a judge is the validity and fairness of the sentence, which is understood by the majority of judges as the "unchanged" status of the sentence in the higher instances. In the judicial environment, there are concepts such as "overturning" and "upholding" judgments as criteria for evaluating the quality of judges' work. The more convictions a judge makes that are not overturned by a higher court, the less likely he is to make mistakes in his professional career. A certain complication of the defense speech of the lawyer is that it is announced after the speech of the prosecutor. Therefore, it is much more difficult to convince the court that a person is innocent. On the other hand, he has the advantage of speaking after all the participants in the process. This advantage is that the lawyer can study in detail the speeches of the previous speakers, effectively refute them and have a beneficial effect on the court. It should be emphasized that the lawyer's unprofessional and unqualified speech often turns into an accusatory speech and can cause irreparable harm to the person under protection.

According to the current legislation, the task of proving the guilt of the accused in court and the correctness of the accusations against him is assigned to the prosecutor. The court has the right to issue a guilty verdict only on the condition that the defendant's guilt of having committed the crime against him has been fully and undoubtedly proven. But this does not free the defender from the need to prove the points advanced by him, to justify his arguments and conclusions. Otherwise, all his discussion will be groundless and will not affect the formation of internal confidence of the judges, their decision.



The facts must be confirmed only by the evidence learned in the judicial investigation. The defense speech should consist of the following content:

1. Introduction;
2. Justification or statement part;
3. Conclusion.

Scholars and theorists have expressed different opinions about the requirements for a defense speech. In particular, P.S. Porokhovshchikov said in this regard:

"There are two external and two internal conditions for achieving excellence in defense speech. If the external conditions are purity and accuracy of the style, the internal conditions are the conditions of knowledge of the subject and the language[11].

G. Tolaganova considers the main requirement for the defense speech to be its clarity and clarity[12].

L. Potapova cited accuracy, full coverage of evidence, thorough study of the subject as necessary requirements for a defense speech[13].

It should be noted that the defender's lack of knowledge of the language of the court case does not prevent him from participating in the case. In this case, he must be provided with an interpreter in accordance with the second part of Article 20 of the Civil Code.

Paragraph 12 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the judicial practice on the application of the laws on providing the suspect and the accused with the right to protection" also provides for the participants of the proceedings who do not know or do not sufficiently understand the language in which the case is being conducted, to make an oral or written application in their native language or in another language that they know. It is established that the right to make, give testimony and explanations, file petitions and complaints, and speak in court is ensured. In such cases, as well as when familiarizing with the case materials, the participants of the proceedings, including the defender, can use the services of an interpreter in accordance with the procedure established by law.

Therefore, it is proposed to exclude the mentioned requirement from the necessary requirements in the theory for defense speech.

In short, the leading position of the court in the process and the question of giving only the court the right to make a decision on the case is one of the main elements of the principle of controversy. In such a situation, the defense speech prepared and read out by the defense attorney is of particular importance for ensuring the rights and interests of the defendant, and for the court to issue a fair verdict in this regard. Therefore, the content and structure of the defense speech of the lawyer is mainly





determined by the results of the court investigation, the nature of the accusation, the characteristics of the evidence, as well as the position chosen by the defender. The defender is obliged to clearly define his procedural position in this case. He does not have the right to come to the court with alternative proposals: he must make only one conclusion, which he must recognize as the most correct and most acceptable for the person from his point of view.

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