

INDICTMENT OF THE ACCUSED IN ABSENTIA

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The article concerns the essence and features of the presentation of charges in proceedings carried out in the absence of the accused (correspondence proceedings).

The authors turn to the grounds and conditions for bringing charges in the course of proceedings carried out in the absence of the accused, to the opinions expressed in theory regarding the institution in question.

The regulations of the institution in question are presented in the national criminal procedure legislation and comparisons of regulations provided for by the legislation of foreign countries are carried out.

The article also presents the positions of the European Court of Human Rights on this issue, and in their light discusses the theoretical problems of bringing charges in absentia.

The subject of discussion is also the question of when the preliminary investigation body knows the exact location of the accused, whether the latter should take measures to notify the accused of the day and time of the indictment, and only in case of his failure to present the charge in absentia.

In connection with the formulation of the question, the authors come to the conclusion that when there are grounds and conditions for absentee proceedings, and the investigator decides to carry out absentee proceedings, then charging the accused by video does not follow from the general ideology of absentee proceedings.

Keywords: *absentee proceedings, indictment, change of charges, video communication, international mutual assistance, public notification, removal of the defender from the proceedings*

Bringing charges is followed by the decision of the competent prosecutor to prosecute the accused.

The indictment of the accused is the procedural measure that provides the accused with the right to be informed of the legal and factual bases of the charge.

The right of a person to be informed of the attributed accusation has both constitutional and conventional foundations. This right of an individual is provided for in Article 27, Part 2 of RA Constitution, in Article 6 Paragraph 3 of the European Convention “On Protection of Human Rights and Fundamental Freedoms, ” as well as in Article 14 Paragraph 3 of International Covenant on Civil and Political Rights. The right to be informed of the attributed accusation is also provided for by the RA Code of Criminal Procedure (hereinafter referred to as RA CCP). It is stipulated by Article 18 of CCP that every person be duly explained the reasons for deprivation of liberty and the charge-in case of being accused in a crime. In accordance with Article 43 of the same code, the accused has the right to be informed immediately and duly of the factual and legal bases of the accusation in a language he understands and of the grounds and reasons for deprivation of liberty in case of being taken into custody.

The European Court of Human Rights has repeatedly stressed that the question of whether the accused has been provided with sufficient information on the legal and factual bases of the accusation in a specific case should always be considered in the context of the right to a fair trial provided for by Article 6, Paragraph 1 of European Convention on "Human Rights and Fundamental Freedoms".¹

In order to efficiently exercise the right of the defense during a competitive trial, the defense must at least have the opportunity to get acquainted with the legal and factual bases of the accusation, to present their own statement regarding them, and to participate in the process of proof. It is impossible to implement the right of defense, as well as to provide a competitive trial, if the accused is not aware of the unlawful act he is accused of and the bases of the accusation evidence.²

Article 190 of CCP RA stipulates that the investigator, having ascertained himself in the identity of the accused, hands him a copy of the decision to institute criminal prosecution, clarifies the factual bases and legal assessment of the charges, clarifies the rights and responsibilities of the accused, and hands him over their complete list.

The same article also defines: "1. The investigator files a charge within 18 hours after receiving the decision to institute criminal prosecution (...)".

The requirement to institute criminal prosecution within 18 hours is a common one, which is applied when the accused is available to the prosecuting authority. In the event that the location of the accused is unknown, or it is impossible to ensure his availability for some other reason, the 18-hour time limit for bringing charges is lifted, and the charges are submitted to the criminal court after the accused has been put at the disposal of the body conducting proceedings within 24 hours upon appearing (Article 190, Part 3 of CCP RA).

RA Court of Cassation, referring to the fact that the defendant has received a proper procedural status for case No. YEAKD/0218/06/12 has stated that detention can be applied only to the accused, i.e., the person who has successively passed the following stages of acquiring the status of an accused:

- a) making a decision on involving a person as an accused,
- b) notification of the decision to involve a person as an accused,
- c) explanation of the core of the charges,
- d) handing over a copy of the decision involving the person as an accused and the list of rights and obligations of the accused.

As a result of the actions performed in the above stated sequence, a person is indicted in accordance with the procedure established by law, and he acquires the procedural status of the accused. Moreover, the performance of all the mentioned actions must be certified by relevant documents and confirmed by the signature of the accused and the investigator or with the appropriate note of the investigator in case of refusal of the accused to sign.

In addition to the above-mentioned, the Cassation Court emphasizes that if the person hides from the investigation, the decision to involve him as an ac-

¹ See: Deweer v. Belgium, judgment of 27 February 1980, paragraph 56, Artico v. Italy, judgment of 13 May 1980, paragraph 32, Goddi v. Italy, judgment of 9 April 1984, paragraph 28, Colozza v. Italy, judgment of 12 February 1985, paragraph 26.

² See: The decision of the RA Court of Cassation of August 24, 2012, case No. YSHD/0002/01/11

cused is sufficient in order to choose his detention as a restraint measure: (...) ³

It is easy to observe that the process of bringing direct charges can be implemented when the accused is available to the authority conducting the proceedings, while this process becomes objectively impossible when the accused avoids (hides from) the investigation. Accordingly, in the situation described, there comes a need to apply such a structural procedure that will guarantee not only further proceedings but also the principle of competitive trial and the right of efficient defense of the accused.

The issue of remote indictment has not been studied thoroughly at the doctrinal level. However, some issues have gained the attention of scientists. ⁴

There is an opinion in criminal procedural science that an indictment in the absence of the accused cannot be considered an independent form of indictment. A different approach leads to completely neutralizing of the procedural significance of the mentioned institute of criminal procedure. There is no remote indictment, and this procedural action cannot be replaced by handing over the indictment decision to the defense. As a result, the overall importance of indictment decreases, so only bringing direct charges acquires a real procedural value. ⁵

This means that in case the accused fails to appear, the investigator should do his best to find out the real and not the alleged reasons, as well as provide the accused with an opportunity to participate in the criminal proceedings and exercise his procedural rights, regardless of the reasons for not appearing.

At the same time, according to another, a more common approach, the remote indictment is perceived as a criminal procedure activity performed by the person conducting the preliminary investigation, which is concluded by subsequent actions: a) to invite the defense of the defendant who is avoiding the investigation and b) to notify the latter about the decision to initiate criminal prosecution against the accused (involving the person as an accused).

When considering the issue from a legal standpoint, it should be noted that there are countries like the Republic of Moldova, the Russian Federation, etc., whose judicial systems have no special procedure of remote indictment of the accused evading investigation, although the possibility of conducting proceedings in absentia is still provided for.

In accordance with Article 321 of CCP of the Republic of Moldova, a case shall be heard in the first instance and in the court of appeals with the participation of the defendant, except in cases specified in this article. A case may be

³ See: The decision of the RA Court of Cassation of April 18, 2013, case No. YAKD/0218/06/12.

⁴ See: **Арабули Д. Т.** Сравнительный анализ заочного судебного разбирательства в Российской Федерации и Республике Казахстан // *Мировой судья*. 2008. № 6. С. 17–18; **Мазюк Р.В.** Международное сотрудничество по уголовным делам и заочное уголовное преследование // *Вестник ОГУ*. 2009. № 3. С. 78–81; **Тукиев А.С.** Особенности заочного возбуждения уголовных дел // *Актуальные проблемы права: материалы науч. конференции*. Караганда: КарЮИ МВД РК им. **Б. Бейсенова**, 2002. С. 68–69; **Тукиев А.С., Ахпанов А.Н., Кусаинов Ш.К.** Особенности привлечения в качестве обвиняемого по заочной форме уголовного судопроизводства в Республике Казахстан // *Закон и время*. 2004. № 10. С. 42–44; **Хасенов О.З.** Институт заочного обвинения в уголовном судопроизводстве Республики Казахстан // URL: www.rusnauka.com/1_NIO_2014/Pravo/5_154476.doc.htm; и др.

⁵ See: **Купрейченко С. В.** Заочное судопроизводство в Российской Федерации по уголовным делам о тяжких и особо тяжких преступлениях: Монография.- М.: Юрлитинформ, с. 133,135.

heard in the absence of the defendant:

- 1) if the defendant evades appearing in court;
- 2) if the defendant, being detained, refuses to be brought before the court to the case hearing and if his/her refusal is also confirmed by his/her defense counsel or the administration of the place of detention; (...)

The court shall decide on a case hearing in the absence of the defendant if the prosecutor submits sound evidence that the person accused and in whose regard the case was sent to court expressly waived his/her right to appear before the court and to defend himself/herself personally as well as has evaded criminal investigation and trial.

Article 247 Paragraph 5 of RF CCP provides that in exceptional cases, a court hearing on criminal cases of grave and especially-grave crimes may be conducted without the attendance of an accused person who is outside the territory of the Russian Federation and/or declines to appear in court, unless that person has been held accountable on the territory of a foreign state in this criminal case.⁶

Although the CCP of the RF does not provide a special procedure for a remote indictment to the accused evading investigation, the investigative practice envisages that in the situations described above the pre-investigative body sends the notification about the date of filing the charge to the address of the residence or location of the accused in the Russian Federation. This is followed by handing in a copy of the decision to the defense of the accused, which implies bringing charges in indirect order.⁷

At the same time, the CCP of some countries provides for the features of indictment in absentia to a person who avoids investigation.

Thus, for example, in accordance with Article 406 of the CCP of Latvia, if the whereabouts of an accused are known, but he or she is evading appearance on the basis of a summons of a public prosecutor, a copy of the prosecution shall be issued to the accused after the conveyance by force of him or her, or sent by post to the address for the receipt of consignments notified by such accused.

If a search for an accused has been announced, a copy of the prosecution, and written information regarding the rights of an accused, shall immediately be issued after the receipt of a written report regarding the arrest or detention of the accused.

If an accused is hiding in another state and a search for him or her has been announced, a copy of the prosecution shall be issued simultaneously with the report of the official extradition request.

In accordance with Article 297 Paragraph 5 of the CCP of Ukraine, in case of conducting a special pre-trial investigation, the summons shall be sent to the last known address of residence or staying of the suspect. It shall be published in national mass media and official websites of the agencies conducting a pre-trial investigation. The suspect shall be deemed to have been properly in-

⁶ In this regard, the judicial board of Sverdlovsk region has recorded for a specific criminal case that the current Russian Criminal Procedure Code does not provide for the possibility of filing charges remotely. The execution of the mentioned action in a remote order has no procedural significance. See: Decision No. 22-8535/2008 of the Sverdlovsk District Court of August 27, 2008.

⁷ See: **Клевцов К.К.** Досудебное производство в отношении лиц, уклоняющихся от уголовной ответственности за пределами территории Российской Федерации./ под ред. канд. юрид. наук, доц. **А.М. Бармста.** — М.: Юрлитинформ, 2018. С. 197-198.

formed about the summons content from the moment of its publishing in national mass media. The copies of procedural documents to be delivered to the suspect shall be sent to a defense counsel.⁸

Article 206 paragraph 8 of the CCP of the Republic of Kazakhstan provides that in the case of finding the suspected outside the Republic of Kazakhstan and his (her) evasion to appear in the criminal prosecution bodies the person, conducting the pre-trial investigation, and in the case of the appearance of the defense counsel -the defense counsel certifies on the decision of the qualification of an act of the suspected that the suspicion may not be declared in connection with his (her) location outside the Republic of Kazakhstan and evasion to appear in the pre-trial investigation bodies.

Furthermore, the mentioned article stipulates that if the location of the suspected is known, a copy of the decision shall be sent to him (her) by means of communication, including by mail.

If necessary, the person conducting the pre-trial investigation (investigator), with the consent of the procurator shall have the right to organize the publication of reports on the qualification of an act of the suspected in the Republican mass media, the mass media on the location of the suspected, as well as in public telecommunication networks.

Nonetheless, it is difficult to consider this method of remote indictment as fully successful firstly because, direct sending of procedural documents, including the decision to initiate criminal prosecution, by post, can be considered as a disregard towards the sovereignty of the state, and secondly, announcements about the decision on criminal prosecution in mass media or on the official website of the state body cannot be considered justified, because the accused may not have noticed them. At the same time, in accordance with the CCP of Kazakhstan, reporting about involving the person as an accused through mass media is not considered to be the responsibility of the official conducting the preliminary investigation. Therefore, the officials may not take the necessary measures to report through public telecommunication methods. In its turn, the European Court of Human Rights considers receiving information on criminal proceedings through mass media as a non-reliable notification.⁹

Article 169 of the CCP of Georgia stipulates that, if the accused avoids appearing before an investigative authority, he/she or his/her relative shall be given a reasonable period for hiring a defense lawyer. If he/she fails to hire a defense lawyer within that period the accused shall be assigned a mandatory defense. To bring charges, the prosecutor, or upon his/her instructions, an investigator, shall summon the defense lawyer of the accused and familiarize him/her with the indictment, which shall be considered the same as bringing charges. The defense lawyer of the accused shall confirm in writing that he/she has become familiar with the charges.

⁸ The CCP of Ukraine provides a separate chapter, 24-1, which regulates the features of the preliminary investigation in the absence of the accused (proceedings in absentia). This procedure is called "Special pre-trial procedure".

⁹ See: Информация о постановлении ЕСПЧ от 18 мая 2004 г. по делу «Шомодьи (Somogyi) против Италии (жалоба № 67972/01) // СПС «КонсультантПлюс».

It is easy to note that the features of the remote indictment provided by RA CCP, with some differences, were receptions from the procedural system of Georgia (more on this see later).

Presenting a charge to the accused in absentia is necessary in order to ensure the further course of the proceedings. Thus, during the pre-trial proceedings carried out in the absence of the accused, the following situations can be distinguished:

First, the accused hasn't been formally charged. This situation may be feasible when the accused evaded the investigation before the charge was presented to him.

Second, even though the formal charge was brought before the accused evaded the investigation, the charge was changed after the accused evaded the investigation.

Third, when the defense attorney involved in the remote indictments was replaced by a new one, even though the formal charge was presented to the replaced defense attorney.

Fourth, in each case of amendment of the charge by the competent prosecutor of the proceedings in absentia.

Another subject to discussion is the question of the circumstances under which the system of filing charges remotely can be conducted.

According to A. Tukiev, at the time of filing a charge in absentia, among the facts that are the standard of proof in the case, additional circumstances specific to the given proceedings must be established, such as- the fact of the accused's evasion of the investigation, the fact that the latter was notified of the place and time of the proceedings, as well as the requirement to attend the proceedings in person¹⁰:

It is noteworthy that the basis for filing charges in absentia is the impossibility of ensuring the presence of the accused evading investigation. In this case the investigator is deprived of the opportunity to file charges against the accused in general terms. And the terms for filing charges remotely are perhaps the circumstances that are the basis for the investigator to make a decision to initiate remote indictments (CCP of RA, Article 476). In addition, the participation of the defense in its process is also an independent condition.

Accordingly, the structural framework of presenting charges remotely in RA criminal proceedings can be implemented only when the investigator has made a decision to conduct remote indictments against the accused. In other words, the presentation of the accusation in a remote order as a judicial action should chronologically follow the decision to transform the proceedings from the general order to the remote order. This implies that the structure of presenting the accusation remotely cannot be applied earlier than the decision of the investigator to conduct remote indictments against the accused.

According to Article 479 of the CCP of RA: "3. in remote proceedings, the charges shall be brought by handing over the copy of the decision to initiate criminal prosecution to the defense counsel of the accused who avoids investigation, as well as clarifying to him the factual bases and legal assessment of the accusation. The execution of the specified actions is confirmed by the corre-

¹⁰ See.: **Тукнев А. С.** Проблемы процессуальной формы заочного уголовного судопроизводства: автореф. дис. ... канд. юрид. наук. Караганда, 2005. С. 20.

sponding protocol, which is signed by the investigator and the defense attorney.

In order to present an accusation to the accused in remote proceedings, the participation of the defense is mandatory. And if the accused does not have a lawyer involved in the proceedings, the investigator takes measures to provide the accused with a lawyer (CCP of RA, Article 478, Part 2). In addition, the CCP of the Republic of Armenia stipulates that if the accused has not been charged before the decision to conduct remote proceedings is made, then the time limit (18 hours) for the filing of the charge, defined in part 1 of Article 190 of the CCP of the Republic of Armenia, begins to run, from the moment of involving a defense attorney in the proceedings in accordance with Article 478, Part 2 (CCP of the Republic of Armenia, Article 479, Part 2).¹¹

It is quite evident that the mentioned norm provides for calculating the total term for filing charges only for those cases when the accused does not have a lawyer involved in the proceedings. Therefore, the question arises as to how the time limits for bringing charges should be calculated when a defense attorney was involved in the proceedings or the defense attorney did not appear within the specified period to participate in the process of bringing charges.

In view of the above, if a defense attorney was involved in the proceedings before the decision to conduct remote proceedings was made, then the period defined by Article 190, Part 1 of the CCP (18 hours) should begin to run from the moment of making the decision to conduct remote proceedings. In case of impossibility to ensure the presence of the defense counsel of the accused within those terms, then the procedure set forth in part 3 of Article 190 of the CCP of the Republic of Armenia shall analogically apply to the defense counsel. Thus, in accordance with the above mentioned procedure, accusation shall be presented to the defense counsel at the disposal of the body conducting the proceedings within 24 hours after appearing.

The procedure defined by Article 190, Part 3 of the CCP of the Republic of Armenia shall also be applied in the event that, although being involved in the proceedings in accordance with the procedure provided for by Article 478, Part 2 of the CCP, the defense counsel fails to be available within the due time (18 hours). Meanwhile, when the defense attorney notified to participate in the process of filing charges in absentia does not appear twice without a valid reason to participate in the mandatory procedural action, he may be excluded from the proceedings by the decision of the investigator (CCP of the Republic of Armenia, Article 147).

Thus, we consider that once the investigator has made a decision to remove the defense counsel of the accused from the proceedings, the defense counsel should be involved in the remote proceedings in accordance with the procedure provided for in Article 478, Part 2 of the CCP of the Republic of Armenia, start-

¹¹ According to part 2 of Article 478 of the CCP of RA, if the accused does not have a defense attorney involved in the proceedings, after the start of remote proceedings, within a three-day period, the investigator sends the evading accused, and in case of its objective impossibility, any of his close relatives to the given accused remotely. a copy of the decision to conduct proceedings and providing a ten-day period for inviting a defense attorney, as well as a written explanation of the consequences of conducting remote proceedings and not inviting a defense attorney within that period. If a defense attorney is not invited within that period, the investigator requests the Chamber of Advocates of the Republic of Armenia to appoint a defense attorney.

ing the calculation of the three-day period from the day following the day. The decision on removing the defense attorney from the proceedings was approved by the supervising prosecutor. In case of the involvement of a new defense attorney in remote proceedings, the procedure provided for in Article 479, Part 2 of the CCP of the Republic of Armenia shall be applied again.

The above-mentioned situation can occur in the event that the accused has not been charged in the given proceedings. Therefore, if the accusation was presented to the accused in the given proceedings through a general procedure, then the above-mentioned structure of presenting the charges remotely, through the defense counsel, will not be valid.

Nonetheless, if the competent prosecutor changed the accusation after the accused evaded the examination, even though the accusation was presented to the accused in general order, we strongly believe that to ensure the further course of the proceedings in absentia and the right of defense of the accused, the amended accusation should be presented to the defense counsel of the accused avoiding the examination, keeping in mind the procedure provided by Article 190 (relevant part (*mutatis mutandis*)) and Article 479, Part 3 of the CCP of RA. The same procedure should be applied in remote proceedings in each case of changing the charge by the supervising prosecutor.

We assume that the structure of presenting charges to the defense counsel in remote proceedings should also be applied in the case when the defense counsel involved in the proceedings was replaced by a new one, and the charges were presented to the previous defense counsel. In this case, the investigator, observing the procedure provided for by Article 479, Part 3 of the CCP of RA, must present the accusation to the new defense attorney involved in the proceedings. The mentioned regulation aims to ensure the effective functioning of the defendant's right to defense in competitive proceedings.

At the same time, we consider that if several defenders were involved in the remote proceedings, but at least one of them was charged, then there is no need to charge the other defender(s).

Presenting the accusation to the defense counsel in the remote proceedings does not exclude the application of the general procedure for presenting the accusation to the accused in the pre-trial proceedings (Article 190 of the CCP of the Republic of Armenia), when the investigator makes a decision to conduct the proceedings in a general procedure based on ensuring the physical availability of the accused. In such cases, the obstacle to filing a charge in a general procedure disappears. The legal possibility to continue the proceedings based on a charge filed in a remote procedure ceases because a charge filed in remote proceedings can only ensure the further course of the remote proceedings, and the procedure carried out in a general procedure requires a general procedure, performance of procedural actions.

Thus, when the accused appears in the investigation or his participation in the investigation of the case is ensured in some other way, then the direct presentation of the charges becomes mandatory. Therefore, if the charges were not presented to the accused before the decision to conduct proceedings in absentia was made, or even if it was, but the charges were later changed, then the body conducting the proceedings cannot refer to the fact that the charges were clari-

fied to the defense counsel and refuse to present an accusation to the accused who appeared for the examination.

This is also due to the fact that, in comparison with the remote procedure, presenting an accusation to the accused in a general procedure is a more objective process arising from the latter's rights, which provides an opportunity to ensure both the factual basis and legal assessment of the accusation, as well as the accused's awareness of his rights and responsibilities, and in case the accused refuses to sign the protocol, the investigator has the opportunity to find out the reasons for the refusal.

The above structure of charging the accused in remote proceedings seems fully justified when the location of the accused who evades investigation is unknown. However, the question arises whether the application of this same procedure can be considered justified when the location of the accused who evades investigation is known. Still it is not possible to ensure his availability to the proceedings (for example, the accused is outside the borders of the Republic of Armenia and it is not possible to arrange his extradition).

In the situations described in the jurisprudence, the following approaches worthy of attention are put forward regarding the features of presenting charges in remote proceedings.

Thus, P.A. Litvishko believes that in order to perform procedural actions within the framework of mutual legal assistance, including indicting and interrogating the accused, the investigator can send a request to the relevant consular representation of the country where the accused is located, if this is provided for by international treaties or allowed by the legislation of the state of location¹²:

According to K. K. Klevtsov, in cases where the preliminary investigation body knows the exact location of the accused, the latter should take measures to notify the accused about the day and time of bringing charges, and only in case of his failure to appear, file charges remotely.¹³ Mandatory notification of the accused is fully justified when there is a suspicion that the person is not aware of the criminal prosecution initiated against him.

In case the location of the accused who is in another country and is evading investigation is known, it is also suggested to organize the trial process of bringing charges through international mutual assistance.¹⁴

Undoubtedly, the presentation of charges to the accused in the framework of mutual legal assistance can ensure the condition of the accused being properly notified of the criminal prosecution initiated against him in the case of remote proceedings, and subsequently create an opportunity to make a decision to apply remote proceedings to the given accused.¹⁵ Therefore, we believe that

¹² See **Литвишко П. А.** Осуществление уголовно-процессуальной юрисдикции в зарубежных представительствах государств: дис. ... канд. юрид. наук. М., 2014. С. 79.

¹³ See **Клевцов К. К.** Досудебное производство в отношении лиц, уклоняющихся от уголовной ответственности за пределами территории Российской Федерации./ под ред. канд. юрид. наук, доц. **А.М. Багмета.** — М.: Юрлитинформ, 2018. С. 201-202.

¹⁴ See *ibid.*, С. 206-211.

¹⁵ Recently, the issues of providing legal assistance with the use of typefaces have attracted great interest at the scientific level as well, which indicates the need to use this possibility in practice.

The CCP of the Republic of Armenia does not contain norms that regulate the issues of performing non-evidential (but procedural) actions through the use of evidence. However, a number of international treaties simply provide for provisions that allow the use of specifics within the

the presentation of charges to the accused in the framework of mutual legal assistance can be considered justified when the accused does not avoid participating in the proceedings or is not aware of the criminal prosecution initiated against him, in other words, there are no grounds or (and) conditions for conducting proceedings in absentia.

Nevertheless, in the event that the basis and conditions of remote proceedings are present, and the investigator has made a decision to conduct remote proceedings, then we believe that presenting an accusation to the accused by means of a bond does not follow the general ideology of remote proceedings. If it is considered acceptable to present the accusation to the accused who avoids the investigation by means of a bond, the performance of evidentiary and other procedural actions through this means should also be accepted, which will contradict the nature of remote indictments and will neutralize the purpose of these proceedings, and the proceedings will not be considered in absentia.

The idea behind remote proceedings, that is, the accused's waiver of his right to participate in the proceedings, cannot lead to the duty of the prosecuting authority to provide the accused with a direct presentation of the charges. In case of waiving the right to participate in the proceedings, the accused also indirectly refuses to participate in such actions that imply his direct participation. Therefore, in case of avoiding the examination of the accused, the preliminary investigation body cannot be burdened with such obligations in the remote proceedings initiated, which would assume to ensure the direct presentation of the accusation to the accused at any cost.

Accordingly, it is worth noting that the documentation of the accused's refusal to participate in the proceedings and the refusal of separate procedural rights are the same. Therefore, if the defendant waives his right to participate in the criminal proceedings, he also indirectly waives a number of other procedural rights (for example, the right to cross-examination or the right to testify, the right to directly participate in the process of presenting an accusation).¹⁶ In addition, it is not easy in practice to organize procedural actions carried out within the framework of international mutual assistance, which may create unjustified obstacles to the implementation of the said procedural actions, thus limiting the further movement of the proceedings.¹⁷

Thus, based on the above, it can be noted that bringing an accusation through a defense attorney is considered a legal fiction enshrined in the CCP, which provides an opportunity to ensure the further progress of the proceedings,

framework of legal aid. Among them are the Convention against Corruption (Articles 32, 46), the Convention against Transnational Organized Crime (Articles 18, 24), the Second Additional Protocol to the European Convention on Legal Aid of 1959. Article 9, Chisinau Convention 2002 (Articles 6, 105).

The national legislation of some foreign countries also provides for the possibility of specific use within the framework of legal aid (for example, Canada). The legislation of many countries provides for the use of tapes in court proceedings, rarely in the pre-trial phase:

¹⁶ Due to the above, we agree with the authors who claim that the accused's refusal to participate in the proceedings should be evaluated as a waiver of the right to testify. See **Хан А.Л., Акимбеков А.К.** Вопросы оптимизации предварительного расследования// Перспективы государственно-правового и социального развития РК. - Костанай, 2001. - С. 223.

¹⁷ The CCP of the Republic of Armenia lacks provisions regulating the performance of non-evidentiary procedural actions through the use of evidence.

in particular, in the absence of the accused, to complete the preliminary investigation and send the proceedings to the court on the one hand, and make it possible to guarantee effective implementation of the principle of competition and the defendant's right to defense in criminal proceedings on the other. In the CCP of the Republic of Armenia, the regulations for presenting charges to the accused in remote proceedings cannot be considered complete. However, if the criminal procedure law is applied by analogy, it will be possible to overcome the legislative gaps described above.

ԳԱԳԻԿ ՂԱԶԻՆՅԱՆ, ՊԵՏԻԿ ՄԿՐՏՉՅԱՆ – Մեղադրանք ներկայացնելը մեղադրյալի բացակայությամբ իրականացվող վարույթում – Հոդվածը վերաբերում է մեղադրյալի բացակայությամբ իրականացվող վարույթում (հեռակա վարույթ) մեղադրանք ներկայացնելու էությանը և առանձնահատկություններին:

Հեղինակներն անդրադառնում են մեղադրյալի բացակայությամբ իրականացվող վարույթի ընթացքում մեղադրանք ներկայացնելու հիմքին և պայմաններին, քննարկվող ինստիտուտի վերաբերյալ տեսության մեջ արտահայտված կարծիքներին:

Ներկայացվում են ազգային քրեադատավարական օրենսդրության մեջ ինդրո առարկա ինստիտուտի կանոնակարգումները, և իրավահամեմատականներ են անցկացվում արտասահմանյան երկրների օրենսդրությամբ նախատեսված կարգավորումների միջև:

Հոդվածում ներկայացվում են նաև խնդրո առարկայի վերաբերյալ Մարդու իրավունքների եվրոպական դատարանի դիրքորոշումները, և դրանց լույսի ներքո քննարկվում են հեռակա վարույթում մեղադրանք ներկայացնելու տեսագործական հիմնախնդիրները:

Քննարկման առարկա է դառնում նաև այն հարցը, որ երբ նախաքննության մարմնին հայտնի է մեղադրյալի գտնվելու ճշգրիտ վայրը, ապա վերջինս արդյոք պետք է միջոցներ ձեռնարկի մեղադրանք ներկայացնելու օրվա և ժամի մասին մեղադրյալին ծանուցելու ուղղությամբ, և միայն նրա չներկայանալու դեպքում մեղադրանք ներկայացնի հեռակա կարգով:

Հարցադրման կապակցությամբ հեղինակները հանգում են այն հետևության, որ երբ առկա են լինում հեռակա վարույթի հիմքն ու պայմանները, և քննիչը որոշում է կայացնում հեռակա վարույթ իրականացնելու մասին, ապա մեղադրյալին տեսակապի միջոցով մեղադրանք ներկայացնելը չի բխում հեռակա վարույթի ընդհանուր գաղափարաբանությունից:

Բանալի բառեր – *հեռակա վարույթ, մեղադրանք ներկայացնել, մեղադրանքի փոփոխում, տեսակապ, միջազգային փոխօգնություն, հրապարակային ծանուցում, պաշտպանին վարույթից հեռացնել*

ГАГИК КАЗИНЯН, ПЕТИК МКРТЧЯН – Предъявление обвинения в производстве, осуществляемом в отсутствие обвиняемого – Статья касается сути и особенностей предъявления обвинения в производстве, осуществляемом в отсутствие обвиняемого (заочное производство).

Авторы обращаются к основаниям и условиям предъявления обвинения в

ходе производства, осуществляемого в отсутствие обвиняемого, к мнениям, высказанным в теории относительно рассматриваемого института.

Представляются регламенты рассматриваемого института в национальном уголовно-процессуальном законодательстве и проводятся сопоставления регулирований, предусмотренных законодательством зарубежных стран.

В статье представлены также позиции Европейского суда по правам человека по данному вопросу, и в их свете обсуждаются теоретические проблемы предъявления обвинений в заочном производстве.

Предметом обсуждения становится также вопрос о том, когда органу предварительного следствия известно точное место нахождения обвиняемого, должен ли последний принять меры для уведомления обвиняемого о дне и времени предъявления обвинения, и только в случае его неявки предъявить обвинение в заочном порядке.

В связи с постановкой вопроса авторы приходят к выводу, что когда имеются основания и условия заочного производства, и следователь принимает решение об осуществлении заочного производства, то предъявление обвиняемому обвинения по видеосвязи не вытекает из общей идеологии заочного производства.

Ключевые слова: *заочное производство, предъявление обвинения, изменение обвинения, видеосвязь, международная взаимопомощь, публичное уведомление, отстранение защитника от производства*