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## Features Of The Institution Of Prejudice In Criminal Proceedings

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### ABSTRACT

The article analyzes the essence and features of the application of the institution of prejudice in criminal proceedings in some countries, examines the opinions of scientists on the procedure for the implementation of prejudice, makes some judgments on the use of prejudice in the provision of legal assistance in international cooperation.

### KEYWORDS

Legal proceedings, prejudice, implementation of prejudice, proof.

### INTRODUCTION

The theory of head-procedural law contains some institutions that are the subject of constant debate among scientists and practitioners. One of such institutions is prejudice in criminal proceedings, which until now has been little studied and therefore the solution of the problems of its application in practice is relevant today.

The Latin origin of the term "prejudice" ( " praeiudicium " ) means two elements: 1) " praecedo " - to go forward, to precede; 2) " praeiudico " - to judge ahead, preliminary, and

" iudicium " is equivalent to a legal decision having the legal force of law. As a result of the synthesis of these words, it turns out: "a pre-decision of the issue, a decision made in advance, a circumstance that allows one to judge the consequences" [ 1, p. 9] . In criminal procedural science, " prejudice " is understood as the duty of the court, the prosecutor, the investigator and the interrogator to accept, without verification and evidence, the facts established by a

previously entered into legal force decision or a court verdict [2, p. 48] .

Discussion of the features of the institution of prejudice is of interest in terms of issues related to its legislative consolidation and law enforcement in the CIS countries. So, in the Model Criminal Procedure Code of the CIS member states, the mention of prejudice is enshrined in Article 147 among the circumstances established without evidence, namely, by a decision that is binding on the court as a prejudicial one [3, p. 26] . Some countries of the Commonwealth, whose criminal procedural legislation is based on the Model Code, have determined their own rules for the application of prejudice.

Thus, Article 141 of the Criminal Procedure Code of the Republic of Azerbaijan establishes that without the use of materials from the criminal prosecution proceedings, the circumstances established by a decision that are legally binding for the court are recognized as proven . A sentence of a criminal prosecution court that has entered into legal force is binding on an inquiry officer, investigator, prosecutor or court both in terms of the circumstances established in the criminal prosecution proceedings and in terms of their legal assessment; a court ruling in a civil case that has entered into legal force is mandatory in criminal proceedings only in terms of whether an incident or action took place, and does not preliminarily resolve the issue of the guilt or innocence of the accused (article 142 of the Code of Criminal Procedure of Azerbaijan) [4, p. 22] .

According to article 127 of the Criminal Procedure Code of the Republic of Kazakhstan , to set foot in the court judgment, as well as

other decision of the court in a criminal case, allowing it to essentially be binding for all state bodies, individuals and legal entities in respect of both the established circumstances and their legal assessment in relation to the person about whom they are made. This provision does not interfere with the verification, cancellation and amendment of the judgment and other court decisions in cassation due to newly discovered circumstances. A court decision that has entered into legal force in a civil case is binding on the body conducting the criminal process, during the pre-trial investigation or in a criminal case only on the issue of whether the event or action itself took place, and should not prejudice conclusions about the guilt or innocence of the defendant [ 5, c . 46]

Prejudice in the Criminal Procedure Code of the Russian Federation are determined to bstoyatelstva established by a legally effective judgment I for other entered into legal force court decision in civil, arbitration or administrative proceedings, which are recognized by the court, prosecutor, investigator, without further verification. Moreover, such a verdict or decision cannot prejudice the guilt of persons who have not previously participated in the criminal case under consideration (Article 90) [6, p . 2] .

An analysis of the legislation of the CIS countries showed that in many countries the recommendations of the Model CPC were used in terms of recognition as a prejudice of a court verdict and other court decisions that entered into legal force. It should be noted that, despite the different interpretations of circumstances Prizna Vai 's prejuditsionnymi, CIS countries unanimously perceive

information about prejudice and how the evidence and the case.

Many scholars have expressed different opinions on the application and implementation of prejudice in criminal proceedings, each of which certainly deserves attention and discussion at the legislative level. One cannot but agree with the opinion that “prejudice in criminal proceedings must be refutable, that is, if the court when the case comes to the conclusion that the facts established by them contradict facts established by a legally effective court decision rendered in the criminal, civil, arbitration or administrative proceedings, he has no right to put them into the foundation of the sentence until until this court decision is canceled by a higher court, since in the presence of a court decision that has entered into legal force, a verdict that contradicts it cannot be passed” [7, p. 87].

In the literature, opinions are expressed regarding the procedural order that was applied when passing a prejudicial sentence. So, quite reasonable seems proposition that “is unacceptable to recognize the circumstances with prejudice without further verification by the verdict handed down without the participation of the defendant, in a simplified form of the trial without the establishment of a court of actual circumstances, with the consent of the accused with the charges against him at concluding a pre-trial cooperation agreement” [8, p. 93].

The implementation of the institution of prejudice in the criminal process, the existing problems in its application indicate the need

to improve the legislative regulation of this institution.

In a society constantly is changing social, there are new legal acts, kotory is, by virtue of their legal nature may also have a prejudicial effect. It is appropriate to note the need s discussions on the recognition of and circumstances preyuditsionnymi established sentences of foreign states in cases where manifest Prejudicial relationship between verdicts of courts of various states. For example, in cases of investigation (consideration) of a criminal case against one of the accomplices in a crime who is a citizen of the state in whose territory he is detained at the request of a foreign state. The verdict in the main case has already decreed by a court of a foreign state in whose territory the crime was committed, and entered into force, and dedicated criminal investigation resumed the State of which a fitment I investigation and returned smiling to their homeland. Because according to the norms of procedural law the issuance of such a person to a foreign state is not carried out, a dedicated criminal case passm atrivaetsya in the state where its national has arrived. Thus, interstate legal relations arise, where for the same crime can be pronounced a sentence of courts of different states, but with the application of the prejudice established by the judgment of a court of another state.

Based on the rules of international cooperation in criminal matters regarding the validity of evidence obtained in a foreign country, etc. olagaem necessary to define the procedural th procedure of recognition of the circumstances established by the verdict of the court of a foreign state, a prejudice the court, prosecutor, investigator of the State in

which the manufacture there is a reopened case. It seems that this will contribute to the development of interstate relations in the provision of legal assistance in criminal cases, including through the implementation of the institution of prejudice.

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