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PARTICIPNT TO THE CRIMINAL PROCEEDINGS ON THE SIDE OF DEFENCE IN THE CRIMINAL PROCEEDINGS OF THE RUSSIAN FEDERATION

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Abstract: The main characteristics of the adversarial type of criminal proceedings in the Russian Federation are: a clear separation and demarcation of the parties in the criminal prosecution, defence and resolution of the criminal case and the procedural equality of the prosecution and defence. At the same time, the court is an arbiter in the dispute between the parties, creating the necessary conditions for the parties to perform their procedural obligations and exercise the rights that they are entitled to. As a rule, there are no pre-trial proceedings and the court is relieved of the procedural functions of the parties. Secondary (derived) typical characteristics of adversarial proceedings are publicity, orality and directness.

The search process or investigative proceedings, unlike the adversarial one, is completely permeated with a public (official) beginning. Its main characteristics are: the merging of the functions of the prosecution and the resolution of the

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crime into one person (organ); the defence function is essentially absent; the suspect is not perceived as a subject, but as a powerless object of criminal procedural activity, and practically has no procedural rights and possibility to compete with the victim; the court proceedings are preceded by a search (investigation).

This paper analyses all the participants to the criminal proceedings on the side of defence (suspect and accused, defence attorney and civil defendant).

Key words: defence, prosecution, injured party, suspect.

1. INTRODUCTORY REMARKS

Theoretically, participants to the criminal proceedings in the Russian Federation can be classified taking into account the purpose of their participation in the criminal proceedings and their attitude towards the outcome of the proceedings[3]. In this regard, they can be divided into five groups:

(1) state bodies and officials who have the authority of the government and whose orders all other participants to the proceedings are obliged to obey: court (judge), prosecutor, investigator, chief of the investigative body, head of the investigation department, investigation body and representative of the investigation body. These participants to the criminal proceedings conduct the proceedings in the criminal case, taking a leading position in it and determine the course of the proceedings. They apply measures of procedural coercion, make decisions on the initiation of the criminal proceedings, their conduct and the resolution of the merits of the case[4];

(2) persons who have an independent substantive legal interest in the case – the suspect or accused, the person against whom the proceedings for the application of a compulsory medical measure was or is being conducted, the injured party, the private prosecutor, the civil prosecutor and the

[3] See Hasplat U. Rustamov, *Уголовный процесс: Формы: Учебное пособие* (Москва: Закон и право, Юнити, 1998); Игорь Владимирович Жеребятьев**, „**Некоторые проблемные вопросы рассмотрения уголовных дел в особом порядке судебного разбирательства“, *Российский судья*, 5(2006), 14; Борис Тимофеевич Безлепкин, *Комментарий к Уголовно-процессуальному кодексу Российской Федерации (постатейный)* (Москва: Проспект, 2007); Анатолий Анатольевич Толкаченко, „Уголовно-правовые аспекты особого порядка судебного разбирательства по уголовным делам“, *Уголов. судопроизводство*, 3(2006): 26-32; Александр Витальевич Смирнов**,** Калиновский Константин Борисович, *Уголовный процесс: учебник для вузов* (СПб, Москва: ИД „Питер**“,** 2006); Калиновский Константин Борисович, Александр Витальевич Смирнов**, „**Презумпции в уголовном процессе“, *Российское правосудие*, (4)2008, 68-74; Михаи́л Соломо́нович Строго́вич**,** *Курс советского уголовного процесса* (Москва: Изд-во Академии Наук СССР, 1958).

[4] See Лидия Борисовна Алексеева, *Международные нормы о правах человека и применение их судами Российской Федерации: практ. пособие* (Москва: Права человека).

civil defendant. They represent a personal substantive legal interest in the proceedings protected by the law, possess broad procedural rights (with certain obligations), which enables them to actively participate in the criminal proceedings;

(3) participants representing the interests of persons from another group – legal representatives of the suspect, the accused, the person against whom the procedure for the application of a compulsory medical measure was or is being conducted, the defence attorney, representatives and legal representatives of the injured party, the private prosecutor, the civil prosecutor and the civil defendant. Their relations with persons from another group, whose rights and interests they represent, are based on special trust;

(4) participants to the proceedings who perform auxiliary functions – some of them are holders of evidentiary information (witnesses), others are involved in the evidentiary procedure due to their special knowledge (expert witness and expert), the third are engaged to confirm the facts of the conduct of the investigative action, as well as its content, course and the results (search witnesses), and the fourth helps in implementing the principles of the language of criminal proceedings (interpreter);

(5) representatives of the public in the criminal proceedings – jurors (Article 328 of the CPC RF), cemetery workers during the exhumation of bodies (paragraph 3 of Article 178 of the CPC RF), and officials during the inspection of the premises of an institution (paragraph 6 of Article 177 of the CPC RF).[5]

It is necessary to distinguish between the terms "subject" (*субъект*) and "participant" (*участник*) to the criminal proceedings, because the Criminal Procedure Code of the Russian Federation[6] (CPC RF) does not recognize the term "subjects" (*субъекты*), but uses exclusively the term "participants to the criminal proceedings" - *участники уголовного судопроизводства* (item 58 of Article 5 of the CPC RF). Subjects of the criminal proceedings are legal and natural persons who enter into criminal procedural relations in the exercise of

[5] See Софья Дмитриевна Шестакова, „Значение гармонизации европейских уголовно-процессуальных систем для развития российского уголовно-процессуального права", Известия вузов, *Правоведение*, 4(2004): 152-159; Михаил Искандерович Ягофаров, „Проблемные вопросы применения международных стандартов по правам человека в уголовном судопроизводстве", *Вестник Оренбургского государственного университета*, 3(2005):149-150; Михаил Искандерович Ягофаров, „Роль Европейского суда в развитии уголовно-процессуального законодательства" *Вестник Оренбургского государственного университета*, 3(2009): 138-139.

[6] Уголовно-процессуальный кодекс Российской Федерации от, N 174-ФЗ (ред. от 9.11.2024) от 18 декабря 2001 года N 174-ФЗ. https://base.garant.ru.

their rights and obligations. Criminal procedural law assumes that the subjects of criminal proceedings can be both officials and citizens who possess procedural legal capacity (*процессуальной правоспособностью*) and business capacity (*дееспособностью*). However, not all persons participating in the criminal proceedings are participants to the criminal proceedings, but only those who have rights and obligations provided for by the criminal procedural law.[7]

2. THE SUSPECT AND THE ACCUSED

The basic *rights of the suspect* (*подозреваемый*) are prescribed by paragraph 4 of Article 46 of the CPC RF[8] and are primarily directed towards ensuring his constitutional right to defence (*обеспечение его конституционного права на защиту*):

- to know what he is suspected (*знать, в чем он подозревается*);
- to get a copy of the procedural decision (*получать копию процессуального решения*) confirming the suspicion of committing a crime - *официально подтверждающего в чем состоит его подозрение в совершении преступления* (the ruling on initiation of criminal proceedings, copy of the custody report, the ruling imposing a preventive measure, notice on suspicion - notice of suspicion *уведомления о подозрении*);
- to avail himself of the advice of the counsel for the defence (*пользоваться помощью зашитника*) from the moment he receives the said documents or from the moment of *de facto* arrest – *фактического задержания* (items 2 and 3, paragraph 3 of Article 49 of the CPC RF), and to have a confidential interview with him (*конфиденциально*) before the first interrogation;
- to give statements and testimonies in connection with the accusation in his native language or a language he knows (with the right to the free assistance of an interpreter - *помощью переводчика пользоваться может бесплатно*) or to refuse giving them;

[7] See Владимир Владимирович Конин, „Проблемные вопросы применения общепризнанных норм и принципов международного права в российском уголовном судопроизводстве“, *Закон и право*, (11)2007: 26-27; Александр Александрович Кайгородов, „Актуальные проблемы пределов ограничения гласности судебного разбирательства и открытости текста судебного решения“, *Российское правосудие*, (7)2010: 58-64; Александр Сергеевич Емельянов, Перспективы развития системы российского права, Российская юстиция, 2(2025); Игорь Антонов, *Нравственно-правовые критерии уголовно-процессуальной деятельности следователя*. СПб.: Юридический центр Пресс, 2003.

[8] See Александр Алексеевич Казаков, “Заочное судебное разбирательство уголовных дел: практика Европейского суда по правам человека и проблемы правоприменения в Российской Федерации”, *Российский юридический журнал*, 2(2009): 214-222; Дмитрий Петрович Великий, *Единство и дифференциация уголовно-процессуальной формы* (Москва: Волго-Вятский институт (филиал МГЮА), 2001.

- to suggest evidence, submit requests and objections;
- to take part, with approval of the investigator, the organ in charge of investigation or the prosecutor, in the investigative actions carried out at his own petition, at the petition of his counsel for the defence, or of his legal representative;
- to get acquainted with the protocols of investigative actions carried out with his participation and to submit comments on them;
- to lodge complaints against the actions (the lack of action) and decisions of officials of the preliminary investigation and prosecution bodies, as well as the court;
- to defend himself using other means and ways, not prohibited by the CPC RF.[9]

Under Article 47 of the CPC RF, the accused is considered a person against whom:

- a ruling is passed to raise an indictment (*вынесено постановление о привлечении в качестве обвиняемого*);
- a bill of indictment is passed (according to the results of the investigation in regular proceedings) - составлен обвинительный акт (по результатам дознания в общем порядке;
- an indictment ruling is drawn up (according to the results of the investigation in summary proceedings) - *составлено обвинительное постановление (по результатам дознания в сокращенном порядке*.

A person against whom a criminal prosecution is conducted may retain the procedural status of the accused (*обвиняемый*) for a longer period. It is included in the criminal procedural relations in the stage of preliminary investigation, but it can maintain that status in the subsequent stages of the criminal proceedings.[10]

According to paragraph 2 of Article 47 of the RF CPC, the accused appears in the role of:

- the accused, if criminal case is appointed the court proceedings (*подсудимого, если по уголовному делу назначено судебное разбирательство*);

[9] See Вале́рий Дми́триевич Зо́рькин, „Конституционный Суд России в европейском правовом поле“, *Журнал российского права,* 3(2005): 3-9; Вале́рий Дми́триевич Зо́рькин, *Конституционный суд России: Доктрина и практика* (Москва: Норма, 2017); Вале́рий Дми́триевич Зо́рькин, *Лекции о праве и государстве* (СПб. Конституционный Суд Российской Федерации, 2024); Алексеи Валерьевич Ильиных, „Конституционный суд РФ и Европейский суд по правам человека: грани соотношения”, Российский юридический журнал, 3(2005): 78-83; Ксения Сергеевна Курочкина, “Конституционный цуд в судебной системе Российской Федерации“, *Молодой учёный*, 23(2021): 211-213.

[10] See Андрей-Владиславович Чумаков, „Европейские стандарты в области прав человека в российском уголовном процессе”, *Законность*, 12(2005): 32-34.

- the convict, if the judgment of guilty is passed (*осужденного, если в его отношении вынесен обвинительный приговор*);
- the acquitted, if the judgment of not guilty is passed (*оправданного, если в его отношении вынесен оправдательный приговор*).

When an indictment is raised (*предъявляется обвинение*), the activities of the subjects of the preliminary investigation within the framework of the criminal prosecution change significantly - it goes from prosecution on the basis of suspicion to prosecution on the basis of accusation (*перерастая от преследования по подозрению к преследованию по обвинению*). For the perpetration of the crime by the accused is confirmed by sufficient proof - *достаточной совокупностью доказательств* (paragraph 1 of Article 171 of the CPC RF).

When an indictment is raised, the content and direction of the preliminary investigation, its boundaries, as well as the extent of the defendant's right to defence are specified. Criminal prosecution focuses on proving the commission of a criminal offense by the person against whom the indictment has been raised.

The procedural rights of the accused (*процессуальные права обвиняемого*) are largely similar in composition and character to the rights of the suspect, but they are somewhat broader. If the suspect has the right to know what he is suspected of, the accused has the right to know exactly what he is accused of, to receive a decision on the initiation of criminal proceedings against him, according to which he is accused, if he has not previously received it. He also has the right to receive a decision on the application of a preventive measure against him, an indictment document, that is a decision on summoning him as an accused, an indictment conclusion, an act or a decision, and in case the prosecutor alters the charges at the end of the preliminary investigation in the form of an examination - the adopted decision as well. By knowing the indictment, the accused gets the opportunity to defend himself, using all his procedural rights provided for by the law, as well as other means and methods that are not prohibited by the CPC RF.

Raising of an indictment is a special procedural act that gives the accused the possibility to use the right to defence. The decision on raising the indictment is not only communicated to the accused and his lawyer, but the investigator has the obligation to explain to him the essence of the accusations, as well as the procedural rights of the accused provided for under Article 47 of the CPC RF. All of this is confirmed by the signatures of the accused, his lawyer and the investigator, along with the date and time of the indictment.

Upon completion of the preliminary investigation, the accused receives a copy of the indictment conclusion (*копию обвинительного заключения*). If

the investigation is conducted in the form of an examination, there is usually no indictment procedure. However, at the end of the examination, a person must receive a copy of the indictment act or decision (*копию обвинительного акта или постановления*). If the court makes a decision to detain a person, and the body in charge of the investigation cannot finish the investigation and prepare an indictment act within 10 days, an indictment must be raised against the suspect. Otherwise, the preventive measure is revoked (Article 224 of the CPC RF).

Knowing the content of the indictment, the accused has the possibility to challenge the accusations, to give statements and explanations in his native language or a language he knows[11], with the right to the free assistance of an interpreter. According to paragraph 1 of Article 173 of the CPC RF, the accused must be questioned immediately after the indictment is raised. This is necessary not only for the purpose of the quick collection of evidence in the form of his statement, but, above all, for the purpose of ensuring the rights of the person to use the defence. The accused must be familiar with the essence of the indictment, as well as with his procedural rights and obligations. However, the accused, as well as the suspect, is not required to testify with regard to the charges against him. It is his right and he can refuse to give any statements or explanations.

The law clearly stipulates that the repeated testimony of the accused on the same charges, in case of his refusal to testify during the first interrogation - can only be carried out at his own request (paragraph 4 of Article 174 of the CPC RF). If the accused agrees to give a statement, he must be warned that his statements may be used as evidence in a criminal case, including the case of later withdrawal of those statements. However, all the statements made by the accused during the pre-trial in the criminal proceedings in the absence of an attorney, also including cases of renouncing the attorney and those not being confirmed by him in the court, are considered inadmissible evidence (*недопустимыми доказательствами*) (Articles 73 and 75 of the CPC RF).

The accused can actively defend his rights both during the investigation phase and during deliberation before the court. This is why he is enabled to submit evidence, requests and objections, to participate (with the approval of the investigator and the authority in charge of the investigation) in investigative actions conducted at his request or at the request of his attorney or legal representative, as well as to be acquainted with the record of those investigative actions and submit remarks. In addition, he has the right to be acquainted with the decisions on the appointment of court experts, to ask questions to the expert and to review the expert's conclusions.

[11] See Генна́дий Влади́мирович Игнате́нко, „Конвенция о защите прав человека и основных свобод в российской правовой системе: реальности и перспективы", *Московский журнал международного права*, 3(1997): 153-157.

In cases provided for by the CPC RF, the accused has the right to use the help of an attorney free of charge, to have an unlimited number of meetings with him, without time limits, without witnesses[12] and in confidentiality, including the period before the first interrogation. Upon completion of the preliminary investigation, the accused has the right to be introduced with all the materials of the criminal case and to transcribe from them any data to any extent, to make copies of the materials of the criminal case at his own expense, including the use of technical means[13].

These provisions, according to the position of the Constitutional Court of the Russian Federation, do not prevent the accused, whose rights and freedoms are affected by the court decisions determining preventive measure or the extension of detention, as well as their attorneys, from getting acquainted with the materials on the basis of which those decisions were made[14]. In addition, the Constitutional Court of the Russian Federation established that the provisions of Article 47 of the CPC RF as a whole do not limit the accused, whose rights are affected by the decisions of the preliminary investigation bodies on extending the term of the preliminary investigation and determining the court expertise, as well as their defence attorneys - in accessing such decisions. In addition, these provisions do not exclude the need to provide them with information about the circumstances significant for the appeal of the decisions in question[15].

The Criminal Procedure Code stipulates the right of the suspect and the accused to file an objection to the suspension of the criminal proceedings for reasons that are not in their favor - *против прекращения уголовного дела по нереабилитирующим основаниям* (Article 27, paragraph 2 of the CPC RF). In this case, the procedure continues as usual (*в обычном порядке*).

In the adjudication phase, the accused participates in the court's consideration of the following issues: determination of a preventive measure in the form of bail, determination and extension of custody and house arrest, prohibition of certain actions; referral to a medical institution that provides medical or psychiatric assistance in inpatient conditions for the purpose of forensic-medical or forensic-psychiatric expertise (if not in custody) and temporary removal from duty (*о временном отстранении от должности*) in accordance with Article 114 of the CPC RF.

[12] See Камиль Феликсович Карибов, „Проблема использования показаний анонимных свидетелей в уголовном процессе в свете решений Европейского суда по правам человека", *Вестн. Моск. ун-та*, Сер.11, 5(2001): 83-90.

[13] See Ольга Николаевна Доронина, Калинин В.А., "Влияние европейских стандартов в области прав человека на российское законодательство и правоприменительную практику", *Современное право*", 10(2007): 105-108.

[14] Decision of the Constitutional Court of the Russian Federation of 12 May 2003, no. 173-O.

[15] Decision of the Constitutional Court of the Russian Federation of 18 December 2003, no. 429-O.

Rights provided for under paragraphs 16-20 of Article 47 of the CPC RF, the accused exercise during the trial before the court of first instance, as well as in the appellate, cassation and supervisory proceedings. As stated earlier, from the moment the court hearing is scheduled, the accused acquires the procedural status of the accused (*подсудимого*) and his presence is mandatory. Only in exceptionally, as provided for in paragraphs 4 and 5 of Article 247 of the CPC RF, the trial can be held in his absence (*проводиться в его отсутствие*)[16].

By participating in the trial, the accused has all the necessary rights that enable him to defend himself against the accusation presented by the state prosecutor. As in pre-trial proceedings, he can present evidence, submit requests and objections, give statements and use the help of an attorney. In addition, he has the right to be introduced with the record of the court hearing and submit comments on it. In case of disagreement with the judgment, ruling or decision of the court, the accused has the right to challenge them. If other participants to the criminal proceedings file the appeal, the accused receives copies of the appeals and objections and may submit objections to them.

If convicted, the accused has the right to participate in the judicial consideration of issues referring to the implementation of the judgment in person or through a video conference connection (*через системы видеоконференц - связи*). In order to exercise this right, he must file an appropriate request to the court (Article 399, paragraph 2 of the CPC RF). The list of his procedural rights is stated in paragraph 3 of Article 399 of the CPC RF. He can exercise his rights personally or with the help of an attorney[17].

3. THE COUNSEL FOR THE DEFENCE

A counsel for the defence is a person, carrying out the defence of the rights and interests of the suspects and of the accused in conformity with the criminal procedure law, and rendering to them legal advice during the criminal proceedings (Article 49, paragraph 1 of the CPC RF). His presence does not limit the procedural rights of the person he represents. When the counsel for the defence takes over the defence of a certain person, he is obliged to carry it out and cannot withdraw from this engagement[18].

[16] See Ермишина Наталья Сергеевна, „Понятие, признаки и правовые подходы к определению европейских стандартов о правах человека в российском уголовном судопроизводстве*", Вестник Саратовской государственной академии права*, 71(2010): 182-185.

[17] Decision of the Constitutional Court of the Russian Federation of 18 December 2003, no. 429-O.

[See] Алисиевич Екатерина Сергеевна, „Система правовых стандартов Европейского суда по правам человека", Юрис*т-международник*, 4(2006): 29-41.

[18] See Николай Павлович Ведищев, „Проблемные вопросы участия адвоката в кассационной инстанции уголовного судопроизводства России в решениях Конституционного суда РФ и Европей-

The counsel for the defence may be:
a) the lawyer (with presentation of a lawyer's ID and the order);
b) the close relative or another person for whose admittance the accused has applied (according to the decision or ruling of the court), together with the lawyer, and if the proceedings are carried out by a justice of the peace, he may be admitted instead of him.[19]

The method of engagement and appointment of a counsel for the defence is regulated under Article 50 of the CPC RF, while Article 51 prescribes cases in which the participation of the counsel for the defence is obligatory. The right to invite the counsel for the defence to participate in the criminal proceedings belongs to the suspect and the accused, and his engagement can also be performed by their legal representative or another person (with their authorization or consent). Multiple counsels for the defence may be engaged. One counsel for the defence can represent several suspects (accused), except in situations where their interests are opposed (*интересы одного из них противоречат интересам другого*).

The investigator, the investigating authority or the court are obliged to provide the participation of a counsel for the defence at the request of the suspect (accused). If engaged counsel for the defence does not appear within five days from the date of the request, the procedural authorities may propose the suspect (accused) to engage another counsel for the defence, and in case of refusal, they must assign him a counsel for the defence through the Federal Bar Association (*Федеральной палаты адвокатов*). If the existing counsel for the defence cannot participate in the implementation of a certain procedural action within five days, and another counsel for the defence is not engaged by the suspect (accused) and no request is submitted for his appointment, that action may be conducted without the participation of the counsel for the defence, except in the cases where his presence is obligatory based on points 2–7 of paragraph 1 of Article 51 of the CPC RF.

In the cases provided for by the law (Article 16, paragraph 4 of the CPC RF), the suspect (accused) may use the legal assistance of a counsel for the defence free of charge (*пользоваться помощью защитника бесплатно*)[20]. If the lawyer participates in the preliminary investigation procedure *ex officio*,

ского суда по правам человека", *Адвокат*, 5(2010): 11-14.

[19] See Александр Алексеевич Воронов, *Роль адвокатуры в реализации конституционного права на квалифицированную юридическую помощь* (Москва: Рекомендованный список диссертаций, 2008).

[20] See Вадим Александрович Виноградов, „Право на бесплатную квалифицированную юридическую помощь: конституционный и международно-правовой аспекты", *Юстиция*, (2)2009): 42-52.

the costs of his remuneration are borne from the federal budget (*счет средств федерального бюджета*).

According to point 2 and 3(1) of paragraph 3 of Article 49 of the CPC RF, the suspect has the right to the legal assistance of a counsel for the defence as from the moment:

- of initiation of criminal proceedings against him,
- of the actual detention of the person suspected of committing a crime,
- of ordering custody as a preventive measure,
- of serving a notification about being suspected of committing a crime (Article 223, paragraph 1 of the CPC RF),
- of announcement of the ruling on court-psychiatric examination, as well as from the moment of the start of the implementation of other procedural measures, infringing upon his rights and freedoms.

The accused has the right to the legal assistance of the counsel for the defence from the moment of the adopting of the ruling on his procedural status as an accused. However, the counsel for the defence is often involved in the proceedings even before that decision is made, already with the start of procedural actions, infringing upon the rights and freedoms of the suspect.

A lawyer can also be engaged by the person against whom procedural actions are being conducted within the framework of the verification of the report about the criminal offense (Article 144, paragraph 1, point 1 of the CPC RF).

Pursuant to Article 50 of the CPC RF, the counsel for the defence may participate in criminal proceedings at the invitation of the suspect or the accused, his legal representative or by the other persons on their authorization or consent. His presence must be provided by the investigating authorities, the investigator or the court, at the request of the suspect or the accused. In cases where the law requires the obligatory presence of the counsel for the defence, and he is not engaged or the person did not waive that right in the prescribed form, the competent authorities must assign him a counsel for the defence (*меры к назначению защитника*).

If, within 24 hours of the suspect's arrest or custody, the engaged counsel for the defence cannot be present, the investigator or investigative authorities are obligated to ensure his replacement through the Federal Bar Association. If the suspect refuses the assigned counsel for the defence, investigative actions may be conducted without him, except in cases where his presence is obligatory.

Pursuant to Article 54 of the CPC RF, the suspect or the accused may, at any time during the criminal proceedings, waive the counsel for defence (*отказать-*

ся от защитника) on his own initiative. This waiver is recorded in writing, and if it is filed during the investigative action, it is entered in its minutes.

Such a waiver is binding for the investigator, the investigative authorities and the court and does not lead to the loss of the right to later request the inclusion of a counsel for the defence in the proceedings. However, the subsequent engagement of the counsel for the defence does not imply a repetition of procedural actions being carried by that time.

Paragraph 1 of Article 51 of the CPC RF stipulates that the participation of a counsel for the defence in criminal proceedings is obligatory, if the suspect or the accused:

- has not refused from the counsel for the defence in accordance with Article 52 of the CPC RF;
- is a minor;
- cannot exercise his right to defence on his own because of his physical or psychological defects;
- does not know the language in which the criminal proceedings are conducted;
- is accused of committing a criminal offense for which a prison sentence for a term of over 15 years, of life imprisonment or of the capital punishment, may be imposed;
- is absent, and the trial is conducted in accordance with paragraph 5 of Article 247 of the CPC RF (in the absence of the accused - *в отсутствие подсудимого*).

In all the above-mentioned cases, the counsel for the defence takes part in criminal legal relations in accordance with the general rules (paragraph 3 of Article 49 of the CPC RF). In addition, his presence must be ensured as from the moment the suspect (accused) submits a request:

- for consideration of a criminal case in a special procedure (*особом порядке*) with his consent to the charges (Chapter 40 of the CPC RF);
- for consideration of cases before the court with jury (*с участием присяжных заседателей*);
- for conducting investigation in an abbreviated procedure - *в сокращенной форме* (Chapter 32(1) of the CPC RF).

If the suspect or the accused, their legal representatives or other persons do not hire a counsel for the defence upon their authorization or with their consent, the investigator, investigative body or court are obliged to take measures to ensure his presence in the criminal proceedings. A lawyer is involved in criminal legal relations as the counsel for the defence on the basis of a lawyer's ID and

order. His procedural status is defined under Article 53 of the CPC RF. Although he is not a civil servant, his procedural rights are called powers. In the case of the need to obtain the consent of the suspect (accused) for the participation of a lawyer in the criminal proceedings, the lawyer is allowed to pay him a visit before admitting the case, with the presentation of a lawyer's ID and order.

The basic rights (powers) of the counsel for the defence include:

- presence when the record on the arrest is made and being acquainted with it;
- presented when the accusation is brought;
- communication with his client;
- taking part in the interrogation of his client, as well as in the other investigative actions, performed with his participation or at his request, that is, at the request of the counsel for the defence himself;
- collection and presentation of proof, necessary for rendering legal advice;
- lodging appeals and complaints;
- engaging an expert (*привлекать специалиста*);
- lodging appeals against the actions (the lack of action) and decisions of the officials of the preliminary investigation bodies, the prosecutor and the court, and taking part in the consideration thereof by the court;
- making use of other means and ways of defence not prohibited by the criminal procedure law.

The counsel for the defence is entitled to get acquainted with the following procedural documents.

- the decision on the application of preventive measures, records of investigative actions carried out with the participation of his client and other documents that have been presented or should have been presented to him;
- all materials of the criminal case (after the completion of the preliminary investigation), from which he may write out any information in any volume, to make copies at his own expense, including with the use of technical devices.

The law regulates the participation of counsel for the defence in investigative actions. As part of providing legal assistance to the client, he can:

- consult with the client briefly in the presence of the investigator or the investigative body;
- pose questions to persons under interrogation by authority of the investigator or investigative body (questions can be rejected but entered in the records);

- make remarks in writing as to the correctness and completeness of entries made in the record of the investigative action.

The counsel for the defence is obliged not to divulge the dana of the preliminary investigation. He signs a statement of criminal liability for their divulgence, in accordance with Article 310 of the CPC RF. If he participates in the proceedings on a criminal case, in the materials of which is contained some information comprising a state secret, while having no corresponding access to the said information, he is obliged to give a written recognizance not to divulge it, to take measures to prevent other persons from becoming acquainted with them, as well as to comply with the requirements of the legislation of the Russian Federation on state secrets when preparing and submitting procedural documents, statements and other documents containing such information.

In the court proceedings, the counsel for the defence has the right to participate in the courts of the first, second, cassation and supervisory instance, as well as in the consideration of the issues relating to the enforcement of the judgment. Pursuant to Article 248 of the CPC RF, he participates in the study of the proof, files petitions, express his opinion to the court on the merit of the accusation and on its proving, on the circumstances mitigating the punishment of the accused or acquitting him, and on the criminal measure and on the other questions arising in the course of the court proceedings.

4. THE CIVIL DEFENDANT

According to Article 54 of the CPC RF, a natural or legal person who, in conformity with the Civil Code of the Russian Federation[21], is held responsible for a damage caused by a crime, may be summoned as a civil defendant (*гражданский ответчик*). Both the accused and other persons can appear in this capacity.

On inclusion of a person as a civil defendant the investigator, the investigative organ or the judge shall pass a resolution, and the court – a ruling. This decision must be passed in a timely manner, as soon as a civil lawsuit is filed within the framework of the criminal proceedings. At the same time, the civil defendant must be acquainted with the substance of the plaintiff's claims and about the circumstances on which they are based. Any written objections of the defendant are attached to the criminal case files.

The civil defendant is not obliged, but has the right to give explanations and testify in connection with the lawsuit in his native language or in a language

[21] Гражданский кодекс Российской Федерации, 30 ноября 1994. года, N 51-ФЗ.

he knows. If necessary, he is provided with an interpreter free of charge. He can also refuse to testify against himself, his spouse or other close relatives. If he agrees to give statements, he is warned that they can be used as proof in the criminal proceedings, even if he subsequently renounces the statements.

Article 54, paragraph 2 of the CPC RF stipulates the right of the civil defendant to collect and present proof, to file requests and objections, and to lodge complaints against the actions (or lack of action) and decisions of the preliminary investigation body, the prosecutor and the court, but only in the part relating to the civil lawsuit and has the right to participate in consideration thereof by the court. All of the above rights, as well as others provided for by the law, may be exercised in person or through their representative.

Upon completion of the preliminary investigation, the civil defendant must be allowed to get acquainted with the criminal case materials concerning the filed civil claim, to write excerpts and make copies of the necessary documents at his own expense, including with the use of technical devices.

A civil defendant has the right to participate in the consideration of the criminal case before the courts of all instances and has all the necessary opportunities for this, including being acquainted with the records of the court session and submitting comments on it, participation in court hearings, to file appeals against the judgment or another court decision, to know about the complaints and presentations filed in the case, as well as to submit objections to them. However, he can exercise all these rights exclusively in the offense referring to the civil claim.

According to Article 55 of the CPC RF, the representatives of the civil defendant may be lawyers. By a court ruling or a resolution of the judge, the investigator or the investigative body, one of his close relatives or another person proposed by him, may also be admitted as his representative. The representative enjoys the same rights as the person he is representing. The personal participation of the civil defendant in the proceedings on the criminal case does not deprive him of the right to have a representative.

The law prescribes the following procedural obligations of the civil defendant:

1. respond to the summons (*являться по вызову дознавателя*) of the investigator, the investigation authority and the court. In case of evading the attendance at the summons, the measure of forcible bringing may be applied (*может быть применен привод*);
2. to keep confidential the dana of the preliminary investigation (*сохранять в тайне данные предварительного расследования*) which he has learned in connection with his participation in the criminal proceedings. He may

be held criminally responsible for divulgence of the data, in conformity with Article 310 of the CPC RF.

It follows from the above that the procedural status of all the participants in the criminal proceedings is based on the possibility to protect their rights and legitimate interests from criminal prosecution. Filing a lawsuit in criminal proceedings leads to the appearance of a civil defendant, who can be the accused or another person who bears the burden of civil law liability (*гражданско-правовой ответственности*) for violation of the criminal law.

5. CONCLUSION

Participants to the criminal proceedings on the defence side are provided for in Chapter 7 of the CPC of the RF. This includes the suspect or the accused, the counsel for the defence, the legal representatives of the suspect and the accused, the civil accused and his representatives. A suspect (Article 46 of the CPC RF) is a person (paragraph 1 of Article 46 of the CPC RF): against whom criminal proceedings have been initiated; who is detained in accordance with Articles 91 and 92 of the CPC RF; to whom a restriction measure has been applied before the indictment was filed in accordance with Article 100 of the CPC RF, and who was informed of the suspicion of having committed a criminal offense in the manner prescribed under Article 221, paragraph 1 of the CPC RF.

The counsel of the defence is a person who, in accordance with the procedure established under the CPC RF, protects the rights and interests of suspects and accused persons and provides them with legal assistance in criminal proceedings (Article 49 of the CPC RF). The legal status of the counsel for the defence is regulated by the CPC RF and the federal law „On Advocacy and the Bar Association in the Russian Federation“ of 31 May 2002, no. 63-FZ.

Among the participants to the criminal proceedings who defend themselves in criminal cases, which include criminal offenses committed by minors, the law lists the legal representatives of the minor suspect and the accused (Article 48 of the CPC RF). The powers of the legal representative of a minor suspect and accused in the pre-trial proceedings in a criminal case are provided for under Article 426 of the CPC RF, and in the court session - in Article 428 of this law. The legal representative participates in the criminal proceedings together with the defence lawyer and cannot limit his rights in this regard.

The civil defendant is also an active participant to the criminal proceedings on the part of the defence (Article 54 of the CPC RF). Representatives of the civil defendant may be lawyers, and representatives of the civil defendant, who

is a legal person, may also be other persons authorized in accordance with the Civil Code of the Russian Federation to represent their interests.

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УЧЕСНИЦИ КРИВИЧНОГ ПОСТУПКА НА СТРАНИ ОДБРАНЕ У КРИВИЧНОМ ПОСТУПКУ РУСКЕ ФЕДЕРАЦИЈЕ

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Апстракт: Главне карактеристике контрадикторног типа кривичног поступка у Руској Федерацији су: јасно раздвајање и разграничење странака у кривичном гоњењу, одбрани и рјешавању кривичног предмета и процедурална једнакост тужилаштва и одбране. Истовремено, суд је арбитар у спору између странака, ствара неопходне услове за странке да обављају своје процедуралне обавезе и остварују права која су им припадају. По правилу, не постоје претпретресни поступци и ослобађање суда од процедуралних функција странака. Секундарне (изведене) типичне карактеристике контрадикторног поступка су публицитет, усменост и непосредност.

Процес потраге или истражни поступак, за разлику од контрадикторног, потпуно је прожет јавним (официјелним) почетком. Његове главне карактеристике су: спајање у једну особу (орган) функција тужилаштва и разрјешења дјела; функција одбране је у суштини одсутна; осумњичени се не доживљава као субјект, већ као немоћан објекат кривичне процес-

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не активности, те практично нема процедурална права и могућност да се такмичи са жртвом; судском поступку претходи потрага (истрага).

У овом раду анализирају се учесници кривичног поступка на страни одбране (осумњичени и оптужени, бранилац и грађански тужени).

Кључне ријечи: одбрана, оптужба, оштећени, осумњичени, одбрана.